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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Long Service of a Member: Lord Trefgarne 849
Questions
Working from Home 849
Tigray 852
Paramedic Services 856
West Coast Main Line 859
Draft Mental Health Bill Committee
Membership Motion 865
UK Infrastructure Bank Bill [HL]
Report 865
CHOGM, G7 and NATO Summits
Statement 918

Grand Committee

Procurement Bill [HL]
Committee (1st Day) ..... GC 181

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

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

Monday 4 July 2022

2.30 pm

Prayers—read by the Lord Bishop of Manchester.

Long Service of a Member: Lord Trefgarne

Announcement

2.36 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I take this opportunity to note that our longest-serving Member, the noble Lord, Lord Trefgarne, yesterday marked 60 years since he first took his seat. On behalf of the House, I pay tribute to the endurance of the noble Lord.

Working from Home

Question

2.36 pm

Asked by ***Lord Howarth of Newport***

To ask Her Majesty's Government what assessment they have made of the impact on (1) the economy, and (2) society, of increasing numbers of people working from home.

Baroness Penn (Con): The pandemic resulted in an unprecedented increase in the proportion of people working from home—from 19% pre-pandemic to a peak of roughly 50% in June 2020. It has since fallen back to 38%. It remains unclear whether this will persist, and the long-term impact of greater remote working is highly uncertain. The Government are monitoring this closely.

Lord Howarth of Newport (Lab) [V]: As someone whom your Lordships have kindly permitted to work from home—I wish it was not necessary in my case—I ask the Minister whether the Government accept that the advantages of hybrid working include improved work/life balance, well-being and the ability to care for family and home; enhanced productivity; the retention of more people in the labour market; opportunities for high-quality employment across the regions; a better balanced housing market; revived high streets and stronger communities; and reduced emissions from commuting. Will the Government therefore embrace home and remote working in the Civil Service and the public sector, in the tax and social security systems, and in their levelling-up, digital and net-zero strategies?

Baroness Penn (Con): My Lords, the Government will accept some of those benefits set out by the noble Lord. However, we also need to think about some of the other effects—for example, evidence also indicates lowered innovation and knowledge-sharing in the workplace due to remote working. So the Government support the ability to work flexibly and support businesses in finding the right approach for them. I think there are many benefits to home or remote working, but those need to be balanced against some of the negatives we can also see.

Lord Forsyth of Drumlean (Con): Will my noble friend the Minister think for a moment about those people who do not work from home but who use their own cars for work purposes? Given that petrol has now reached £10 per gallon, should the Treasury not think about changing the 45p allowance, which barely covers the cost of petrol, let alone other costs? At that level, people have to pay tax and national insurance on any remuneration they receive back from their employer for using their own vehicles.

Baroness Penn (Con): My noble friend is absolutely right that, even at its peak, only 50% of people reported working remotely, so we must remember the other half of people who were not doing any remote working at all during the pandemic—and even less so now. I understand his concern about fuel costs; this is why my right honourable friend the Chancellor gave the biggest cut to fuel duty that we have seen in a number of decades in the recent Spring Statement.

Baroness Armstrong of Hill Top (Lab): My Lords, I wonder if the Minister, following her very helpful replies to my noble friend, will ensure that the message she is giving to this House is also given to Members of the Cabinet. When Jacob Rees-Mogg made his remarks, there was a marked decline in the number of applications to public sector jobs, because it is absolutely clear that young people want a different pattern of employment to that which was normal for people like me. They want more hybridity and flexibility—maybe the Cabinet need to understand that too.

Baroness Penn (Con): I understand the point the noble Baroness makes. We do need to move with the times on hybrid working; however, from the perspective of young people—I am not sure that I am one, but I may be slightly younger—there are some downsides to remote working regarding opportunities to mentor and learn in the job, or for people whose housing situations do not allow them space to work properly. It is all a question of balance. It is also right, after the peaks of what we saw during the pandemic, that people move more towards spending some time in the office and interacting with colleagues.

Baroness Randerson (LD): My Lords, increased home working has led to a dramatic drop in sales of rail season tickets, down to 30% of pre-pandemic levels. Traditionally, rail companies relied heavily on this reliable source of funding. We have been promised for years the modernisation of ticketing on the railways, making tickets simpler to purchase, with cheaper and fairer fares. Can the Minister tell us when we are going to get this long-promised revolution?

Baroness Penn (Con): My Lords, I believe that quite a bit of it is under way, but I am not as familiar with progress as my colleagues in the Department for Transport will be. What I can say is that an assessment by the National Infrastructure Commission found—the noble Baroness is right—that pandemic restrictions and

[Baroness Penn]
associated increases in remote working did affect infrastructure use. However, it is too early to assume that long-term behaviour change such as increased remote working would lead to a wholly different pattern of infrastructure. In terms of our approach to transport infrastructure, there is an element of "wait and see" on the effects of the pandemic.

Lord Deben (Con): Does my noble friend accept that most sensible employers—I count myself as one—have a balance in this? They bring people in, say, two days a week when everybody works together and gets the advantages of which she speaks. The point of this Question really is that the Government ought not to give the appearance that the way we are dealing with this in the public sector is somehow different from the private sector, which has reached out to this new way of working. In terms of family friendliness it is enormously better, and in my business I certainly find better productivity as a result, because people feel happier about the work/life balance.

Baroness Penn (Con): I would absolutely echo my noble friend's language around balance, and he has mentioned some of the other benefits of hybrid working that we have discussed. Each government department sets its own hybrid working policy. The Treasury, for example, expects staff to work 50% of the time in the office and the remaining time at home over a two-week period. I think that strikes a balance.

Lord Tunnicliffe (Lab): My Lords, flexible working is one of the many issues that could and should be included in an employment Bill. That legislation has been promised for years, but still we wait for the Government to bring forward proposals. With these questions becoming more urgent, why did the Government opt against including that Bill in the recent Queen's Speech?

Baroness Penn (Con): My Lords, I am afraid that I am not sure I can add to any previous answers on the employment Bill, except to say that we are still committed to bringing one forward when parliamentary time allows. However, progress on our Good Work agenda does not need to wait for the Bill: we have made progress on a number of initiatives, either through secondary legislation or policy changes, and we will continue to look for those opportunities to make progress on that agenda.

Baroness Uddin (Non-Afl): My Lords, I have to confess that I thoroughly enjoyed the opportunity to work from home: it was the very first time in 35 or 40 years that I had been able to spend that much time with my family. What assessment have the Government made of the impact of domestic violence on women who have continued to work from home and have additional responsibilities as carers?

Baroness Penn (Con): There are couple of points in the noble Baroness's question. We have seen a positive impact overall on those with caring responsibilities, with the increase in hybrid working and more opportunities for them to stay connected to the workplace. But she also mentioned domestic violence, which was another issue during the pandemic. We saw that it was important for people to have the option to come into the office as a safe space for them to work, because home is not always a safe space for everyone, sadly.

Lord McLoughlin (Con): My Lords, will the Government bear in mind the many people who do not have the opportunity to work from home? Those who work in the National Health Service and on the front line in the police service, along with many other public sector workers, do not have the opportunity to work from home. There must not be a division between those who have to attend work and those who do not.

Baroness Penn (Con): My noble friend makes a very important point. It is incumbent on all of us to see life through not just our own experience but that of others. As I said, at the moment the majority of people do not work from home at all, and we need to understand that too.

Lord Grocott (Lab): My Lords, further to the question of the noble Lord, Lord McLoughlin, is it not true in so many respects that the people who cannot work from home are the people on whom society depends most? You cannot be a nurse, a bus driver or a plumber and work from home. There is a whole range of people who cannot do so, and if there are tremendous benefits from flexible working, maybe we ought to be looking at ways of reducing the length of their working week as compensation for the fact that they simply cannot ever work from home.

Baroness Penn (Con): Where I do agree with the noble Lord is that flexible working encompasses a whole range of different working practices, not just working from home or hybrid working; it might also include part-time working or job shares. There are huge opportunities in this space, including for people for whom working from home is not an option at all. The Government will continue to take forward work in that area.

Tigray

Question

2.47 pm

Tabled by ***Lord Collins of Highbury***

To ask Her Majesty's Government what steps they are taking to support a peaceful resolution to the conflict in Tigray, Ethiopia.

Baroness Wheeler (Lab): On behalf of my noble friend, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we welcome the cessation of hostilities between the Government of Ethiopia and Tigrayan forces and the subsequent uplift in aid deliveries, but the humanitarian situation remains dire for those impacted by the conflict. We are, of course, in regular touch with Ethiopian and Tigrayan leaders and the AU's

high representative, Olusegun Obasanjo, and are working closely with the G7. The UK's special envoy to the Horn of Africa and the Red Sea raised this very issue with Ethiopian PM Abiy in May.

Baroness Wheeler (Lab): The Minister will know the huge scale of suffering through hunger and malnutrition in northern Ethiopia, with the UNOCHA reporting up to 3 million people desperately in need of food aid. Despite the welcome increase in supply, there are continued reports in some parts of Tigray that internally displaced people are still resorting to eating wild plants to survive. What steps are the Government taking to end the continued humanitarian blockade and ensure that aid is received in all parts of Tigray?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Baroness that the challenge is immense across Ethiopia. In particular, 9 million people in northern Ethiopia are in need of life-saving aid due to the conflict and nearly 30 million people require life-saving humanitarian aid throughout Ethiopia in 2022. The UK has been working with our UN partners. We were involved with the very first set of convoys that went in to provide humanitarian relief and continue to do so. We have been lobbying the Ethiopian Government to restore access to cash banking and communications, and since November 2020, the UK has provided more than £86 million to support vulnerable crisis-affected communities across Ethiopia, reaching communities in the Tigray, Afar, Amhara, Oromia and Somali regions.

Baroness Sugg (Con): My Lords, around 26,000 women and girls need services following conflict-related sexual violence. This violence has led to babies being born and their mothers ostracised. Can my noble friend provide an update following the deployment of the UK's Preventing Sexual Violence in Conflict Initiative team and say when its report will become available?

Lord Ahmad of Wimbledon (Con): My Lords, as my noble friend will be aware, CRSV remains a key priority for the UK Government. The Foreign Secretary has made sexual violence in conflict one of her top priorities. In northern Ethiopia, the UK has provided £4 million of support to survivors of sexual violence. My noble friend is correct that we have deployed experts; we are working with UNICEF and the UNHCR to ensure that full support can be provided to survivors. I will be pleased to provide a briefing to my noble friend on the detail of our support and the focus we hope to bring at the PSVI conference in November.

Lord Alton of Liverpool (CB): My Lords, has the noble Lord had a chance to look at the link I sent him over the weekend to a French documentary, the first in 18 months to be undertaken by international, independent journalists who had access to Tigray, entitled "Tigray, the Land of Hunger"? It develops the point made by the noble Baroness, Lady Wheeler; it is about the deliberate starvation of the people of Tigray, which is a war crime. Does the noble Lord agree that, with 6 million people under siege and starving to death—a situation that will be only worsened by the blockades in Ukraine—and Tigray being without electricity, internet, banking services and medical supplies, the situation is dire? When will the FCDO's JACS report—the joint analysis of conflict and stability—in Ethiopia be completed? Are we preserving the evidence, so that those responsible for atrocity crimes will be brought to justice? Does he agree that there can be no peace without justice?

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with the noble Lord's final point. We are ensuring through the deployment of experts and in working with key international partners that we do exactly as he suggests and protect the evidence so that we can bring the perpetrators of these crimes to justice. As the situation has been enhanced by our ability to provide humanitarian support, the report is being updated. We were just talking about home working; I regret to say that it is perhaps also not part and parcel of the job of a Foreign Minister. This weekend I spent most of my time in Birmingham, so I have not had time to read the report for the OSCE plenary, but I will look at the link that the noble Lord has sent me.

Lord Purvis of Tweed (LD): My Lords, the World Food Programme estimated today that 40% of the population of Tigray are now with extreme lack of food. It is spreading, with rising hunger in the neighbouring regions of Amhara and Afar, as well as in Sudan—where I was three weeks ago—and in South Sudan. With an estimate that Somalia may have a famine, for the first time in very many years, the Horn of Africa will see hunger on an unprecedented level. I reiterate my call for the UK Government to convene a London summit on hunger to co-ordinate the international effort. I applaud what the UK is doing, but it is not enough without the rest of the international community. Without that co-ordination, we may see hundreds of thousands—if not millions—of people die this summer of something that is absolutely preventable.

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord about the need for co-ordination. As I said earlier, that is why we are working with key UN agencies in particular, which are among the first to gain access to some of the regions the noble Lord has highlighted. We are looking specifically at other regions, as I said earlier, including Oromia, Somali and Amhara. However, the point is well made. We are co-ordinating our efforts; on whether it requires an international conference specific to this issue, a broader range of conferences is currently taking place where this key issue of food security and famine relief should be central to the thinking and outcomes.

Lord Anderson of Swansea (Lab): Does the Minister agree that it is surely one of the tragedies of our time that, just a few years ago, Ethiopia was considered a model and one of the African success stories? Since then, the Nobel prize-winning Prime Minister has alienated minorities, brought in Eritreans on his side and generally helped to cause the humanitarian crisis which is the subject of this Question. Was this matter raised at the recent CHOGM summit in Kigali because of the proximity of Uganda and Kenya? What can we do in terms of co-ordination?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord about the tragedy of what has happened in Ethiopia, and he is right that Prime Minister Abiy was very much at the forefront of bringing peace and security to the country and the surrounding regions. It is deeply tragic that we are seeing the conflicts unravel in the way we are. However, there is a silver lining to this very dark cloud, not just in terms of humanitarian support but the recent announcement on all sides to agree for discussions to take place, and we full support those efforts. On CHOGM, of course we raised the issue of food security and, in particular, that of conflict prevention. In bilateral discussions, the Foreign Secretary and my colleague, the Minister for Africa, raised these issues directly with the Government of Ethiopia.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that our selling arms to neighbouring Eritrea—a country with a dismal human rights record and an active participant in the maiming and killing in Tigray—is not exactly helping towards a peaceful resolution?

Lord Ahmad of Wimbledon (Con): My Lords, again, without getting too much into the arms sales issue, as I have said repeatedly from the Dispatch Box, we have a very rigid policy when it comes to arms and defence sales across the world; those same principles are applied irrespective of which country may be requesting that support or assistance from the UK.

Lord Browne of Ladyton (Lab): My Lords, this conflict is a humanitarian disaster of monumental proportions; 9 million people have been affected by it and about half a million people have died. Turning to the peace process which has been proposed, the TPLF does not trust the African Union to lead the peace process and wants Kenya to lead it instead. Given that on Thursday last week Prime Minister Abiy's spokesperson spoke very positively about the relationship between Ethiopia and Kenya and between Prime Minister Abiy and President Kenyatta, should we not argue for the Kenyan Government to work alongside the AU and its envoy as a compromise solution? Surely with what is at stake, that is what is necessary: a compromise.

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord makes a very valid proposal and I assure him that in our engagement with Kenya the importance of the situation in Ethiopia is part and parcel of our discussions. I think there will be a change of leadership very shortly in Kenya, with President Kenyatta stepping down. But it is equally important that we engage proactively to ensure that whoever then goes on to lead Kenya is fully engaged in finding a solution to this process.

Viscount Waverley (CB): My Lords, the question of arms sales has been raised. Does the Minister accept that consistency by the United Kingdom on the provision of licences for arms sales around the world would be extremely helpful, rather than the current inconsistent way in which such issues are addressed? Does he concur that peace in this troubled region would be enhanced by sustained and unhindered humanitarian access, the restoration of internet and banking services, and bringing to an end youth conscription throughout the region, all of which would be most welcome?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's second suggestion, I have already alluded to the fact that some of the very points the noble Lord has raised are being discussed directly, and one hopes that the outcomes of these discussions—as and when they take place—will see a real focus on the priorities that he has articulated. On arms sales, I have to disagree; as I said, we have a process that we seek to follow in every negotiation and discussion we have. Of course, there are always learnings to improve that process and we adapt those accordingly.

Paramedic Services

Question

2.59 pm

Asked by ***Lord Young of Norwood Green***

To ask Her Majesty's Government what steps they are taking to prevent avoidable deaths caused by delays to the arrival of paramedic services.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): NHS Improvement has allocated £150 million of additional funding to ambulance services to help address pressures, alongside reducing ambulance handover delays. Even though the pandemic placed significant pressure on response times, there have been improvements in all response time categories in both April and May, with average response times to category 2 emergency calls—such as strokes and heart attacks—reduced by about 11 minutes and 24 seconds in May alone. Work continues with the service to restore performance.

Lord Young of Norwood Green (Lab): My Lords, it is difficult to thank the Minister for the Answer because it is a totally unsatisfactory one. I have been raising this question for about the last six months. The reality is that, as the noble Baroness, Lady Uddin, told me when her son had a stroke and 999 was called, it took nearly six hours. He suffered serious consequences as a result of that. People are dying as we sit in this Chamber, literally thousands of them. Why? Because paramedics are waiting with trolleys in hospitals for a bed. There is a simple solution to this problem, which I have been suggesting to the Minister. I have also given him a place—Wolverhampton—where they have solved this problem. Yet, still we do not seem to treat this as a matter of urgency. It is a national disgrace and I want an assurance from the Minister that real action is to be taken—and that does not mean an 11-minute improvement.

Lord Kamall (Con): I begin by thanking the noble Lord for his engagement with me and the department on this issue. When the noble Lord has sent me details or suggestions, I have passed them to the relevant officials within the department. I hope I can assure that noble Lord that I have done that. As the noble Lord will know, within departments we have particular portfolios and I have to hand it on to the person

responsible. In terms of the recovery plan, the NHS has published a 10-point action plan for urgent and emergency care. I will not go through the whole action plan, but it includes dealing with paramedics, recruitment and retention, and more space in A&E departments. At the same time, can requests be handled by telephone by clinicians and patients diverted to a more appropriate resource? All these have been looked at. I understand that the noble Lord thinks it is unsatisfactory, but we have been hit by the pandemic, we are trying to recover and there is a plan.

Baroness Blackwood of North Oxford (Con): My Lords, the noble Lord, Lord Young, is right that handover times have a particular impact on ambulance services. I was pleased to hear the Minister mention recruitment and retention in A&E departments. This is a long-standing problem in emergency services. The Royal College of Emergency Medicine states that emergency medicine has a high attrition rate. I know that a number of steps have been set out. Can the Minister state what success they are having and, if they are not succeeding yet, what further steps the Government plan to set out? We need a change in direction as soon as possible.

Lord Kamall (Con): I thank my noble friend for the question and also for the point that this happens at number of different points in the system. Clearly, there are recruitment campaigns for doctors and nurses. In addition, the number of ambulance and support staff has increased by almost 40% since 2010. Call handler numbers have also increased since the start of May 2022; we have 400 more. In addition, there are pledges to increase the training of paramedic graduates nationally by 3,000 per annum. All these will take time to get into the system, which is still recovering from the pandemic.

The Lord Speaker (Lord McFall of Alcluith): My Lords, we have a virtual contribution.

Baroness Brinton (LD) [V]: My Lords, when Sandra Francis of Oswestry had a cardiac arrest a few months ago, her son had to do 35 minutes of CPR waiting for an ambulance delayed in handovers at A&E. Sadly, she died. Her son said:

"An ambulance should be a way of getting someone to hospital. It shouldn't be a waiting room sat at the hospital."

He is right. Ambulance delays are the very visible part of the A&E crisis and the wider shortage of hospital beds, doctors and other healthcare professionals. Again, I ask the Minister: what are the Government doing to remedy this much wider emergency that is causing preventable deaths right now?

Lord Kamall (Con): The noble Baroness will be aware that there are a number of things going on with the 10-point plan. Maybe I will go through some of the points now. We are supporting 999 and 111 services, making sure that the appropriate person answers the call; supporting primary care and community health services to manage those services; making more use of urgent treatment centres; and providing more support for children and young people. Sometimes people ring 999 but do not need emergency treatment and they can be redirected to another clinician, who can speak to them and that takes pressure off. We are recruiting more staff and looking at more prevention and looking at different rules which prevent the appropriate workflow through the system.

Lord Winston (Lab): My Lords, some months ago, as my wife lay dying in my arms, I phoned the 999 service. The man answering the call asked me a litany of questions and asked me to count her number of heartbeats per minute. That waste of time is critical; with a cardiac arrest you have only a few seconds. I had to interrupt the cardiac massage that I was giving my wife until the emergency services arrived, but of course they had not been called yet. When eventually the man backed down, it was obvious that he had not been trained to ask the right questions. Can the Minister assure the House that there is proper training for people who answer these calls at these critical times, when they are dealing with someone who may recognise that their close relative is dying, and that the latter can hear what they are saying on the telephone? It is highly dangerous and that makes it very difficult. The last thing we hear as we die is usually the voice of someone who is with us.

Lord Kamall (Con): I thank the noble Lord for sharing that very personal story. Clearly, there are too many incidents of this kind. One of the issues that we have to be very careful about as we look to recruit more numbers is to look at the system and at how to divert the less urgent calls. Probably in that case the person was trained to ask particular questions to ascertain how serious or urgent it was but, clearly, that was inappropriate. I will take that case back to the department and see whether I can get some answers.

The Lord Bishop of Manchester: My Lords, our prime objective must be to eliminate all these unacceptable delays as quickly as possible. Can the Minister confirm what work is being done in the interim to ensure that effective pastoral care is available for those who are currently waiting for long periods in ambulances, particularly for the many for whom last rites and other rituals that take place at the point of death form an important part of their faith?

Lord Kamall (Con): The right reverend Prelate raises an important issue for those of faith who want to share their last moments of life with someone. I am afraid that I do not have a detailed answer, but I will go back to the department and write to the right reverend Prelate.

Baroness Merron (Lab): My Lords, as other noble Lords have said, ambulance delays are a symptom of pressures elsewhere in the health and care system. At the end of April, 62% of over 20,000 patients in England who were medically fit to be discharged remained in hospital, largely due to a lack of appropriate social care provision. Can the Minister say how and when there will be a fully costed workforce plan to ensure that the relevant staff are in place to urgently tackle this bottleneck?

Lord Kamall (Con): The noble Baroness will know from the debates that we had during the passage of the Health and Care Bill that there is a 15-year plan; Health Education England has been tasked with that. In addition, significant amounts of things are being done at the local trust level, so it is not just a sort of five-year, top-down Soviet-type plan but is looking at recruitment at a local level. There is also a national discharge task force that works with national and local government and the NHS to identify long-term sustainable changes which could reduce delayed discharges and ensure that patients are in hospital only for as long as they need to be.

Lord Tugendhat (Con): My Lords, what role does the Minister think the police might have to play in this? Last Wednesday I was knocked down in Great George Street by a bicycle and rendered unconscious. Although a paramedic arrived from St Thomas' by bicycle quite quickly, there was no ambulance. I was very grateful to the police for taking me into St Thomas' and depositing me at the A&E. That was very helpful, and I wonder whether the Minister thinks that might happen more often.

Lord Kamall (Con): I thank my noble friend for sharing that experience, and it is good to see that he has recovered and is able to ask the question. One interesting thing that is being looked at as part of the overall review—again, we have to be very careful about unintended consequences—is how many of these cases can be treated at the scene without requiring the patient to be taken to hospital. That will need careful thought as it is a difficult trade-off. In this case, clearly, they were looking at the possibility of someone else taking my noble friend to hospital, and he was fortunate that there was a police officer nearby who was able to do that. However, with any of these interventions we have to be careful and make sure that we are fully aware of unintended consequences that could make things worse.

West Coast Main Line

Question

3.09 pm

Asked by ***Lord Snape***

To ask Her Majesty's Government what assessment they have made of the recent performance of the rail services on the West Coast Main Line provided by Avanti Trains.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, train operating companies' performances are independently assessed against their contracts periodically across set criteria. An evaluation is under way and therefore it would be inappropriate for me to comment at this time. Once the evaluation is complete, results will be published.

Lord Snape (Lab): Does the Minister recollect our exchange on 27 April, when she said that this company had the lowest possible passenger satisfaction, scoring only one out of five? Will she accept from me that since then the performance has been even worse? The company is now at the bottom of the intercity league so far as delays and cancellations are concerned. As the company's contract expires in October, what plans do the Government have to renew it or to find an alternative, bearing in mind that anyone running the west coast main line from October qualifies to run HS2 in the future? Will we really hand over Britain's flagship railway to a company that is 70% controlled by the Italian Government and that has made a complete mess of the trains that it is responsible for running at present?

Baroness Vere of Norbiton (Con): I do indeed recall an almost identical Question on 27 April. It is a pleasure to be answering it again. Avanti West Coast achieved one out of three, not one of five, which I agree is still terrible—it was at the bottom—but the Government hold it and all other train operators to account via the contracts. Avanti West Coast is still on an ERMA and, as the noble Lord pointed out, we are looking at potentially moving it and allied organisations on to a national rail contract within the third tranche of the national rail contracts. Will it definitely happen in October? That is not certain at all. We will look at its performance. We will think about the other options that we might consider in terms of incorporating HS2, for example, and being the shadow operator of HS2. Nothing is certain at this stage.

Baroness Randerson (LD): My Lords, there are reports that Avanti West Coast has withdrawn the 0745 Stoke-on-Trent to Manchester Piccadilly service, a vital commuter service. It has been withdrawn until September, apparently due to staff shortages. This is clearly not acceptable, as it was done without any notice. What are the obligations for train operating companies to give due notice and to undertake public consultation prior to withdrawing train services that they are contractually committed to provide? There is an issue here in relation to season ticket holders. Will they be given full refunds? What penalties will Avanti West Coast suffer if it has not obeyed the rules that are attached to its obligations?

Baroness Vere of Norbiton (Con): My Lords, I am grateful to the noble Baroness for the warning about the 0745 Stoke-on-Trent to Manchester but, as she pointed out, the removal of that service is temporary. It will be reinstated. Noble Lords will be aware that there has been a significant uptick in the number of cases of Covid recently, leading to short-term staff unavailability. That has had a knock-on impact on training for new staff coming in to support these services. Avanti West Coast is working very hard to minimise the impact on passengers. All cancellations are regrettable. Often these circumstances are quite fast-moving, and changes are temporary, so traditional consultation does not usually happen. However, usually the train operating companies will work with the local markets and with key stakeholders to understand any impact.

Lord Berkeley (Lab): My Lords, Great British Railways is coming into effect in, I am sure the Minister hopes, a couple of years. She will be directly responsible for all

the trains that are on time and late, as well as for the infrastructure. Does she relish that? If not, who will she blame?

Baroness Vere of Norbiton (Con): I hope that it will not be me personally, as I am not the Rail Minister, though it will be the Government. However, Great British Railways will be a body set up specifically for all those things that the noble Lord has pointed out, which will be to the benefit of passengers and freight since it will bring everything under one overarching umbrella. Will the Secretary of State and any Rail Minister at that time micromanage the network? Absolutely not. However, there will be one guiding mind. That is our ambition for Great British Railways.

Lord Goddard of Stockport (LD): My Lords, I fear the Minister will never be able to see the virtues of Stockport, which is a vibrant community and is business-friendly. On Saturday, eight trains to Manchester were cancelled; on Friday, two; and on Thursday, one. The 2.40 was cancelled at short notice today as well. Every time a train is cancelled, hundreds of real people are disadvantaged. Is the Minister certain that there is not a sensible alternative to handing over HS2 to Avanti, as the noble Lord, Lord Snape, spoke about? You would not put Herod in charge of an orphanage, would you?

Baroness Vere of Norbiton (Con): My Lords, Avanti West Coast is not the only train operating company currently facing difficulties, which are principally due to the uptick in Covid, as I suggested. There is a downward trend in the public performance measure and the moving annual average across all train operating companies, but it is expected that this will be proactively mitigated. The DfT will actively manage this process through the schedule 7.1 sections in the franchise agreements to make sure that we hold people to account, get the performance data, and understand why things went wrong and what we can do to fix them. Our goal is to deliver for passengers and for freight.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, given the awful service on the west coast and on other railways, and given that fares in the United Kingdom are so much greater than on the continent, including in Italy—which owns a big percentage of the west coast firm—will the Minister not agree with my noble friend Lord Berkeley about moving back to Great British Railways and that the unbelievably complex privatisation of the railways in Britain has been a total disaster? There are some guilty men opposite who should admit it.

Baroness Vere of Norbiton (Con): I cannot agree with the noble Lord at all. Bringing the private sector into the railways probably rescued them. The number of passengers has gone up enormously since the private sector was involved. There have been problems more recently, principally owing to the Covid pandemic, but the Government will keep the private sector involved in our railways. These national rail contracts will become passenger service contracts, and the noble Lord is most welcome to respond to the consultation on them.

Lord Tunnicliffe (Lab): My Lords, there seems to be consensus that Avanti is one of the worst train operators in the country, and that is against a very low bar. Can we turn to the other side of the contract? Since 2010, the cost of a season ticket on the west coast main line between Coventry and London Euston has risen 49%, from £7,096 to £10,546. This represents an increase of almost £300 a year. What steps are the Government taking to address increasing rail fares on the west coast main line?

Baroness Vere of Norbiton (Con): The Government are very conscious of increases in rail fares across the entire network, which is why we used the July RPI figure to increase the regulated fares this time around. We could have used the later figure and it would have been higher, but we deliberately decided to use a lower figure. How we will take subsequent rises forward is still under consideration. We recognise the impact that the cost of living challenge is having and will bear this in mind as we think about future price rises.

Lord Wigley (PC): My Lords, does the noble Baroness appreciate the negative effect that performance on the west coast line is having on potential industrial and economic development in north Wales? Undermining rail connectivity between north Wales and other industrial centres in England means that the convenience of being located there is now very difficult to sell to incoming industrialists. Are the Government satisfied with that result from their policy?

Baroness Vere of Norbiton (Con): The Government are not satisfied with the current performance of the train operating companies, and we are doing all we can to work with them and get through this difficult phase of the current Covid uptick and improving timetables. The timetables have been improved, not only by increasing the number of trains coming in on the west coast main line, but by ensuring that future timetables are flexible and respond to demands such that, if people choose to invest in north Wales—I encourage them to do so—they would have appropriate rail services.

Arrangement of Business

Announcement

3.20 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I want to raise my concern—and I think there is concern across the House—regarding the preparedness of the Procurement Bill, which is an extremely important Bill that should have considerable support across the whole House. We have had 300 government amendments, many of which are not technical. I invite all noble Lords to look at today's Marshalled List for the Grand Committee. Amendments have been tabled late, and groups of government amendments were still be sorted out over the weekend. Yesterday, the Government sent out another list, apologising for the ongoing issues, thanking Members for their patience, inserting the missing amendments and removing the duplicate ones. I fail to see the benefit of publishing a Bill in such a poor state.

Noble Lords: Hear, hear!

Lord Kennedy of Southwark (Lab Co-op): This is a Lords starter Bill, yet on the first day in Committee so many government amendments are needed. Surely it would have been better for the Bill to be published when it was in a fit state to be published and then only at that point would the Second Reading and other stages take place.

I have discussed my frustration with the usual channels and we have found a way forward today. I am grateful to the Government Chief Whip for that, but this is no way to proceed generally. I ask the Government Chief Whip to go back, speak to his colleagues in government and government departments and suggest to them that, irrespective of whether a Bill would be generally supported by the whole House or is a more controversial aspect of the Government's programme, it is unacceptable for it to be brought forward in this state. Every Bill brought forward in this state will have major problems here. The House deserves to be treated with respect, and the handling of the Procurement Bill fails to do that. It is just not what we expect. I ask the Government to look at this again because this Bill will quite rightly have a very difficult time in this House because of the way the House has been treated. I will leave it there. I shall not talk about the Schools Bill, which is in an equally parlous state. I await the Government's response.

Lord Ashton of Hyde (Con): My Lords, in many respects I completely agree with the noble Lord, Lord Kennedy. I apologise to the House, and particularly to some of the government Front-Benchers who were working all weekend, as was my office, who have received the list of amendments. I agree with the noble Lord that this is not the way things should be done. I accept that. It is not totally without precedent, but the fact that it was done before is not a good excuse.

As I said to the noble Lord, Lord Fox, last week, I have taken more than 200 government amendments through and the way we had to do it then and the way we are doing it now is by talking to the usual channels. I am grateful to the noble Lord and the noble Lord, Lord Stoneham. We have decided to stop at the point where there is a particular problem for the Opposition Front Bench so that they have more time to prepare for the group, so we are going to do only the first three groups. It might help the whole House to get the Marshalled List a day earlier so that the majority of the amendments with their numbers would be made available to Members earlier so we would know the order in which they are coming. That would still allow manuscript amendments and other additional amendments later. That can be taken forward in the Procedure Committee.

We will do only three groups today. The usual channels have agreed that that is the way to go forward. I agree with the noble Lord that this is not an ideal way to proceed. I will certainly take the message back to other parts of government. I can only apologise again to him and to the House.

Lord Hunt of Kings Heath (Lab): My Lords, I thank the Chief Whip for what he said, and I agree with him about the Marshalled List. Since I have a considerable number of amendments in the Procurement Bill, can he assure me that, given only three groups are to be debated today, there will be ample time to deal with all the other amendments in this important Bill and, if necessary, to allocate further days in Committee for that to happen?

Lord Ashton of Hyde (Con): I think you can take that as read, because one of the features of this House, and one of the nightmares for the business managers, is the fact that noble Lords can talk for as long as they like. If we do not finish within the appointed number of days, we have to find more time. I accept what has been said. One of the things we will try to do is to indicate more clearly what is genuinely a technical amendment and what is a substantive amendment that needs discussion.

Lord Wigley (PC): My Lords, I am grateful to the Minister for having made this statement, but will he appreciate that the effect of this sort of change goes beyond the usual channels in this House? It affects those outside who have to live with the consequences of the legislation and want to brief Members of the House accordingly. In this instance, the weekend before last, I spent the whole weekend going through all 80 amendments to have a telephone conference—as did other noble Members on the Liberal Democrat Benches and the Cross Benches—with members of the Welsh Government who are seriously affected by this. When this barrage of amendments comes forward, it totally undermines that sort of discussion that should be an essential part of the process of government, to ensure that the legislation is workable for those it affects. What discussion, if any, did he have with the Welsh Government?

Lord Ashton of Hyde (Con): The short answer is that I did not have any discussions with the Welsh Government, but I completely accept that when amendments come in late—and when government amendments come in late—it does affect more than just the Front Benches and the Members of this House. The people who brief Members of this House will be affected and the devolved Administrations will be affected—I absolutely accept that. As I said right at the beginning, I do not think having 342 government amendments at the last minute is a suitable way forward. I hope we will do our best not to do this again.

Lord Forsyth of Drumlean (Con): My Lords, it is much appreciated that my noble friend has come to the Dispatch Box to make this apology, but it is not really his fault. The fault lies with Ministers in this Government not doing their job properly, and with parliamentary draftsmen producing such material. Again and again, we see framework Bills that are full of Henry VIII clauses, we find bills that are not thought through, and amendments being tabled at the last minute that have not even been discussed in the House of Commons. Frankly, it is not treating this House with the dignity it deserves and it is a very bad way to make law. Should we not find some method whereby Ministers in the other place can perhaps be educated on what this place does, how it operates and what it expects?

Lord Ashton of Hyde (Con): I believe there are attempts going on at the moment to do that. In this case, however, this was a House of Lords starter, so we cannot blame the other place.

Draft Mental Health Bill Committee

Membership Motion

3.29 pm

Moved by ***Earl Howe***

That it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the draft Mental Health Bill presented to both Houses on 27 June 2022 (CP 699), and that the Committee should report on the draft Bill by 16 December 2022.

Lord Foulkes of Cumnock (Lab Co-op): I wonder if it is possible to ask a question on this. This is a good way of dealing with a Bill. Why is a similar procedure not being followed for the Bill of Rights?

Earl Howe (Con): My Lords, the Bill of Rights fulfils a key manifesto commitment of the Government. We have already conducted a thorough and detailed consultation on it, which is why we think it right to introduce the Bill now and let the whole House debate it. Having said that, I am sure my right honourable friend the Deputy Prime Minister and my noble and learned friend Lord Bellamy would be pleased to engage with the noble Lord, other noble Lords and the relevant Select Committees as the Bill makes its way through Parliament.

Motion agreed.

UK Infrastructure Bank Bill [HL]

Report

3.30 pm

Clause 2: Objectives and activities

Amendment 1

Moved by ***Baroness Hayman***

1: Clause 2, page 1, line 12, at end insert—

"(ii) to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008, and

(iii) to protect, enhance and restore the United Kingdom's natural capital, including by supporting efforts to meet the targets and improvement plans under Chapter 1 of Part 1 of the Environment Act 2021,"

Member's explanatory statement

This amendment clarifies that the Bank's objective to help tackle climate change includes mitigation of climate change, adaptation to climate change, and the protection and restoration of the UK's natural capital.

Baroness Hayman (CB): My Lords, I declare my interest as a director and co-chair of Peers for the Planet.

I thank the Minister for the constructive dialogue that has taken place throughout the passage of the Bill, including the meeting with the bank's chair and chief executive last week to discuss their new strategic plan and the subsequent letter from the chief executive, which we received today. These meetings have been useful and have provided some comfort that the bank's leadership, which is obviously of very high quality, has considered and intends to address many of this House's concerns about issues such as natural capital, climate resilience and how certain types of infrastructure, such as gas and roads, will be treated. It would, however, be extremely helpful if the Minister made clear from the Dispatch Box the position on gas exploration and road building, concerns about which were raised in Committee and in our meeting. Although I know she believes that those concerns are unfounded, it would be helpful to have on the record some of the assurances that we received informally.

I welcome the Government's amendment on energy efficiency, to which I have added my name. It is a much-needed signal of their recognition of the urgency and importance of making progress in this area. I hope the Minister may have an opportunity to have a word with her noble friend about the Social Housing (Regulation) Bill, where we could do with some movement on the same topic.

Where we have not made progress in making changes to the Bill is on the environmental priorities, including nature-based solutions, the circular economy and adaptation. It is with these issues, about which we spoke at length in Committee, that this group of amendments is concerned. I have tabled Amendments 1 and 6A, while similar related issues are raised in amendments tabled by the noble Lords, Lord Teverson and Lord Holmes of Richmond, and the noble Baronesses, Lady Jones of Whitchurch and Lady Bennett of Manor Castle. My amendments have signatories from all sides of the House, for whose support I am extremely grateful. Indeed, the Minister herself recognised the importance of these issues but simply queried the need to spell them out in the Bill.

Following the Minister's comments in Committee, my Amendment 1 no longer sets out a third stand-alone objective for the bank, which she indicated would be extremely difficult to do, but is limited to expanding on the climate change objective to clarify exactly what

"to help tackle climate change"

means for the bank in practice, and to reflecting what has been indicated by the Chancellor, the Minister and the bank itself—that is, that resilience and adaptation measures and nature-based solutions absolutely fall within the scope of the climate change objective.

Given the consensus on this, it is hard to understand the argument against including these additional proposed new subsections and making clear that the bank has within its founding objectives a coherent, integrated response to climate change, and sending a clear message to the markets that these are priority areas for market development. We all agree on this, so why do we not make that clear to everyone else out there?

Including nature in the Bill in no way ignores the fact, as has been argued, that the market for nature-based solutions is nascent. What it does provide is a strong signal that the bank recognises that it has a role in developing capacity towards a pipeline of investable projects and will be poised to act—crucially, encouraging others to do the same—when these come to fruition. Moreover, the bank has a role now in helping build

[Baroness Hayman]
and develop these markets, including through taking a nature-positive approach to near-term projects, building internal capacity for future projects and taking a joined-up approach across government-related bodies, including UKRI, the British Business Bank and local authorities, to help seed projects and initiate the local capital and innovation needed to bring those projects to market.

On adaptation, we are told that it is agreed that climate-resilient infrastructure is critical to reaching net zero, and that mitigation and adaptation will be considered together. But even the Climate Change Committee's most recent progress report last week observed that the UKIB consultation on investment priorities focused on key net-zero infrastructure priorities, but

"has no mention of adaptation."

Clarity, focus and policy direction are needed.

Amendment 6A, the second tabled in my name, offers an alternative approach to these issues by including the circular economy and nature-based solutions in the definition of infrastructure, by making explicit that the infrastructure solutions set out in the indicative list in Clause 2(5) include those related to the circular economy and nature. As the Minister will have noticed, it mirrors the approach that the Government themselves have taken to energy efficiency.

I have already spoken about the importance of including nature in the Bill. It was generally accepted how important an issue it was in Committee, so I can be brief on this point. It is not in question that nature-based solutions play a role. The bank's new strategic plan, which is focused on short initial timescales, already provides examples of some of the main near-term opportunities in the water sector for nature-based solutions. Explicitly stating that nature may play a part in infrastructure projects which realise the bank's objectives would provide the confidence and the clarity needed to give momentum to the development of these solutions.

Similarly, adopting circular economy structures within the definition should be uncontroversial and a signal of how infrastructure projects may be approached. The bank's strategy already says that it is

"open to financing … circular economy projects."

A circular economy approach is completely in step with producing positive synergies between the bank's objectives. Circular economy principles recognise planetary boundaries, promote fairness and reduce overconsumption. It is estimated that circular economy infrastructure could support up to 450,000 jobs by 2035 in reuse, recycling and remanufacturing. Crucially, those jobs would be in occupations and areas suffering higher rates of unemployment.

In our debates, the Minister spoke at length about the need for clarity, but the Bill is Parliament's only opportunity to be not only clear but explicit about policy priorities. The Government recognised that by proposing their own amendment on energy efficiency. I believe that there is support all around the House for taking exactly the same approach to nature-based solutions and the other issues covered in these amendments. I beg to move.

Lord Teverson (LD): My Lords, I am pleased to follow the noble Baroness, Lady Hayman. I also welcome the Minister's and the Government's change of mind, if you like, on including energy efficiency specifically in the Bill. We all know that the International Energy Agency cried out about developed nations not doing anything about energy efficiency. We also know that it is the cheapest and most effective option: this programme would avoid huge amounts of further capital expenditure. We have not been good at making sure that we pursue that for our housing or building stock.

Having said that, energy efficiency, as measured by output against energy per year, has gradually increased over the years in this economy. This is the silent way of reducing the energy bills that so many of us receive in our inboxes these days—I was going to say through our letterboxes—and I really welcome that. But it is not enough.

I put down an amendment, similar to the noble Baroness's, on including "biodiversity" and the recovery of nature as an objective. I do not understand why the Government do not find it straightforward to include this, because it accepts that there is a biodiversity emergency. The Treasury in particular produced the fantastic Dasgupta report, which went through the whole area of natural capital, partly covering how we can solve this issue but also clearly painting the challenges. I congratulate the Treasury on having initiated that report but perhaps not quite so much on the follow-up to date. But here is an opportunity to put this into the Bill.

However, if we cannot have this as an objective in the Bill, I very much support Amendment 6A tabled by the noble Baroness, Lady Hayman, which references

"the circular economy, and nature-based solutions".

This could be a major step for government policy on the circular economy, which was very well described by the noble Baroness. But I get the impression that, out there in the real world, people are enthusiastic about local repair shops and being able to mend the stuff they buy so that they do not have to buy it again, saving money and resources and helping on climate change. So, the circular economy element is equally important.

Of course, nature-based solutions are a natural way—literally—not just for a number of climate change and biodiversity recipes but to help the natural environment in all sorts of ways. They do this more cheaply and, compared to just pouring concrete, have wider effects, as we know, on areas of adaptation like water quality and flooding, which have been so neglected, as the noble Baroness said.

I favour Amendment 9, tabled by the noble Baroness, Lady Bennett. If we saw any UK Infrastructure Bank investment in roads, we would be concerned about its climate change objectives. I also strongly support, and have put my name to, Amendment 11 in the name of the noble Baroness, Lady Jones of Whitchurch. I am sure that she will explain this herself, and I will not remark on it at this stage.

3.45 pm

Baroness Bennett of Manor Castle (GP): My Lords, I rise to speak in particular to my Amendment 9, and I thank the noble Lord, Lord Teverson, for his support. I very much agree that climate change means that we cannot be building new roads, although big issues of air pollution are of course also addressed in this group.

I have to begin, since I do not get the chance to do it very often, by commending the Government on their amendment on energy efficiency. It demonstrates the sentiment of our debate in Committee—and indeed throughout the House and the country—and shows that campaigning really does work. Let us see lots more of it.

Essentially, I agree with everything the noble Baroness, Lady Hayman, and the noble Lord, Lord Teverson, have said, so I will not repeat those points. However, we are increasingly hearing from the Government about the importance of biodiversity and the state of nature. Indeed, I had the pleasure recently of attending an event at the Groundswell Regenerative Agriculture Show & Conference, at which the Government and Members of this House and the other place expressed their concerns and spoke of the importance they place on restoring nature. Surely, the Infrastructure Bank should be explicitly directed to do that.

As the noble Baroness, Lady Hayman, said, we are talking about sending a message to the bank and to the country about the importance of biodiversity in nature, and we can also look to the international stage. We see reports expressing grave concern about the state of the COP 15 biodiversity talks, and the entire nature community is screaming out for leadership in those talks. Clearly, as the chair of COP 26, it should be our responsibility to lead the way. As the noble Baroness said, if the Government are saying, "We already mean this anyway", what is the harm in including such a provision in the Bill and sending that message out to the international community as well as to the country?

On the circular economy amendment, in Committee I tabled an amendment calling for a reduction in resource use. In the interests of efficiency and time—and given that I was not getting many positive signals from the Government—I did not table it this time, but I think the Government will come back to this issue so that we can make at least some progress on it. Explicit support for a circular economy, which is a necessary but not a sufficient condition, given that we continue to treat the planet as a mine and a dumping ground, is essential in order to see some progress. We will certainly see the other place pushing on the question of resource use.

My Amendment 9 is a modest amendment, and it is perhaps worth making clear what I mean by it. I am very happy if the Government want to look at using different terminology, but I point out that what I mean by "roads" is major stretches of roadway. I do not mean tracks up to new onshore windfarms, government enthusiasm for which we are finally seeing signs of in the media, which is greatly encouraging. If the Government wish to find another form of wording, I point out that, clearly, what I am referring to is major road infrastructure. As the noble Lord, Lord Teverson, said, the climate emergency does not allow that. This issue crosses over with the clean air amendments in this group, and the issues of disadvantage that we are going to discuss in the next one. Broadly speaking, air quality is worst in the poorest, most disadvantaged areas of the country. New roads are the last thing those areas need, as they would make the air quality even worse.

To say that the Infrastructure Bank is not for roads but for mass transport should be considered uncontroversial. It is not my intention to put the amendment to a vote, but this is a debate that will continue in the other place. I commend all these amendments to your Lordships' House.

Lord Holmes of Richmond (Con): My Lords, I rise to speak to Amendments 7 and 10 in my name, but before I do I join others in congratulating my noble friend the Minister on tabling the government amendment on energy efficiency. It speaks to an amendment that I and others tabled in Committee, and it is certainly welcome that it will now, rightly, be included in the Bill.

Amendment 7 would insert just three words: "nature-based solutions". There is a lot in the Bill about climate and carbon, but the reality is, as noble Lords are well aware, whatever we do and must do on that front, we will still be left with a pressing, urgent need for nature-based solutions. As other noble Lords have mentioned, we have "roads" in the Bill. As the noble Baroness, Lady Bennett, has just pointed out, I do not think anybody would necessarily be against roads as a secondary, tertiary or lower-level aspect of an infrastructure project—to get to the shoreline for offshore wind, to give another example. However, that is at best a tertiary part of the bank's investment, or of that particular infrastructure project, yet it is in the Bill. If "roads" can be there, surely "nature-based solutions" has at least an equal place in the Bill. Would my noble friend consider including "nature-based solutions" and, in exchange, taking "roads" out of the Bill? That would be a thoroughly good thing.

Finally, in similar terms, my Amendment 10 would insert "clean air"—perhaps one of the most significant, precious and essential parts of our infrastructure. Does my noble friend the Minister agree that it would not be difficult or controversial, and that it would be a thoroughly good thing, to have "clean air" on the face of our infrastructure bank Bill?

Lord McDonald of Salford (CB): My Lords, the House this afternoon represents one of the Prime Minister's favourite metaphors: a nest of singing birds. Everybody who has spoken agrees with each other; I agree with everything that has already been said, but particularly with what my noble friend Lady Hayman has said. I have added my name to her Amendment 1, and I will make just two additional points to the ones she made.

First, the Government agree that nature, nature recovery and nature-based solutions are important, and they say that all of that is encompassed within the Bill as drafted. But if nature is not mentioned on the face of the Bill, it will always look secondary; it will always nest behind climate. It will not have the same

[Lord McDonald of Salford]
prominence or importance, yet all the facts suggest that the biodiversity crisis is at least as urgent as the climate crisis. These two things, according to the facts and the evidence, deserve to be side by side. If they are not, the bank and others will draw obvious conclusions.

Secondly, the only point I have heard made for why there is resistance to having nature on the face of the Bill is that there are not really any projects ready to go. My answer to that is: so what? This Bill is setting the course for the years ahead. It does not matter that there is not something ready to go in the next few months, because these projects will surely come. One issue that has detained your Lordships' House time and again over the last year has been water quality and the fact that water companies are dumping sewage hundreds of thousands of times a year into our rivers and the sea. It is easy to imagine a project on water quality that would not really be about climate but would be all about nature. Surely that would deserve to be supported by the UK Infrastructure Bank. So I ask the Minister to reconsider one last time.

Baroness Jones of Whitchurch (Lab): My Lords, first, I apologise for not attending the earlier stages of the Bill. I was caught out by conflicting diary commitments, but I have been following the debates and the developments around the Bill through all the stages, and my noble colleagues will know of my interest in this issue.

We have been grateful to the Minister for the continued dialogue on the contents of the Bill. However, as we heard today, there remains unfinished and unresolved business, and I am therefore grateful to the noble Baroness, Lady Hayman, and all noble Lords who set out the case for their amendments so clearly; we share their concerns. The number and range of amendments in this group on the environmental priorities demonstrate that there is a feeling across the House on this issue. The noble Lord, Lord McDonald, described it beautifully as a "nest of singing birds". I concur with that description, because there is a concern that the ministerial responses in Committee simply have not been good enough to embed "nature-based solutions" and the "circular economy" into the bank's founding legislation. However, we believe that these principles are crucial for the creation of green jobs, for harnessing the best science and technology, and for reshaping the economy away from the damaging fossil fuel mentality that exists at the current time.

Amendments 1 and 3 demonstrate our ongoing concerns about the implementation of the "biodiversity" and "natural capital" commitments of the Environment Act, which, as the noble Lord, Lord Teverson, quite rightly pointed out, were designed to underpin the very compelling evidence in the Dasgupta review. In that report, Dasgupta made it clear that enhancing nature and biodiversity are more than aspirational extras; they lie at the heart of our future economic and social well-being and are fundamental to delivering our climate change commitments. This is why we believe that these principles should be a major driver of the bank's activities and spelled out in the Bill. As the noble Baroness, Lady Hayman, has made clear, the Chancellor's strategic steer in March set out that the Government are already calling for the bank to grow natural capital markets through its investment. This Bill seems the proper vehicle to drive that policy through.

I have also added my name to Amendment 6A, which would make it clear that the definition of infrastructure projects should be widened to include "nature-based solutions", rather than just concrete and metal. I also think that Amendment 9 of the noble Baroness, Lady Bennett, quite rightly challenges the emphasis on "roads"; surely public transport and green energy should be priorities in future. "Nature-based solutions" can be anything from creating natural flood defences to restoring our woodland, peatland and parks. The growing market for investment in nature-based land use is an illustration of its potential for delivering our climate change commitments.

The amendment also embeds the principle of the "circular economy", putting greater emphasis on our scarce resources through better reuse, repair, recycling and remanufacturing. As noble Lords have said, these are principles to which the Government are already committed but have been slow to implement. Placing these in the Bill would provide the means for drawing in new revenue streams to transform our manufacturing processes. The noble Baroness, Lady Hayman, has already set out a convincing argument for Amendment 6A and—depending on the Minister's response—if she wishes to test the opinion of the House, we will support her.

We also have our Amendment 11 in this group, which seeks to expand the definition of "harmful pollutants" to include those

"which are not greenhouse gases but"

other forms of "particulate matter", such as car tyre air dust, which can be just as

"detrimental to air quality and human health."

Therefore, we think that the case for expanding that definition is vital. I am grateful to the Minister for her discussion with my noble friend Lord Tunnicliffe on this issue, and hope that some of those assurances can be placed on the record today.

As is the case with so many other Bills, there seems to be a significant gap between what the Government say they want to achieve and what they are willing to commit to in legislation. Whether it is biodiversity, air quality, the circular economy or ensuring that infrastructure projects use nature-based solutions, their record of delivery does not match their stated ambitions. There always seems to be a political or legal excuse for delay. All we are doing in these amendments is formalising policy commitments already agreed by the Government, and providing a mechanism for financial support. There is already a review process built into this, but, if we are not rightly ambitious about delivering projects outside the normal investment portfolios, we will find ourselves in the seven-year review stage facing a tally of missed opportunities. This is why it is so important for noble Lords to support the amendments in this group, and I hope that they will.

4 pm

Baroness Penn (Con): My Lords, we start Report with a topic that has already been central to our discussion of the UK Infrastructure Bank: its role in investing in nature and the environment. I thank the noble Baroness, Lady Hayman, and all noble Lords who have engaged with the Government on this important topic.

I turn first to Amendments 1 and 3, in the names of the noble Baroness, Lady Hayman, and the noble Lord, Lord Teverson, which seek to add natural capital, biodiversity, wider environmental targets and climate adaptation to the bank's climate change objective. As we discussed in Committee, nature-based solutions and projects to support climate adaptation are already within scope for the bank. Those who attended the briefing with the bank's chief executive and chair last Tuesday will have heard that the bank is keen to explore this area. We have given thorough consideration to the question of adding to the bank's objectives through our environmental review on whether nature-based solutions should be in the objectives. We engaged with a wide range of stakeholders during this review, from think tanks to investors, and we heard from a majority of them that they felt that there was already significant scope for intervention in nature-based solutions within the bank's existing mandate without adding a third objective.

In considering this question it is important to acknowledge that the bank already has two stretching and broad objectives that are the outcome of significant work, starting from the recommendations of the National Infrastructure Commission and the national infrastructure strategy. Ultimately, the bank is an infrastructure bank, so it should invest in nature as a means of achieving its objectives and to enhance the UK's infrastructure. The Chancellor made this clear to the bank when he sent it a strategic steer in March this year. The bank's strategic plan sets out that it will explore opportunities to invest in nature and highlights opportunities to invest in water-related projects, as the noble Baroness, Lady Hayman, mentioned.

While the bank's scope to invest in nature is already significant, it is important to note that this is not the only, or indeed primary, government intervention to support the market for natural capital projects. I will mention just a few areas. To provide an accredited route for income for nature projects, the Government are backing the maturation of the woodland carbon code and peatland code through the nature for climate fund and woodland carbon guarantee. To create demand for nature projects, we are implementing regulation to grow the market—for example, through mandating biodiversity net gain for development. The nature recovery Green Paper also sets out plans in this area, specifically on ensuring that environmental regulation and regulators, including Natural England, the Environment Agency and Ofwat, are equipped to support the uptake of nature-based solutions and more strategic, landscape-scale approaches to environmental protection and enhancement by industry. To help the market mature from grant support to a more commercial basis, Defra has established the natural environment investment readiness fund of up to £10 million, which will provide grants of up to £100,000 to environmental groups, local authorities, businesses and other organisations to help them to develop nature projects in England to a point where they can attract private investment. Defra is also initiating the big nature impact fund, a blended finance vehicle designed to use public concessionary capital to attract private capital into the fund. The fund will invest in a portfolio of natural capital projects that can generate revenue from ecosystem services to provide a return on investment. These initiatives will support the growth and commercialisation of the natural capital market.

I thank the noble Baroness, Lady Hayman, for her support for the government amendment in my name. I again reassure noble Lords that it was always the Government's intention that the bank could invest in projects to increase energy efficiency—for example, the retrofitting of homes. In fact, this forms a key aspect of the bank's strategic plan. However, recognising the points raised in debate on this, I have tabled this amendment to add "energy efficiency" to the non-exhaustive definition of infrastructure in Clause 2 to ensure that it is explicit that the bank can invest in projects to increase energy efficiency.

Amendments 6A, 7, 9, 10 and 11 all seek to make further changes to the definition of infrastructure in the Bill. Amendments 6A and 7 seek to add "nature-based solutions" to the definition of infrastructure. As noble Lords have already heard, the Government are confident and, through our review of the bank's environmental objectives have sought third-party views to ensure, that the definition we have included covers nature-based solutions. The bank's strategic plan also makes clear its commitment to supporting the development of a circular economy.

On Amendment 9 in the name of the noble Baroness, Lady Bennett, I hope she has received the letter from John Flint, the bank's CEO, on this issue. As highlighted in the bank's strategic plan, we do not anticipate the bank investing much in roads. However, it is important that it has the flexibility to do so under the right circumstances. The bank may, for example, consider supporting local authorities in road upgrades that feature as part of their wider transport infrastructure and transport decarbonisation plans. For example, the bank has already financed the West Midlands Combined Authority's sprint bus programme, which includes road adaptations such as priority signalling, redesign of junctions and additional bus lanes.

I take this opportunity to comment on the bank's investment in gas, which the noble Baroness, Lady Hayman, asked about. The bank will not lend or provide other support to projects involving extraction, production, transportation or refining of crude oil, natural gas or thermal coal, with very limited exemptions. These exemptions include projects improving efficiency, health and safety and environmental standards, without substantially increasing the lifetime of assets, for carbon capture and storage or carbon capture, usage and storage where projects will significantly reduce emissions over the lifetime of the asset, or those supporting the decommissioning of existing fossil fuel assets. The bank will not support any fossil fuel-fired power plants unless this is part of an integrated natural gas-fuelled CCS or CCUS generation asset.

[Baroness Penn]

Finally, I come to Amendments 10 and 11 tabled by my noble friend Lord Holmes and the noble Baroness, Lady Jones of Whitchurch. This is a difficult area to tackle, so let me set out how the bank considered the wider environment within its policy framework. First, there are investments which, while addressing climate change or growth, can help to improve the environment. Separately, there is a policy framework considering whether and the extent to which the bank's investments impact environmental factors beyond climate change. With this in mind, I shall set out how the objectives of the bank relate to pollution.

The bank's objectives are tackling climate change and regional and local economic growth, but not wider pollution. The bank can invest in projects that tackle pollution, but only so long as they also help to achieve its core objectives of tackling climate change or regional and local economic growth. Investments directly into infrastructure to tackle other pollutants that can impact clean air will already be broadly covered by the existing definition of infrastructure and the objectives in the Bill. For example, tyres would fall under transport, in the same way that water pollution is covered by water, and tackling those pollutants is in scope as long as that investment is also tackling climate change and/or facilitating regional and local economic growth. As we have discussed, there are likely to be large numbers of synergies in this area.

I know that there has been interest from Peers in broadening the bank's definition of infrastructure to ensure that the bank takes into account the wider environmental impacts, beyond climate change, of its investment decisions. Widening the definition of infrastructure in this way is not the best way to achieve this. Instead, the way that wider environmental impacts are dealt with is via the bank's environmental, social resilience and governance policy. The ESRG policy and framework that the bank is developing will be used to screen projects and provide transparency on its portfolio. Part of this policy will involve collecting data from each investment to meet reporting standards, such as the forthcoming sustainability disclosure requirements, which will include green taxonomy reporting. The objectives of the green taxonomy include pollution prevention and control, which the bank will need to report on for its investments.

More broadly, infrastructure projects are subject to a range of environmental regulations appropriate to their specific type and circumstances. It would not add value to apply these directly to the bank when they already bind the project developers directly. Defra is consulting on new legal targets for air quality, water, waste, and biodiversity, which the Government are required to set under the Environment Act by October this year and which noble Lords will be well aware of.

I hope, therefore, I have provided sufficient reassurance for the noble Baroness, Lady Hayman, to withdraw her Amendment 1 and for other noble Lords not to move the other amendments in this group when they are reached.

Baroness Hayman (CB): My Lords, I am extremely grateful to all noble Lords who have spoken in this debate. As in Committee, we saw support from all around the House. Unfortunately, the Minister has not completely reassured me. I am grateful for her reassurance on gas and understand the reason for including roads, with caveats, in the infrastructure. I sort of understand not wanting to change the objectives, because of the process she described with consultation and wanting to keep clarity for the two objectives.

What I cannot understand is refusing to include the circular economy and nature-based solutions in the infrastructure. I am afraid her arguments are undermined by the Government's actions. They keep roads in there even though they need to be caveated and we need reassurances that they will not be a mainstream activity of the bank. However, they tell us that they are absolutely committed to making these an activity for the bank. We know that the Treasury, departments and everyone who talks about these issues understands the connection between nature-based solutions and climate change. They understand that we need to tackle these areas; there is no difference between us. These are not tablets of stone, unlike the objectives—and the Government are seeking the leave of the House to change the objectives on energy efficiency. If they can do it for energy efficiency, why cannot they do it for nature-based solutions and the circular economy?

I rest my case on that issue and will return to it when we come to Amendment 6A. I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Sharkey***

2: Clause 2, page 1, line 13, leave out "and"

Member's explanatory statement

This amendment seeks to probe whether the Bank would need to meet both objectives in the exercise of its activities.

Lord Sharkey (LD): My Lords, Amendment 2 is a probing amendment so I can be very brief. Its purpose is to seek clarity on how the objectives of the bank will work together and to allow the Minister to put that clarification on the record.

We have discussed this informally with the Minister and her officials, and I am grateful for the time they gave us. Our questions were about whether the two basic objectives—tackling climate change and supporting regional and local economic growth—both needed to be met in any project. Is that what "and" means here in the Bill? In her letter to us of last Tuesday, the Minister responded:

> "I can confirm that the Bill's drafting does not mean that a project must meet both those objectives. The Bank can invest in projects which meet only one of these objectives, so long as supporting a project to deliver regional and local economic growth does not do any significant harm against the Bank's climate objective."

As far as it goes, that is clear and helpful; I look forward to the Minister putting it on the record in a moment.

However, it raises a couple of other issues. For example, does it work the other way round? Is it permissible to invest in a project to support the bank's climate objectives as long as it does no significant

harm against the bank's regional and local economic growth objective? I assume that this is the case—I would be grateful for confirmation that it is. What does "significant" mean in these contexts? What criteria will be used to provide a threshold test for significance? Will each project carry an assessment of the harm that pursuing only one objective may cause to the other? Will any such assessments be published along with other details of the project? I look forward to the Minister's reply and the arrival of complete clarity.

4.15 pm

Lord Ravensdale (CB): My Lords, Amendment 5 is in my name. I declare my interest as a project director working for Atkins and note that I am co-chair of the Midlands Engine APPG. First, I thank my supporters on this amendment; I thank the right reverend Prelate the Bishop of St Albans for all his help in crafting it, and the noble Lord, Lord Tunnicliffe, for his support. My remarks are equally applicable to Amendment 12 in the name of the noble Lord, Lord Tunnicliffe, to which I have added my name.

To briefly reiterate the issue, the current levelling-up objective of the bank, set out in Clause 2, is not clear enough to articulate the levelling-up purpose of the bank in the Bill. Indeed, I would question what the words

"support local and regional economic growth"

really add to the Bill. Almost any conceivable infrastructure investment will meet this objective for the area in which it sits.

As the Minister has previously stated, we have the strategic steer in the form of a letter from the Chancellor, which clearly sets out levelling-up objectives. However, levelling up is a long-term, generational project—as is this bank—and the strategic steer will not bind it in the long term. Ultimately, if nothing is done because of the lack of clarity in the Bill, the bank and the Government may drift away from the levelling-up purpose expressed in the strategic steer and may not undertake the vital work of helping disadvantaged areas in the long term.

This is particularly the case because the effects of agglomeration work against infrastructure spend outside the metropolis. The economic return is simply much better in areas that already perform well, so those projects have a much better chance of proceeding. Inequality becomes entrenched and self-fulfilling. That is why it is so important that, for an infrastructure bank still focused on making a return, levelling-up objectives are clear in the Bill. This can be solved via the simple amendment we have set out. It takes on board feedback from the Minister in Committee to avoid any complicated definitions of disadvantaged areas. It does this by using similar comparative wording to a recent government amendment to the Subsidy Control Act. The amendment would mean that Clause 2(3)(b) read:

"to support regional and local economic growth, with an emphasis on reducing social or economic disadvantages within the United Kingdom."

I am very grateful to the Minister and her team for meeting me and for their efforts in investigating this issue. I know that the Minister is concerned about legal challenge and whether the wording would cause the bank to be too cautious in its approach, but this wording captures the very fundamentals of levelling up. Given the guidance for the bank in the strategic steer, all its investments should be compliant with the wording in any case, so I do not believe that this would limit the bank in any way.

Amendment 12 provides the same clarity in a slightly different way, by ensuring that the first mission in the levelling-up White Paper—the key mission of relevance for the bank—is written into the bank's objectives. Ultimately, both amendments address the same issue: we want to be confident that there is some permanence to the bank's objectives on levelling up and focusing on disadvantaged areas. The strategic steer and a letter to the bank do not offer this permanence, so I hope the Government will agree that something needs to be done to ensure that the bank will deliver in the long term for disadvantaged areas, deliver for the levelling-up agenda and fulfil its potential to make a real difference to the lives of people in those left behind communities all across the country.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Ravensdale. It was particularly useful that he spoke before me because I have taken some of the words that he and his supporters put down in their amendment but made an additional change, taking out the words "economic growth". But I agree entirely with everything the noble Lord just said about the need to focus on reducing disparities and tackling economic and social disadvantages. As he said, that takes the wording from the Government's own approach in another place and it would be very hard for the Government to argue against that.

I argued extensively in Committee about why economic growth as a target in its own right has failed and, indeed, is undeliverable, because you cannot have infinite growth on a finite planet. I will not go over those arguments again now, but I think it is very clear from the fact that we are back here again, after an extensive debate in Committee from all sides of your Lordships' House, simply saying that the bank will work for regional and local growth. As was said in Committee, that could be regional and local growth in Chelsea and the wealthiest 10 wards in the whole country, which is surely not the purpose, and it therefore needs to be clarified in the Bill. As was said in our earlier debate when we were talking about the environment, we have seen acknowledgement of the need to change the Bill already. This is surely another crucial change.

I was pleased to attach my name to Amendment 12 in the name of the noble Lord, Lord Tunnicliffe, and backed by the noble Lord, Lord Ravensdale, and the noble Baroness, Lady Kramer. This is again putting levelling up in the Bill. It is what the Government say the Bill is for. Surely, it has to be specified in it.

Baroness Kramer (LD): My Lords, I am going to be exceedingly brief because so much has been said which I support. I want to make a couple of comments on Amendment 12 in the name of the noble Lord, Lord Tunnicliffe, and others, that I have been pleased to sign. I want to make a point that I think has not been hit on. It is really important because it signals to those who put together projects and then turn to the

[Baroness Kramer]
investment bank and look for resources and funding that they are going to have to meet tests such as improving productivity and making sure that they are delivering well-paid jobs.

Putting that in the Bill would take it away from being a passive measure by which the bank looks at and decides whether to support projects and moves it into the active category. Those who are going out and investing will look closely at whether they are delivering against those various tests. There is so much that is good in the various amendments within this group—I very much support my colleague on Amendment 2—but I particularly wanted to underscore the message-signalling that is deeply inherent in Amendment 12.

Lord Tunnicliffe (Lab): My Lords, I am grateful to all noble Lords who have spoken in this important debate. I am particularly grateful to the noble Baroness, Lady Bennett, the noble Lord, Lord Ravensdale, and the right reverend Prelate—who is not present—for their support in tabling Amendments 4 and 5. Those texts are similar in intent to my Amendment 12, and those colleagues made a powerful case for tightening up the bank's second objective.

I thank the noble Baroness, Lady Kramer, who joined the noble Lord, Lord Ravensdale and the noble Baroness, Lady Bennett, in signing Amendment 12, which I shall turn to now. The Government say their absolute priority is to deliver their levelling-up agenda. Ministers say they will use every tool available to them to ensure left-behind communities can catch up economically, compared to London and the south-east. However, anybody reading the Bill would be hard-pressed to identify that intent. Yes, the bank should be operationally independent from government, but that does not mean it cannot support the levelling-up agenda in its day-to-day work.

Amendment 12 would, in essence, place the first mission from the Government's recent *Levelling Up* White Paper in the Bill. The amendment would not prevent the bank from acting in a manner that deviates from that mission. It will be free to invest in climate-related schemes or projects in wealthier parts of the UK; that would remain the bank's prerogative. However, the amendment would introduce a general requirement for the bank to have regard to the public interest in targeting funds in a manner that will improve productivity, jobs, pay and living standards.

The Government say they want to create good jobs, lift people's pay and improve life chances. However, at the same time, Ministers are slashing the size of the Civil Service and washing their hands of responsibility for pay negotiations in sectors where the Government have a direct interest. We still await an employment Bill that has been promised for many years. That Bill was not deemed a big enough priority to be included in the Queen's Speech, meaning many workers will lack important statutory rights.

The aforementioned White Paper mentions that by 2030, the Government want to see the gap between the best and worst performing regions of the UK narrowing. We want to see that gap close, too, but let us be realistic: it will require concerted action, not just warm words.

The year 2030 is not very far away. Let us consider the current economic context: the economy is on the brink of recession and is forecast to flatline in 2023. The cost of living crisis is squeezing household incomes to an extent not seen for decades. There is not a huge amount of time to turn this picture around. If we are to do so, we need urgent action to create secure, well-paid jobs, and the bank can help only if it is explicitly encouraged to do so.

Amendments to the framework document or strategic steer are not enough to target the bank's mind or provide comfort that the Treasury is sufficiently invested in following through with its stated ambitions. It is regrettable that the Government have not brought forward their own amendment at this stage in proceedings. We have pushed for this in meetings with the Minister but have not succeeded.

We will listen carefully to the Minister's response today but feel that this is an important issue which deserves to be in the Bill. Unless the noble Baroness is able to commit to an amendment at Third Reading, I am minded to test the opinion of the House when Amendment 12 is called.

Baroness Penn (Con): My Lords, I will first take Amendment 2 from the noble Lord, Lord Sharkey, which, as he explained, seeks to probe our use of "and" in the activities of the bank to see whether it must meet both objectives or just one. As we discussed previously, the bank's two objectives—to help tackle climate change and to support regional and local economic growth—are both stand-alone but complementary objectives. I can confirm that the Bill's drafting does not mean that a project must meet both of those objectives but rather that over the breadth of its activities the bank must meet both.

The bank can invest in projects which meet only one of these objectives, so long as supporting a project to deliver regional and local economic growth does not do any significant harm against the bank's climate objective. The bank wrote to noble Lords with further detail on the "do no significant harm" policy on Friday.

To address the noble Lord's two specific questions, there is no reverse or equivalent "do no significant harm" policy for climate change investments with regard to local and regional economic growth. However, in reality we do not consider the bank likely to invest in something harmful to economic growth given the need to crowd in private capital and be additional, in line with its investment principles. The bank will create its own framework for assessing what "do no significant harm" means, drawing on best practice from around the world.

Amendments 4 and 5 from the noble Baroness, Lady Bennett, and the noble Lord, Lord Ravensdale, attempt to define levelling up within the local and economic growth objective of the bank. I reiterate why we have taken the approach that we have. The Bill sets the foundation on which the bank will operate. The specificity of how the bank's objectives will be achieved will be contained in the framework document and in the strategic steer and strategic plan. This is the appropriate use of primary legislation, which can be a blunt and inflexible tool. Specificity in the Bill must be backed

up with detailed and precise drafting, and a number of the aspects which we will discuss today are not easily defined. Failure to do this unnecessarily increases the risk of legal challenges which the bank will face, and that increased risk could result in the bank having a decreased risk appetite for investment.

That is why we have taken the approach we have done with the objectives. We have kept the high-level principles in legislation and supplemented those with additional information in the strategic steer and the framework document. The definition of local and regional economic growth is addressed in the first strategic steer, issued by the Chancellor in March, which stated that a focus on geographic inequality must be a priority for the bank. It also pointed to the *Levelling Up* White Paper to set out the missions with which the bank should align itself when considering investments. We could not do something like that in the Bill.

4.30 pm

Future Governments and the bank are likely to want flexibility in determining areas of focus, and increased specificity in the Bill will reduce this flexibility. The objectives cannot be amended by secondary legislation. That is a deliberate choice, but it also means that we must be careful about what we put into something which cannot be changed easily.

On the amendment tabled by the noble Lord, Lord Ravensdale, although similar wording is used in the Subsidy Control Act, the contexts are very different. In that legislation, the use of the phrase is related to an exemption to a prohibition in a specific context where tight parameters are needed. However, here it is operating as a limit on the long-term and overarching functions of the bank and will impact on every project that it enters into. As a result, the risks that we have previously discussed, and which relate to the bank being excessively cautious in considering investments for fear of legal challenge given the subjective nature of the suggested drafting, are much higher.

Amendment 12, tabled by the noble Lord, Lord Tunnicliffe, focuses on improving productivity, pay, jobs, and living standards, and reducing geographical inequality. The effect of this amendment would be that every investment would need to have regard to these two areas. He has included the wording "have regard to", but this will still have significant impacts on the bank. On improving jobs specifically, we understand the intention of the amendment and do not disagree with it. However, we are concerned that there may be consequences. It could again lead to the bank being overly cautious for fear of legal challenge. For example, it might be nervous to invest in a new technology because that would cause job losses regarding an older or outdated technology. By extending the range of objectives, we increase the risk of tension between those objectives and, therefore, the risk of legal challenges to the bank's operations.

I assure the noble Lord that the bank's early deals are already creating jobs across the UK. For example, a deal with the West Midlands Combined Authority, which invested in a project that will increase connectivity between residential and employment areas by setting up a green bus route, is projected to unlock nearly 4,000 jobs. The strategic steer is also the right place to provide specificity about jobs or employment to meet the current needs of the country. Here, government can be more specific about quality, location and types of role.

Similar to the amendments tabled by the noble Lord, Lord Ravensdale, and the noble Baroness, Lady Bennett, a requirement on reducing regional inequality would mean that the bank has increased risk across a number of its investments. However, this amendment has the added risk of applying to its functions generally, not just to the regional and local economic growth objective. For example, what would happen if a future Labour Government wanted to use the strategic steer to allow the bank to focus on green jobs? What if the green jobs did not offer significant productivity increases in the same way as another investment, or if those green jobs were focused in a poor area of the south-east of England? There is a risk that, under the drafting of the amendment tabled by the noble Lord, Lord Tunnicliffe, the bank would be unable to focus on green jobs—or would at least be cautious about focusing on green jobs—given the read-across from the legislation. However, I understand the points being made in the debate today and commit to updating the framework document to ensure that there is wording which is consistent with the strategic steer and levelling-up White Paper. The wording here is:

"Addressing the deep spatial disparities across and within UK regions",

which I hope that noble Lords agree captures what we are trying to achieve.

I hope that this goes some way towards addressing the concerns of noble Lords, although it does not seek to make changes to the Bill. I hope that the noble Lord, Lord Sharkey, can withdraw his amendment and that other noble Lords do not move theirs.

Lord Sharkey (LD): My Lords, I thank the Minister for clarifying and putting on the record how the bank's two objectives will work together. I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Amendments 3 to 5 not moved.

Amendment 6

Moved by ***Lord Holmes of Richmond***

6: Clause 2, page 1, line 22, at end insert—

"(4A) Before making any investment decision, the Bank must ensure that the principle of additionality is met.

(4B) The principle of additionality is that—

(a) all activities make a contribution which is beyond what is available or is otherwise absent from the market,

(b) all activities do not crowd out the private sector, and

(c) all activities have effects that encourage private sector funding to a multiple specified by regulations made by the Treasury."

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to open this group of amendments and to move my Amendment 6. This amendment boils down to just one word, which predates the investment principles of the bank, the objectives of the bank, the strategy of the bank, the framework document of the bank and everything else associated with the bank: additionality. That is the bank's raison d'être—no additionality, no bank.

As mentioned in the first group of amendments, we have "roads" in the Bill but nothing about additionality. My Amendment 6 would seek to set out exactly what additionality means, how it covers crowding out as well as crowding in, and what multiple Treasury should set on that crowding in.

Government Amendment 23 is purely an amendment to review what the bank has done on crowding in after seven years. It says nothing on crowding out, hence why I support Amendment 24 in the name of my noble friend Lady Noakes, which I will say no more about.

My Amendment 6 covers both the end-point—the review—and the beginning, the mission the bank needs to be on. It is all well and good to have a review at the end of 10 years, or now seven, but without Amendment 6 the review is just the spectre of an individual walking backwards into the future, wringing hands about what the bank has done, either positively in achieving additionality or negatively. Although a review is significant and important, it always arrives a little too late to influence what has just happened.

It is critical that additionality is in the Bill for the benefit of the bank and for the private sector, which would have the confidence to know that the bank would operate to the threshold of additionality, which would have to be achieved or that specific investment would not be entered into. If the Minister cannot accept my amendment, would she commit to meeting with me between Report and Third Reading to look at what we can do to get additionality in the Bill to strengthen the position of the bank, to make projects far more likely to crowd in and not crowd out funding and, ultimately, to benefit everything we are trying to do in this infrastructure space? I beg to move.

Baroness Noakes (Con): My Lords, I have Amendment 24 in this group, which is an amendment to the Minister's Amendment 23. It is always rather strange speaking to an amendment to an amendment when the amendment itself has not been spoken to—but I will do my best.

First, I congratulate my noble friend Lord Holmes of Richmond on his Amendment 6. It is well drafted and encompasses what we understand by additionality in the context of the operations of the UKIB. In Committee, it was widely agreed that additionality was so important that it should be in the Bill. I think it was also agreed that the boundary between what is in this Bill and is in other documents outside the Bill, including the framework document which is not even referred to in the Bill, has been set in the wrong place. When I say that the Committee agreed these things, I do not suggest that the Government agreed, but the vast majority of the Committee was aligned on these matters.

The Minister has been generous with her time with noble Lords, and I thank her for the meetings she arranged and for her letter of last week. She gets a gold star for effort, but I am afraid that that is not matched for content. On additionality, my noble friend claimed that the absence of an agreed definition in the Bill could stop it developing over time. That is nonsense. Additionality, as a basic concept, has barely shifted in the many years that I have been involved in public sector matters. The essence of it is about, and always has been about, something that should occur that would not otherwise have occurred but for the particular intervention or action. It is a universal principle that can be adapted to a number of circumstances.

I then suggested to my noble friend the Minister that, rather than try to produce a specific definition, she could put a high-level definition in the Bill and take a Treasury power to issue guidance to UKIB. That too was brushed aside. The Treasury likes to keep stuff in documents, such as the framework document, which it alone controls. I remind noble Lords that, as my noble friend the Minister informed us in Committee, the framework document is not even legally binding.

Nevertheless, I recognised that the Treasury is something of an immovable object on this issue, so I decided that it would be better to pursue the Minister's offer of a way forward and include additionality issues in the periodic reports which are required by Clause 9. I thought that half a loaf would be better than no loaf, but I have to say that Amendment 23, which my noble friend has tabled, is a serious disappointment. It represents no more than a quarter of a loaf.

Amendment 23 adds an additional reporting requirement to Clause 9 but it is a lop-sided approach to additionality. Its focus is on the extent to which UKIB's investments in projects have encouraged additional investments in those projects. It therefore will cover the extent to which projects have enabled crowding in, but it does not explicitly cover crowding out, which has always been my biggest concern, because a bank with a high capital ratio and a low cost of capital can easily outcompete private sector financing. I do not believe that if UKIB were to finance the whole of a transaction to the complete exclusion of the private sector in circumstances where 100% private finance could have been obtained, it would be captured by my noble friend's amendment—it would not come close to being captured by my noble friend's amendment. Such a transaction would not have encouraged or discouraged private sector finance; it would have bypassed it completely. That is why my Amendment 24 refers to investments having been made by UKIB

"despite an adequate supply of private sector financing".

My noble friend the Minister will doubtless say that it is not in UKIB's strategic plan to do transactions without private sector financing. It was never in the strategic plans of the European Investment Bank to crowd out private sector financing, but it did it anyway, in collusion with private sector borrowers, who were quite happy to take soft loans from public sector lenders who were much easier to deal with than hard-nosed real bankers in real banks.

My noble friend the Minister has also referred in correspondence to the impact of the Subsidy Control Act, which became law earlier this year. I have to say

that the Act, which refers to subsidy decisions, sits rather uneasily with the practice of doing investment deals in the context of a bank. I accept that at a high level it would apply to UKIB. I just think that the language is very difficult to interpret in the context of what UKIB would do. My main concern is that there would never be an enforcement action against UKIB because the crowded-out private sector financiers are exactly the same people who want to be invited to any crowding-in party. It simply will not be in their interest to try to get the Act enforced against UKIB.

For all these reasons, I am very disappointed that this Bill, which I have never regarded as a shining example of Conservative economic values in any event, is going to ignore the concept of crowding out, which ought to be something dear to any Conservative Government's heart. I shall not move my amendment when we reach it in the Marshalled List, but I live in hope that there are still some Conservatives in the Treasury who might have a change of heart before this Bill reaches the other place.

Lord Vaux of Harrowden (CB): My Lords, I rise to speak to Amendment 24 in the name of the noble Baroness, Lady Noakes, to which I have added my name. The noble Baroness has already eloquently explained the rationale for this amendment, so I will try to keep my speech reasonably short.

Like the noble Baroness, I was strongly drawn to Amendment 6 in the name of the noble Lord, Lord Holmes, which would insert the critical additionality principle into the principles of the Bill. That would be the preferable approach, but, like the noble Baroness, Lady Noakes, I have been persuaded, reluctantly, to go along with the Government's approach of making this something the bank reports on.

That leads me to amendments in the final group about the timing of those reports, which are, at the moment, seven years apart. If this is to be the way we deal with additionality, the report timings need to be shorter.

4.45 pm

I thank the Minister for her engagement during this process. It has been exemplary. I thank her for listening and I am pleased that she has introduced the principle of additionality, albeit into the review process, by amending Clause 9 with Amendment 23. However, I share the disappointment of the noble Baroness, Lady Noakes, with that amendment and, in particular, the way in which it fails to deal with crowding out. It deals with the additionality element, but it does not deal with the crowding-out element.

If noble Lords will forgive me, I will touch on why crowding out is important, because I am not sure it is widely understood. It sounds like a technical economic term, but it is not; it is a very practical and important issue. Crowding out happens when the Government, in this case through the bank, invest in direct competition with the private sector by offering lower interest rates or better terms generally. This is something, as the noble Baroness, Lady Noakes, has said, that the Government have rightly criticised the EIB for doing in some circumstance. I think the EIB got some things right and was quite good in certain circumstances, but there are also plenty of examples where it crowded out.

First, crowding out is a waste of taxpayers' money—why should the taxpayer, in effect, subsidise a project that could perfectly well be financed by the private sector? More damaging still is the effect that crowding out has in actively discouraging the development of a thriving private sector financing market for the sorts of investments in infrastructure and the environment that the bank is meant to encourage. Why would a private sector financier bother to create an infrastructure financing business if it will simply be undercut by the Government's investment arm? So the impact of crowding out is to reduce the longer-term availability of private sector finance, and it may end up actually reducing the level of infrastructure and environmental investment over the longer term, which is precisely the opposite of what we are trying to achieve with the infrastructure bank. That is why it is so important that the bank does not crowd out private finance.

Amendment 24 is designed to ensure that those situations where crowding out occurs are explicitly reported on, rather than just ignored. The Minister said in her letter of 30 June that

"given that review will cover crowding-in, that necessarily includes the question of whether crowding-in did not happen with the attendant risk of crowding-out. This is because additionality is designed to measure genuine additional private finance, in other words investment that would not otherwise have happened ... I would fully expect the independent review to address the question of crowding-out under the terms of this drafting."

However, let us look at the drafting of Amendment 23: it simply does not do that. It requires the review to report only on

"the extent to which its investments in particular projects or types of project have encouraged additional investment".

It does not refer to situations where the bank has replaced private finance, in whole or in part. Indeed, in the slightly odd situation where it replaced private sector finance only in part—for example, by taking 50% of an investment—as drafted, the bank would be able to measure the other 50% as additionality, even though it would have happened anyway. A project where 100% is replaced by private finance would simply be treated as not crowding in. There is nothing in Amendment 23 that would mean it would be the actual crowding out would be measured or reported on.

Given the importance of the bank not crowding out the private sector, which, as I have explained, would potentially undermine the bank's very purpose of encouraging infrastructure and environmental investment, the Government should look very closely at accepting an amendment like Amendment 24. At the very least, could the Minister please be explicit at the Dispatch Box—rather than implicit, as she was in her letter—that her Amendment 23 is intended to ensure that the review is intended to cover, and will actually report on, those situations where the bank invests despite there being private finance available for the investment? That wording is really important, and her letter is not explicit on that point.

Baroness Bennett of Manor Castle (GP): My Lords, it was not my intention to speak on this group but, given that all the non-government speakers have been from the other side of the House, I felt I should offer an argument from this side of the House that is perhaps 180 degrees opposite to that presented by the noble Baroness, Lady Noakes, but, none the less, makes an argument for either Amendment 6 or Amendment 24.

The noble Baroness, Lady Noakes, suggested that she preferred private bankers to public bankers. Private bankers have been left to provide the direction for our economy and society over the past few decades and look where that has got us: we are having to talk from all sides of the House about the urgent need to level up and to tackle poverty, inequality, our climate emergency and the nature crisis. Therefore, we need to make sure that the bank is not crowding out private finance. If it is, it is spending money in the wrong places. It needs to be doing things that are innovative and different from what we have been doing up to now. That is why I encourage either the mover of Amendment 6 or those speaking to Amendment 24 to consider testing the opinion of House, and I offer them Green support.

Baroness Kramer (LD): My Lords, my motivation here is somewhat different: I want to see the bank move along the risk spectrum. There is a temptation, due to the structure of the bank, for it to stay within the range of fairly safe investments. It has to produce a return and it has a very small risk capital base, but I would like it to maximise that to move along the risk spectrum. I see no other way to accelerate the innovative technologies that we need, or development in disadvantaged areas where people have typically turned their backs, unless the bank is willing to take on that much higher risk profile. The various additionality amendments seem to create that kind of pressure to move UKIB much further down the risk spectrum than it might otherwise feel comfortable in doing, meaning that it therefore does not maximise the opportunities in front of it.

Baroness Penn (Con): My Lords, I join my noble friend Lady Noakes in applauding Amendment 6 in the name of my noble friend Lord Holmes as a gallant attempt at defining additionality, although I dare say another Peer might draft it differently.

I want to make a more general point about additionality before coming on to the specifics of each amendment in this group. Additionality is a key principle underpinning the bank, and it is something that the Government take very seriously. That is demonstrated by the fact that additionality is one of the bank's core investment principles, as set out in its framework document and strategic plan. However, following legal advice, the principle is not included in the Bill as there is no single agreed definition of additionality in a financial context that we could appropriately include in the Bill. Approaches to assessing additionality are developing over time and we would not want to stymie that development by creating a statutory definition of additionality at this stage.

While the term "additionality" has been included in previous legislation—for example, the Dormant Assets Act 2022 and the National Lottery Act 2006—additionality in those contexts had a different meaning: of funding projects or activities that the Government would not have otherwise funded. Assessing private sector additionality is more complex because it involves more actors and varied forms of financing. Each deal will have a particular set of circumstances that will indicate the amount of additionality that the bank is bringing. For the bank, as part of that, additionality means ensuring that it both crowds in private finance through its investments and avoids crowding out the market by providing finance that could have come from the private sector.

The bank has set out its approach to assessing and measuring these concepts of additionality in its strategic plan, which was published at the end of June. Currently the bank will assess additionality on a case-by-case basis, assessing the evidence as part of due diligence and monitoring that through a key performance indicator on the levels of private sector finance that it has crowded in. This is a measure commonly used by other organisations such as the OECD.

Crowding out is best assessed through evaluations and medium-term assessments of whether the portfolio of investments has led to crowding out in a particular sector. The bank is developing its thinking on how it will monitor and evaluate its work at both deal and portfolio level, including setting up an independent evaluation.

Further to this, additionality is implicitly covered in the Subsidy Control Act 2022, which of course applies to any subsidies the bank gives. Schedule 1D states:

"Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy."

Given the protections of the Subsidy Control Act 2022 and the regulatory regime, the difficulty in accurately defining additionality in the Bill, the work the bank is already doing on additionality and, finally, our amendment to the review, I hope my noble friend Lord Holmes will feel able to withdraw his amendment. I must say to my noble friend that the Government do not intend to bring forward any amendments at Third Reading, so I must disappoint him on that front. I should also say that to the noble Lord, Lord Tunnicliffe, in relation to the previous group, if I was not clear on that front.

The amendment in my name to Clause 9, on the statutory review, will ensure that the review of the bank will measure its success in encouraging additional investment. The drafting of the amendment is based on the reference to additionality in the framework document. I should like to provide reassurance that, given that the review will cover crowding in, it necessarily includes the question of whether crowding in did not happen, with the attendant risk of crowding out. This is because additionality is designed to measure genuine additional private finance—in other words, investment that would not have happened otherwise. I would fully expect the independent review to address the question of crowding out under the terms of this drafting.

The bank could act as the sole financer of a private project if it meets the bank's investment principles and objectives, but it is highly unlikely that the bank, as the sole financer of a private project, would crowd out private investment, as the bank would be the sole investor in very immature or nascent financial markets for a technology only if no other investors were willing to support the project.

The bank's initial assessment of the technologies, sectors and markets it plans to engage in, as published in its strategic plan, will allow it to focus its investment in areas with a limited risk of crowding out. This will continue to be developed and reviewed. In cases where the bank would act as the sole financer of a private project, it would expect to have a transformational impact on the market and for the market to be able to attract private capital over the medium to long term. This in part speaks to the concern of the noble Baroness, Lady Kramer, about the bank being able to operate along the risk spectrum, as it were, rather than seeking to invest solely in perhaps lower-risk or less innovative projects, given the other demands that it has: making a return on its investments and becoming self-funding.

Given this, I am grateful to my noble friend for her commitment not to move her amendment when it is reached. I hope that, in future, my best efforts produce more than a quarter of a loaf.

Lord Holmes of Richmond (Con): My Lords, I thank all noble Lords who have spoken on this group, and particularly my noble friend Lady Noakes for bringing forward Amendment 24. I shall summarise what the Minister said: that additionality is pretty much impossible to define, but the bank will definitely do it—so that is good. It is unfortunate that we cannot have that in the drafting of the Bill given that, as I said in opening the group, this is the raison d'être of the bank: its only ultimate purpose is additionality. As other noble Lords have said, not having this could lead to less rather than more, and taxpayers' money being put to that purpose.

It is desperately disappointing that we cannot have additionality in the Bill. I will withdraw my amendment but, in doing so, I gently, politely and respectfully request that my noble friend the Minister considers not moving government Amendment 23 and working to meld it with my noble friend's Amendment 24 to come up with something that actually covers both crowding out and crowding in. Certainly, as drafted, government Amendment 23 does not do this. I beg leave to withdraw Amendment 6.

Amendment 6 withdrawn.

Amendment 6A

Moved by ***Baroness Hayman***

6A: Clause 2, page 1, line 23, after "includes" insert "structures underpinning the circular economy, and nature-based solutions,"

Baroness Hayman (CB): My Lords, in the earlier debate on this amendment, we heard very powerful arguments for including nature-based solutions and the circular economy in the definition of "infrastructure" in the Bill. The arguments that we heard from the Front Bench were not as strong: the principle was accepted, and we were asked to accept the reassurance that these issues could be included because they were in the framework document or the strategic plan. This is Parliament's opportunity to say what its priorities are. I believe that there is support for this around the House, and I beg leave to test the opinion of the House.

5 pm

Division on Amendment 6A

Contents 182; Not-Contents 153.

Amendment 6A agreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Alderdice, L.
Allan of Hallam, L.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Bennett of Manor Castle, B.
Berkeley, L.
Best, L.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Craig of Radley, L.
Cromwell, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Elder, L.
Elis-Thomas, L.
Faulkner of Worcester, L.
Finlay of Llandaff, B.
Foster of Bath, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hope of Craighead, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janvrin, L.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jordan, L.
Judge, L.
Kennedy of Southwark, L. [Teller]
Kilclooney, L.
Knight of Weymouth, L.
Kramer, B.
Laming, L.
Lawrence of Clarendon, B.
Layard, L.
Lennie, L.
Lipsey, L.
Lister of Burtersett, B.
Londesborough, L.
Loomba, L.
Ludford, B.
Lytton, E.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Manchester, Bp.
Mann, L.
Masham of Ilton, B.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonald of Salford, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan, L.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Primarolo, B.
Purvis of Tweed, L.
Randerson, B.
Ravensdale, L.
Razzall, L.

Redesdale, L.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Russell of Liverpool, L.
Scott of Needham Market, B.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Snape, L.
Stansgate, V.
Stevens of Birmingham, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Wellington, D.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Winston, L.
Wood of Anfield, L.
Woodley, L.
Worthington, B.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L. [Teller]
Balfe, L.
Barran, B.
Bellamy, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Little Venice, B.
Chadlington, L.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cormack, L.
Courtown, E. [Teller]
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deighton, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Fleet, B.
Fookes, B.
Foster of Oxton, B.
Framlingham, L.
Gadhia, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Godson, L.
Goldie, B.
Goodlad, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Livingston of Parkhead, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
McCrea of Magherafelt and Cookstown, L.
McLoughlin, L.
Meyer, B.
Montrose, D.
Morgan of Cotes, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
O'Loan, B.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pidding, B.
Polak, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Rose of Monewden, L.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stirrup, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Younger of Leckie, V.

5.13 pm

Amendment 7 not moved.

Amendment 8

Moved by ***Baroness Penn***

8: Clause 2, page 1, line 25, after "heat" insert "and, in relation to electricity, gas and the provision of heat, energy efficiency"

Member's explanatory statement

This amendment would make it clear that energy efficiency, in relation to electricity, gas and the provision of heat, is within the definition of infrastructure.

Amendment 8 agreed.

Amendments 9 to 11 not moved.

Amendment 12

Moved by ***Lord Tunnicliffe***

12: Clause 2, page 2, line 4, at end insert—

"(5A) In exercising its functions, the Bank must have regard to the public interest in targeting investment in a manner that—

(a) improves productivity, pay, jobs and living standards, and

(b) reduces economic disparities between the nations and regions of the United Kingdom."

Member's explanatory statement

This amendment would ensure the Bank has regard to the first mission of the Government's Levelling Up White Paper when exercising its functions under this Bill.

Lord Tunnicliffe (Lab): I beg to test the opinion of the House.

5.14 pm

Division on Amendment 12

Contents 172; Not-Contents 158.

Amendment 12 agreed.

Division No. 2

CONTENTS

Addington, L.
Alderdice, L.
Allan of Hallam, L.
Andrews, B.
Armstrong of Hill Top, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Craig of Radley, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Elder, L.
Elis-Thomas, L.
Faulkner of Worcester, L.
Finlay of Llandaff, B.
Foster of Bath, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hylton, L.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jordan, L.
Judge, L.
Kennedy of Southwark, L. [Teller]
Knight of Weymouth, L.
Kramer, B.
Laming, L.
Lawrence of Clarendon, B.
Layard, L.
Lennie, L.
Lipsey, L.
Lister of Burtersett, B.
Loomba, L.
Ludford, B.
Lytton, E.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Manchester, Bp.
Mann, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonald of Salford, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Morgan, L.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Primarolo, B.
Purvis of Tweed, L.
Randerson, B.
Ravensdale, L.
Razzall, L.
Redesdale, L.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Scott of Needham Market, B.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Snape, L.
St John of Bletso, L.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Walney, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Winston, L.
Wood of Anfield, L.
Woodley, L.
Worthington, B.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L. [Teller]
Balfe, L.
Barran, B.
Bellamy, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cormack, L.
Courtown, E. [Teller]
Craigavon, V.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Framlingham, L.
Gadhia, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Godson, L.
Goldie, B.
Goodlad, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Livingston of Parkhead, L.

Londesborough, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
McCrea of Magherafelt and Cookstown, L.
McLoughlin, L.
Meyer, B.
Montrose, D.
Morgan of Cotes, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Risby, L.
Rose of Monewden, L.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stirrup, L.
Stowell of Beeston, B.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Wasserman, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Younger of Leckie, V.

5.25 pm

Amendment 13

Moved by ***Lord Sharkey***

13: Clause 2, page 2, line 9, leave out subsection (7) and insert—

"(7) Regulations made under the powers set out in subsection (6) are subject to the "super affirmative procedure" as set out in subsections (8) to (15).

(8) The Secretary of State must lay before Parliament—

(a) a draft of the regulations, and

(b) a document which explains the draft regulations.

(9) Where a draft of the regulations is laid before Parliament under subsection (8), no statutory instrument containing the regulations may be laid before Parliament until after the expiry of the 30-day period.

(10) The Secretary of State must request a committee of either House of Parliament whose remit includes infrastructure, economic growth, finance or climate change to report on the draft regulations within the 30-day period.

(11) In preparing a draft statutory instrument containing the regulations, the Secretary of State must take account of—

(a) any representations,

(b) any resolution of either House of Parliament, and

(c) any recommendations of a committee under subsection (10) made within the 30-day period with regard to the draft regulations.

(12) If, after the 30-day period, the Secretary of State wishes to make regulations in the terms of the draft or a revised draft, he or she must lay before Parliament a statement—

(a) stating whether any representations, resolutions or recommendations were made under subsection (11);

(b) giving details of any representations, resolutions or recommendations so made; and

(c) explaining any changes made in any revised draft of the regulations.

(13) The Secretary of State may make a statutory instrument containing the regulations (whether or not revised) if, after the laying of the statement required under subsection (12), a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(14) In this section, references to "the 30-day period" in relation to any draft regulations is to the period of 30 days beginning with the day on which the original draft regulations were laid before Parliament.

(15) For the purposes of subsection (14) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days."

Member's explanatory statement

This amendment seeks to provide Parliament with the opportunity for enhanced scrutiny of the regulations made under this section.

Lord Sharkey (LD): My Lords, I shall speak also to Amendment 18. I am very grateful to the noble Lord, Lord Vaux, and my noble friend Lady Kramer for adding their names to both amendments and to the noble Lord, Lord Tunnicliffe, for adding his name to Amendment 18.

The Bill contains Henry VIII powers in Clause 2(6)(a) and (b). These powers would enable the Treasury to amend the activities of the bank and change the definition of infrastructure by regulations subject to the affirmative procedure. There is no constraint, the Treasury has carte blanche: it can add to, subtract from or modify any or all of the bank's listed activities; it can change what counts as infrastructure by adding, subtracting or modifying. This would enable fundamental changes to be made to the bank's operations without any meaningful parliamentary scrutiny. The Government have previously asserted, and may do so again today, that the affirmative procedure for SIs constitutes meaningful parliamentary scrutiny, but this is obviously not the case.

In its 2018 report, the Constitution Committee noted:

"Without a genuine risk of defeat, and no amendment possible, Parliament is doing little more than rubber-stamping the Government's secondary legislation. This is constitutionally unacceptable."

But there is a way of enhancing scrutiny of secondary legislation. This is the super-affirmative procedure, and our Amendment 13 would replace the affirmative procedure with this super-affirmative procedure. *Erskine May*, in Part 4, chapter 31.14, characterises this procedure as follows:

"The super-affirmative procedure provides both Houses with opportunities to comment on proposals for secondary legislation and to recommend amendments before orders for affirmative approval are brought forward in their final form … the power to amend the proposed instrument remains with the Minister: the two Houses and their committees can only recommend changes, not make them."

During the passage of the recent Medicines and Medical Devices Act, the Minister, the noble Baroness, Lady Penn, very helpfully summarised the super-affirmative procedure as follows, saying

"that procedure would require an initial draft of the regulations to be laid before Parliament alongside an explanatory statement and that a committee must be convened to report on those draft

regulations within 30 days of publication. Only after a minimum of 30 days following the publication of the initial draft regulations may the Secretary of State lay regulations, accompanied by a further published statement on any changes to the regulations. They must then be debated as normal in both Houses and approved by resolution."—[*Official Report*, 19/10/20; col. GC 376.]

It was in that Bill that the House last voted to insert the super-affirmative procedure. There was widespread support from across the House—from Labour, from these Benches, from the Cross Benches and even from two extremely distinguished Conservative Peers. Prior to that, according to the Library, the last recorded insertion was by the Government themselves in October 2017 in what became the Financial Guidance and Claims Act.

When they are not doing it themselves, the Government traditionally put forward any or all of three routine objections to the use of the super-affirmative procedure. The first is that it is unnecessary because the use of the affirmative procedure provides sufficient parliamentary scrutiny. This is obviously untrue. The second routine objection is that the super-affirmative procedure is cumbersome. I take this to mean only that this procedure is more elaborate than the affirmative procedure; which is, of course, the whole point. It is necessarily more elaborate because it provides for actual scrutiny where the affirmative procedure does not. The third routine objection is that it all takes too long. This has force only if there is some imminent deadline, and there is none in this case.

In Committee, the noble Viscount, Lord Younger of Leckie, argued in favour of retaining the Henry VIII powers in Clause 2:

"There may, however, be instances where we need to update the definition of infrastructure or the bank's functions to ensure that the bank can continue to fulfil its objectives as a long-lasting institution."

He went on to give an example:

"New green infrastructure technologies may emerge in the future which we would want … to include in the bank's definition of infrastructure, to signal to the bank and the market that the bank can invest in these technologies."—[*Official Report*, 14/6/22; col. 1541.]

I am afraid that this is a very weak argument. The definitions of "infrastructure" in the Bill are not exhaustive, as the Minister has again said this afternoon. The bank could simply decide that it wanted to include new green technology and say so in an official press release. In any case, the Treasury could always direct the bank to include these new technologies and any such direction would be published. As things stand, the Henry VIII powers would enable the Minister to change both the bank's activities and the definitions of infrastructure without constraint or meaningful parliamentary scrutiny. Our Amendment 13 would restore an element of parliamentary scrutiny; Parliament should not be bypassed.

5.30 pm

Amendment 18 addresses the issue of transparency over aspects of the Treasury's relationship with the bank, including operational independence. The relationship between the Treasury and the bank is in large measure set out in the framework document. It is not entirely clear what the legal status of this document is, and there are inconsistencies between it and the Bill. We will discuss those later when we talk about the need to revisit the framework document and align it with the Bill, but I will examine just one section of the document.

Section 15 is entitled:

"Resolution of disputes between the Company and the Shareholder".

The company is the bank and the shareholder is the Treasury. Paragraph 15.2 sets out a fairly standard procedure for trying to arrive at an agreed resolution of a dispute. Paragraphs 15.3 and 15.4 set out what happens if the resolution process is unsuccessful. Under the terms of these paragraphs, the Treasury may give the board of the bank directions of a specific or general nature.

If the board and the accounting officer reasonably believe that a given direction would conflict with a set of prescribed items, the board may issue a reservation notice in writing to the Treasury in respect of a direction that in its opinion would:

"infringe the requirements of propriety or regularity … not represent good value for money for the Exchequer as a whole … be of questionable feasibility or … unethical … be contrary to the Strategic Objectives ... result in the directors of the Company being in breach of their legal duties … and/or … not be in the best interests of the Company for any other material and demonstrable reason."

The Treasury may nevertheless instruct the bank to comply with the direction. If that happens, the bank must seek a written instruction to undertake the actions set out in the direction. This written instruction is called a written direction; there is an oral equivalent, called an oral direction. The bank then has to follow the written direction. It is also required to tell a list of people what has happened and to arrange for the existence of the written and oral directions to be published. However, there is a caveat. The existence of the written or oral direction may not be published if the Treasury has directed the board in writing not to do so.

There are several things wrong with all this. First, there is no mention of publishing the reservation notice in the framework document at all. In her letter to us of 25 June, the Minister said:

"we have committed to update the Framework Document to clarify this position to reflect that the Bank may publish its Reservation Notice."

Why "may" and not "must"? After all, the Bill specifies that the Treasury must publish any direction.

The second thing wrong is that the framework document explicitly requires the bank to

"arrange for the existence of the Written Direction or any Oral Direction … to be published".

That is, unless the Treasury tells it not to. Why the odd language about publishing the "existence" of the written or oral directives? In plain English, that is not a requirement to publish the contents, but only the existence of the written or oral directives. That clearly cannot be right.

The third thing wrong is the Treasury's power, set out clearly in the framework document, to gag the bank by directing it not to reveal the existence of a written or oral directive. The whole chain of events must be transparent at every point. If operational independence is to have any real meaning, the bank

[LORD SHARKEY]
and the Treasury must publish not only the original directive but also any reservation notice and any written or oral direction.

That is what Amendment 18 would do. It simply amends Clause 4(3)(b) to read that the Treasury must publish a direction and

"any subsequent, consequential or relevant correspondence between the Treasury and the Bank."

That means it must publish the content of such correspondence, not just the fact of its existence. I beg to move Amendment 13.

Lord Thomas of Cwmgiedd (CB): My Lords, I will speak to two sets of amendments. Before doing so, I thank the noble Lords, Lord Vaux and Lord Wigley, and the noble Baroness, Lady Kramer, for their support in the drafting of the amendments and for co-signing them. They fall into two distinct categories.

The first group, Amendments 14 to 17, relates to Clause 3. They are intended solely to deal with the framework document, about which we have had many discussions today and on various occasions. There is one in existence, but it is now more than a year old. That document needs to be brought in line with the other governing documents of the bank. It seems clear that, if you are to govern a bank properly, effectively and efficiently, its governing documents must be got right.

One of the problems with the framework document is that it is not clear what it is. Is it a very mundane document—I hate to use the word, but I think it is right—that deals with ordinary day-to-day activities or a much more important document, as the Minister suggested earlier in the debate, which might be used to fine-tune the way the bank will work or the objectives it is to be set?

Is it legally binding? Without seeing the document that will operate in the course of the bank's governance, it is quite impossible to say, unless there is a clause which says that it is not legally binding. If it is not legally binding, unless it deals with day-to-day matters such as meetings, there may be no problem, but which is it?

Is it consistent with the Bill and the clauses that will be inserted into the strategic priorities? The present document is quite clear; it contains provisions that are redundant, such as those relating to the objectives and the appointment of directors, because they have been overtaken. The purpose of this amendment is to press the Government to be clear about what may or may not be an important part of the governance of the bank. I intend to say no more about that group of amendments.

Amendment 21 is a much more important amendment and goes to a constitutional point. Economic development is a devolved issue. It is not a straightforward one, because the government Acts of Scotland, Wales and Northern Ireland contain extensive reservations on aspects of economic development, as one would expect. One would expect that, ordinarily, the Governments of the devolved constituent parts of the United Kingdom and the Government of the United Kingdom would work closely together on so important an institution as the UK Infrastructure Bank. The Bill ought to reflect a properly organised structure, so that there is consultation and the views expressed by the devolved Governments are taken into account on consultation.

It is useful to look to Germany. KfW has one of the most successful track records in the world on the operation of an investment bank; 80% of it is owned by the federal Government and 20% by the Länder. It therefore has an institutional structure.

In the UK—I do not make any point about what has been decided—this is 100% owned by HM Treasury. Given the need for co-operation, particularly with the Welsh development bank and the equivalent development bank in Scotland, we ought to be clearer in the Bill that there should be appropriate consultation on its key features. I accept that the strategic plan put forward by the bank makes some mention of working in co-operation. Indeed, it mentions Wales or the Welsh six times, and Scotland gets a bit more as it is mentioned eight times, but Northern Ireland gets a bit less as it is mentioned only twice. But when one looks at the analysis of what is there, there is nothing of any real substance on which the Governments of the devolved constituent parts of the United Kingdom can get any comfort.

The Bill needs a legislative consent Motion. Another important feature is that we ought to recall the Sewel convention; we ought to be concerned at the number of instances where there is no consent. We are gradually moving away from the concept of "not normally" legislating the areas of devolved matters without the consent of the devolved legislatures. In this area, that is a very important point. Therefore, this amendment is put forward to provide a mechanism for consultation on three critical areas, and this inclusion should check and institutionalise in the Bill a structure for proper consultation in relation to the three most important functions of the Government on it: the ability to amend by regulation; the ability to appoint directors; and the creation of the statement of strategic priorities.

Given the current circumstances—and the real need to hold the union together—I hope that this amendment could be one which the Government would readily accept. Consultation is not going very far. One could put forward a clause which went much further, and I very much hope that the Government will look favourably on this proposed new clause, but I shall listen carefully to what the Minister has to say and, in light of that, consider whether I would seek to test the opinion of the House on this provision.

Lord Sentamu (CB): My Lords, I have been in your Lordships' House since 2005 and one of the things that has always surprised me, having come from another part of the Commonwealth, is the way in which secondary legislation—statutory instruments and regulations—has grown like Topsy. Secretary of States are always accountable to Parliament and, if you give power away, some people never want it to be brought back. The Bill is an innovation. The noble Baroness, Lady Kramer, was right that we do not want to simply put things back into the systems of other banks, and this is a risky bank. It will go into areas where hitherto nobody has gone.

I speak only to Amendment 13, which seeks to provide Parliament with the opportunity for enhanced scrutiny of the regulations made under this section. That is all it is doing: Parliament must not just pass a law and allow the Secretary of State the power to make regulations and statutory instruments which then cannot be clearly watched. I have always believed that good law is good law—no one should be frightened of any good law. Therefore, the Secretary of State must not see this affirmative action as a hindrance of their function and their work. No, it is simply enhancing the scrutiny of regulations made under this section. I urge those who tabled this wonderful amendment to stick with it and not just give it away.

5.45 pm

Lord Vaux of Harrowden (CB): My Lords, I have added my name to all the amendments in this group, which cover four separate topics, and I will touch on each of them briefly. First, Amendment 13, which the noble Lord, Lord Sharkey, eloquently explained, aims to introduce a greater level of scrutiny to the use of the Henry VIII power that is included in the Bill. The activities and, in particular, the definition of infrastructure are fundamental to what the bank can do and how it will be measured. It must be right that changes to this are subject to a meaningful level of parliamentary scrutiny and, as the noble Lord clearly explained, the affirmative procedure has sadly become a bit of a sham. Amendment 13 seeks to find an interesting balance between the rubber-stamping of a statutory instrument and full use of primary legislation. I urge the Government to support this, and I would be quite supportive generally of seeing more of this process in Bills more often: we have seen far too many of these Henry VIII clauses, as we have just heard.

Amendments 14, 15, 16 and 17 in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd, to which I have also added my name, are aimed at trying to resolve issues around the framework document that we discussed at length in Committee. As we heard, the framework document is a slightly peculiar animal: it seems to have no real legal status, but it is an important document in how the bank will behave. The consensus around the Chamber in Committee was, I think, that the balance within that is too far towards including elements of principle rather than the day-to-day running of the bank. These amendments do not really address that. All they ask is for the framework document to be updated, and that it should be consistent with the statement of strategic priorities. That seems pretty straightforward and simple.

There are a number of areas where the more recent statement of strategic priorities is inconsistent with the framework document. One example—it is relevant to the discussion we had on the previous group about additionality—is that the strategic priorities expressly do not require local authority investments to achieve additionality, but the framework document does. Perhaps the Minister could explain why. I doubt that she will accept the amendments, but could she at least confirm that the framework document will be updated and that it will be brought into line with the statement of strategic priorities?

Amendment 18 in the name of the noble Lord, Lord Sharkey, addresses the extremely important point raised in Committee, I think by the noble Baroness, Lady Kramer, that as drafted the Bill—in conjunction with all these other governing documents, including the framework document—would require directions given by the Treasury to be published, but would not require situations where the board disagrees with that direction to be published or explained. Indeed, it effectively applies a gagging order, and that cannot be right. This important amendment brings in some essential transparency to that and I wholeheartedly support it.

I agree with the noble and learned Lord, Lord Thomas of Cwmgiedd, that the final amendment in the group is the most important. It introduces a simple requirement to consult the devolved Governments in various situations, and in preparing or changing the statement of strategic priorities. The bank's activities will cover the whole UK, which I think is a good thing. The Minister has indicated, as does the statement of strategic priorities, that the bank is establishing a good relationship with the devolved Governments, and with the bank's counterparts in the devolved nations. However, the Bill does not mention this. As someone who lives in Scotland and is a passionate unionist, I am consistently surprised by the fact that legislation that covers the whole UK rarely includes proper consultation requirements. That seems really counterproductive—even dangerous—as not taking proper account of the reasonable views and concerns of the devolved nations further undermines the strength of our union.

It gives ammunition to the nationalists that the Government do not take the devolved Governments seriously. We are heading rapidly towards a break-up of the union if we behave like this. This amendment does not create any veto powers or anything of that nature, which I would strongly disagree with that as you cannot work something if one party has a veto. It just requires consultation and that the reasonable views of the devolved nations be taken into account when setting the strategy or appointing directors.

I urge the Government to accept this. More widely, I urge them to start to be more consultative and include clauses of this nature more generally in Bills that cover the whole of the UK. That will strengthen, not weaken, the union and will ensure that the bank takes actions genuinely in the interests of all parts of the UK. If the noble and learned Lord decides to divide the House on this matter, I certainly will support him.

Baroness Kramer (LD): My Lords, I have added my name to all the amendments in this group but I will try to be brief. I want to pick up on the point just made by the noble Lord, Lord Vaux. Amendment 21 in the name of the noble and learned Lord, Lord Thomas, deals with consulting devolved Administrations. It ought to be a matter of course that in every Bill where consultation is important, it is in the Bill. It then underscores the constitutional relationship between central government and the devolved Governments. The expectation that it is to be dealt with either in other documents or just off the cuff is, I suspect, one of the reasons we see so much stress and pressure on

[Baroness Kramer]
the union today. It embodies a lack of respect, to be quite frank, and it ought to be a matter of course that we see these arrangements in a Bill.

I will look at the other amendments tabled and so well drafted by the noble and learned Lord, Lord Thomas. On updating the framework document, we have heard of nothing but the importance of that document. On almost every issue we raise, we are told that it does not need to be in the Bill because it is in this absolutely critical document—the framework document—which is actually a document agreed between the Treasury and the bank; it is not even necessarily in the public arena. Yet we can see that it is inconsistent with the Bill as it stands, never mind with the issues that have surfaced in the course of this very complex debate. It is a document that desperately needs to be updated. I know there is a plan to update it by the end of this year but that is completely out of touch with making sure that we have proper, consistent and meaningful arrangements in place for a bank that is already functioning as we stand here today. I very much support those amendments.

I now look at the two amendments from the noble Lord, Lord Sharkey. Amendment 13, so eloquently supported by the noble and right reverend Lord, Lord Sentamu, addresses another fundamental problem that we see in one piece of legislation after another: the wide use of Henry VIII powers to allow secondary legislation—which cannot be amended and, in effect, cannot be rejected—to change primary legislation fundamentally. It almost makes a joke of primary legislation. I know the Government would say that they would not exercise the power widely and it is just a marginal change here or there, but the Bill is already written to allow for marginal changes. The only time when that clause would be relevant would be if fundamental changes were to be made. I would argue that those should come back to Parliament, at least for the level of engagement of a super-affirmative.

I want to speak most to Amendment 18 because I am truly exercised on the issue of transparency. As others have said, the Bill requires the publication of a direction when the Treasury basically decides it is going to tell the bank what it can do. It can give it instructions that are either general or specific. It could say, "Make this loan and do it this way." That is entirely allowed and there has to be a publication. But what is not that established is that when the bank says no and then is overridden, that information comes into the public arena. When it says no, it says so in a letter of reservation and the kind of issues it can raise are fundamental, such as issues of propriety, issues of ethical behaviour and issues of departing from the fundamental purpose of the bank.

I think we must have an absolute assurance that those will be published so that they are in the public arena. Let me give an example. The Minister has often drawn parallels between this bank and the British Business Bank, which allows me to draw a parallel with the British Business Bank's decision to accredit Greensill to provide a Covid-related loan. We know, because it is now in the public arena, that when Greensill applied to the British Business Bank for accreditation, various parts of the Government fairly bombarded the British Business Bank with emails. They did not say "accredit it" but kept saying how important it was that they knew the result, asking whether it was done yet and saying that this would be fundamental to the future of steel in the UK and so on. Anyway, as we all know, the British Business Bank did accredit Greensill and, I suspect, regrets the very moment that it did so.

If a direction from the Treasury had been published on that issue, I am sure it would have said: "This direction is intended to make sure that our very important steel industry survives. It is to support jobs. It is to support communities related to the steel industry." The reservation would have said something very different. I suspect it would have said: "We do not believe that the entity, Greensill, meets our ethical standards. We believe that it is basically an organisation that has got itself into some very unfortunate and potentially unethical arrangements and is on the verge of bankruptcy." That is why it is important that the reservation notice is published and the conversation does not exist only in the context of the direction. That is why I say to the Minister that we cannot have an arrangement where the bank could, if it wished, publish its reservation notice; it is crucial that it publishes its reservation notice. I argue that on the grounds of the propriety that should surely lie at the heart of all the legislation that we provide in this House.

Lord Morgan (Lab): My Lords, I rise very briefly to say why—my Whip may not be too happy to hear this—I wish to vote for the amendment from the noble and learned Lord, Lord Thomas of Cwmgiedd, which I know is not the view of my party at present.

I think the distance between central institutions in London, such as the Bank of England, is far too great. We have not really taken account of the mechanics of devolution in our constitutional and legal arrangements. This was shown—very dangerously so—in the Brexit negotiations, when important features of the Welsh economy, notably in agriculture, were not attended to by the Westminster Government. Wales and, I suppose, Scotland were treated in a somewhat colonial fashion and the consequence was that a great deal of ill will was needlessly caused. The noble Lord across the House mentioned difficulties that have arisen in the case of Scotland.

I hope we would accept an amendment that thinks in terms of harmonising the economic strategies in London and the devolved authorities. I speak as one who believes strongly in the union but also in devolution for Wales. I hope very much that the amendment from the noble and learned Lord, Lord Thomas, who is deeply learned in these matters, will be accepted.

6 pm

Lord Tunnicliffe (Lab): My Lords, I am grateful to the noble Lord, Lord Sharkey, and the noble and learned Lord, Lord Thomas, for tabling the various amendments in this group. I was pleased to sign Amendment 18, which would increase transparency relating to Treasury directions. The Minister and her officials have offered several helpful assurances on this subject during discussions between Committee and Report. I am grateful for those assurances, but I am

not convinced that they go far enough. As with the earlier group on job creation and levelling up, this may be another area where the Treasury leans on the framework document as the preferred way forward. If that is where we end up after the Bill has been considered in another place, so be it, but there is merit in this House taking a view on transparency safeguards today.

Sadly, we have become all too familiar with non-legislative commitments or safeguards being flouted. By strengthening Clause 4, we can at least ensure that the bank will have a voice if there are concerns around the Treasury's use of its powers. Accordingly, if the noble Lord, Lord Sharkey, divides the House on this issue, he will have our support.

Elsewhere, I appreciate the wish of the noble Lord, Lord Sharkey, to see the regulations under Clause 2 subject to a form of super-affirmative procedure. However, this concern was not raised by your Lordships' Delegated Powers and Regulatory Reform Committee, and we will of course debate relevant regulations if and when they are brought forward in the future. The noble and learned Lord, Lord Thomas, has tabled a number of amendments in this group, and I hope that the Minister will be able to provide a comprehensive reply.

As with so many other pieces of Whitehall legislation, there is a clear overlap with devolved competence, and the Government will therefore have to seek consent Motions. I have huge sympathy for Amendment 21, which seeks to ensure formal consultation with the devolved authorities in certain circumstances. While the Government will dispute this, they have a poor and arguably worsening record in engaging with colleagues in the devolved nations. However, I am not convinced that an amendment to the Bill would change that, or that Conservative MPs will defy the Whip when the Bill is considered in the Commons. I hope this is an area where the Minister can provide strong, non-legislative commitments. Crucially, the Government must then follow through on them.

The union is at least fragile, and the way these relationships are conducted can add to that fragility. It is crucial on this occasion that the Government do everything they can to overcome the present concerns on this matter.

Baroness Penn (Con): My Lords, Amendment 13 in the name of the noble Lord, Lord Sharkey, seeks to make the bank's delegated powers subject to the super-affirmative procedure. As indicated in *Erskine May*, the super-affirmative procedure has been deployed for secondary legislation where an exceptionally high degree of scrutiny is thought appropriate. This procedure has rarely been considered the appropriate one to prescribe in primary legislation; where it has, the relevant instances have tended to be of a particularly substantive and wide-ranging sort. The noble Lord, Lord Sharkey, gave us an example but I had another: the Legislative and Regulatory Reform Act 2006, where the super-affirmative procedure was used to regulate significant powers under which Ministers could amend legislation to remove regulatory burdens. It cannot be said that amending the bank's activities or the definition of infrastructure reaches the threshold of requiring the super-affirmative procedure. I have noted comments from noble Lords, but I also draw to their attention the Delegated Powers and Regulatory Reform Committee's response to the Bill, which stated:

"There is nothing in this Bill which we would wish to draw to the attention of the House."

On the other amendment from the noble Lord, Lord Sharkey, in this group, Amendment 18 on the power of direction, I recognise that there has been some concern about the wording in the framework document in relation to the issuing of directions. In particular, there were concerns that the Treasury would be able to "gag" the bank. That is clearly not the intention, and I have taken away the wording in section 15 of the framework document to make it clear that Her Majesty's Treasury is not able to prevent publication of a written direction or any reservation notice in respect of that direction.

It is incumbent on the Treasury to meet its obligation to publish the direction and any associated reservation notice as soon as appropriate. Of course, there can be circumstances in which the publication of a written direction or any associated reservation notice needs to be delayed for reasons of national security or commercial sensitivity. An example of this occurred, in relation to a similar power in a different circumstance, during the sale of British Steel Ltd, where the Secretary of State directed the Permanent Secretary to continue an indemnity with the official receiver but delayed publication during negotiations with Jingye, despite value-for-money uncertainties, as to publish at the time would likely have undermined the rescue deal due to commercial sensitivity concerns. However, I will be clear with the House that if publication of a written direction were to be delayed for reasons of commercial sensitivity or national security, we would ensure that it was sent to the chair of the Public Accounts Committee immediately and on a confidential basis.

I hope that I have addressed the points made by the noble Lord, Lord Sharkey. However, to be absolutely clear, and maybe to go further than I did in our previous discussions, we will amend the framework document to be clear that where a direction is issued, an accompanying reservation notice "must" be published—rather than "may"—and, to further clarify, the content of the direction and reservations must be published rather than the fact of their existence. I hope that that provides further reassurance to noble Lords on that matter.

The amendments to Clause 3 in the name of the noble and learned Lord, Lord Thomas, seek to ensure that the bank's framework document is updated to reflect any strategic steer, and that any revised framework document will be laid in Parliament. In maintaining the bank's framework document, the Treasury will follow the guidance set out in *Managing Public Money*. This guidance states that framework documents should

"be kept up to date as the partnership"—

between a department and its arm's-length body—

"develops."

The Treasury will update the bank's framework document as needed to follow this guidance. As has already been noted, the Treasury is currently reviewing the framework document and will publish a new version once the Bill has passed, which will include changes brought about

[Baroness Penn]
by this House; for example, the clarification which I mentioned earlier in relation to the bank's ability to publish a reservation notice if the Treasury subsequently issues the bank with a direction, and, in reference to an earlier debate, the clarification of the second objective in local and regional growth relating to levelling up and regional inequalities.

On the publication of framework documents, *Managing Public Money* is clear. Any revised framework documents should be published and laid in Parliament. Further, the Chief Secretary to the Treasury laid a Written Ministerial Statement today where he set out that all departments should lay their framework documents in Parliament. This has put the question of publication beyond doubt.

On whether the bank's framework document should be updated to reflect the content of the strategic steer, I think that in that respect I differ in opinion from the noble and learned Lord, Lord Thomas. *Managing Public Money* sets out that framework documents should contain information on purpose, governance and accountability, decision-making, and financial management. It does not specify that they should contain information on current policy steers or priorities.

The bank's framework document and strategic steers fulfil very different purposes; the framework document providing an agreement to govern the relationship between the bank and the Treasury, and the strategic steer providing an opportunity for the Government of the day to provide steers on current priorities and policy emphases. That does not mean that there will never be circumstances in which the framework document is updated. I have already told the House that we will reflect on the wording in the framework document on the regional and local economic growth objective. However, I do not think that the framework document needs updating every time a strategic steer is issued. It should be updated only when necessary, to provide for continuity and to avoid creating unnecessary resource burdens. The noble and learned Lord, Lord Thomas, would be inventing a new process for the framework document, when there is already a process set out in Annex 7.2 of *Managing Public Money*.

On this, I also refer noble Lords to the strategic steer issued by the Chancellor in March. This provided a steer on priorities for the bank in light of the situation in Ukraine, and the recently concluded environment review, as well as other priorities for the bank to reflect in its first strategic plan. None of this information impacted the high-level framework under which the bank operates, as set out in the framework document, and therefore a mandatory update to the framework document would have been unnecessary. However, the strategic steer must be reflected in the bank's strategic plans. This is provided for in the Bill.

Amendment 21 seeks to bring a consultation process on the use of some of the powers in the Bill with the devolved Administrations. I appreciate the intent, but this will cut directly across the negotiations that we are having with the devolved Administrations on the legislative consent process. This was brought up in Committee and I explained then that the normal practice is to bring forward any amendments required for a legislative consent Motion in the second House, which for this Bill would be the Commons. It would not be appropriate to accept this amendment until we have begun those negotiations with the devolved Administrations in earnest.

I hope that I can reassure noble Lords by saying that we have begun those discussions with the devolved Administrations in a positive fashion. Engagement with the devolved Administrations on the set-up of the bank was also positive. They all support the establishment of a national infrastructure bank. The bank has also been developing its own relationships with the devolved Administrations and their respective institutions, such as the Scottish National Investment Bank. The bank has now also completed deals in all four nations.

The tone and tenor of the bank's relationships with the devolved Administrations and their respective institutions, and the way that the bank has gone about its business so far, give noble Lords in this House quite a bit of reassurance, I hope, about the collaborative approach that the bank has taken so far and intends to take in future. Therefore, I hope that the noble Lord, Lord Sharkey, feels able to withdraw Amendment 13.

Lord Sharkey (LD): I thank the Minister for her response and thank all other noble Lords who spoke to Amendment 13. I detect a chillier wind from my right than I would have liked. Under those circumstances I can only repeat that the House will not have a substantive opportunity to scrutinise these important things. I regret that. The loss of both parliamentary authority and the ability to scrutinise what comes before us is a critical issue, which I have no doubt we will come back to in future Bills. In the meantime, I beg leave to withdraw Amendment 13.

Amendment 13 withdrawn.

Clause 3: Strategic priorities and plans

Amendments 14 to 17 not moved.

Clause 4: Directions

Amendment 18 not moved.

Clause 7: Directors: appointment and tenure

Amendment 19

Moved by ***Lord Tunnicliffe***

19: Clause 7, page 3, line 17, at end insert—

"(ba) at any time, the Bank has at least one non-executive director who is a representative of workers;"

Member's explanatory statement

This amendment ensures that the Bank's board would have at least one workers' representative at any time.

Lord Tunnicliffe (Lab): My Lords, in Committee we had a wide-ranging debate about the bank's board and whether the Bill should include requirements about its

composition, expertise, and so on. Responding, the Minister said that she could understand my temptation to have a workers' representative on the board but asserted that it was not necessary for several reasons.

During our very helpful follow-up discussions, we have discussed the various processes being followed by the bank as it constitutes its board. I have been assured that my concerns will be dealt with in due course, though it is not clear exactly how and when. I have therefore re-tabled the amendment that I tabled in Committee to give the Treasury another opportunity to explain the position. If it were the Labour Party setting up this institution, we would ensure that the board contained at least one non-executive director responsible for representing the views of workers. Having those views aired would improve the quality of jobs created through the bank's investments.

I will not pre-empt the noble and learned Lord, Lord Thomas, in relation to his Amendment 20, but it is fair to say that there is genuine concern across Your Lordships' House when it comes to the effectiveness of this board. I hope that the Minister can offer a degree of reassurance today and perhaps commit to providing updates on the bank's appointments, as and when they are confirmed. I beg to move.

6.15 pm

Lord Thomas of Cwmgiedd (CB): My Lords, I will speak briefly to Amendment 20. I traversed the reasons for this amendment at Second Reading. I traversed them again in Committee. I need not weary your Lordships by traversing them a third time. The points are obvious.

Enlightened departments have now agreed to put into Bills qualifications for the boards of important institutions. One sees that in the Climate Change Act and the Environment Act. It is a great pity that the Treasury is not an enlightened department. It should have a little more humility and appreciate that if you are to run something as important and, ideally, successful as an infrastructure bank, you ought to tick off the qualifications of the board as a whole. I have listed what they should be; they are drawn very carefully from the Climate Change Act and the Environment Act and adapted to ensure what I spoke about earlier; namely, that you have people who come from the devolved nations or who have a knowledge of the devolved nations. This is another way of dealing with the point.

However, having made those arguments, which are obvious and ought to be accepted, I fear that the Treasury is obdurate on this point. I just hope that in due course there will be a more humble and less entrenched view than its omniscient view about its capacity to do everything without some statutory guidance.

Lord Vaux of Harrowden (CB): My Lords, briefly, I support Amendment 20 in the name of the noble and learned Lord, Lord Thomas. It is self-evident that the bank's board should have the experience and skills that the noble and learned Lord proposes in his amendment, rather than just being Treasury placemen. The success or failure of the bank in achieving its objectives will depend entirely on the experience of the people running it, so I urge the Minister to accept this very common-sense amendment.

Baroness Bennett of Manor Castle (GP): My Lords, I offer Green group support for Amendment 20, to which we would have attached our name had there been space.

In Committee, I suggested that the bank should not be in the hands of the Treasury at all. I got some expressions of interest but not enough support to bring it back on Report. However, it is clear that we need systems thinking, as I often say in your Lordships' House. We need an approach that looks beyond the narrow growth in GDP to something broader and more holistic. This amendment is a step towards achieving that.

Baroness Penn (Con): My Lords, I speak on this group with some trepidation; I hope I do not show the lack of humility that the noble and learned Lord, Lord Thomas, has accused my department of. I will stand up for the Treasury: in my dealings with this group of public servants, they have been bright and suitably humble, trying to work in the best interests of the country.

I will take the amendments in reverse order. The amendment tabled by the noble and learned Lord, Lord Thomas, as he explained, seeks to ensure that the bank's board has the necessary expertise to deliver on its objectives. He is right to focus on the importance of the bank's board in steering this nascent institution to deliver on its two wide-ranging objectives across the whole of the UK.

I reassure noble Lords that the bank's board already contains a wealth of experience in infrastructure finance, policy-making, economics and green investments, across the public and private sectors. Collectively, its members have worked at similar national organisations, such as the Canada Infrastructure Bank, the UK Green Investment Bank and UK Export Finance, as well as leading financial services firms and central government departments. John Flint, the bank's CEO, was chief executive of HSBC, and Annie Ropar was the CFO at the Canada Infrastructure Bank. So, in its infant form, it has already attracted some high-quality individuals to work there.

The bank's non-executive directors were recruited in line with the guidelines set out by the Office of the Commissioner for Public Appointments, and were selected based on the skills they could bring to the board to deliver on the bank's mandate. These appointments could be audited by OCPA in due course. OCPA's guidelines include a principle of merit, which means

"providing Ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question."

As I have said in previous groups, in drafting this Bill, we are seeking to create a high-level framework within which the bank can operate, while providing for the longevity of its objectives. Therefore, given that appointments are already recruited in line with OCPA's guidelines, which we expect OCPA to review and which include a principle of merit, I do not think it is

[Baroness Penn]
necessary to add greater specificity to the Bill on this point. Including these provisions could be overburdensome and prevent the bank and Treasury hiring the most appropriate people for the roles.

I spoke about the recent appointments in Committee, so do not propose to do so in detail again, but I would be very surprised if the noble and learned Lord, Lord Thomas, could find much fault with the appointees. He has also expressed an interest in the representation of the devolved Administrations and, as he spoke about on the previous group, in making sure that the board and the bank command the confidence of all four nations in the UK. As I said to him before and will happily say again, commanding that confidence is central to how the bank has gone about its business. The skills of the board will adequately represent the needs of all four nations, although, as I said on the previous group, specifics in that area are not necessarily a discussion for now, as they are part of the process of legislative consent. I therefore hope that the noble and learned Lord does not move his amendment when it is reached.

The amendment of the noble Lord, Lord Tunnicliffe, seeks to ensure that the bank always has a representative of the workers on its board. The UK Corporate Governance Code already states that a company should have one or a combination of a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director to facilitate engagement with the workforce. It also states that, if the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why.

I give the noble Lord my absolute reassurance that the bank will comply with the UK Corporate Governance Code; however, as I have said, it is a nascent institution, with its board appointments made and the non-executive directors joining only recently. The bank has not yet had the opportunity to determine how it will meet this specific provision. It is currently establishing its governance and will report on its progress in its annual report and accounts. The noble Lord can expect an update there.

Lord Tunnicliffe (Lab): Before the noble Baroness sits down, could she find a device—a statement or something—to advise us on when that process has been completed and in what form that requirement has been met?

Baroness Penn (Con): I am happy to write to the noble Lord to set out those anticipated timelines. The annual report and accounts are published and laid before Parliament so, between those two pieces of information, I will endeavour to cover this for the noble Lord. If we reach the annual report and accounts and are not in a position to do so, I will pick this up again then and ensure that I get back in touch.

Lord Tunnicliffe (Lab): My Lords, I thank all noble Lords who have participated in this debate, and I thank the noble Baroness for her assurances on my specific point. I hope that it is seen through and that the result is not that the bank explains that it is not following the code, for some reason. This is an alternative, but one that I would deeply regret if it were chosen. With that, I beg leave to withdraw my amendment.

Amendment 19 withdrawn.

Amendment 20 not moved.

Amendment 21

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

21: After Clause 7, insert the following new Clause—

"Consultation with devolved governments

(1) Before exercising the powers of the Treasury under section 2(6), the Treasury must consult the Northern Ireland departments, the Scottish Ministers and the Welsh Ministers and take account of any views expressed in the consultation.

(2) Before preparing a statement of strategic priorities under section 3(1) and before exercising the powers under section 3(3) to revise or replace the statement, the Treasury must consult the Northern Ireland departments, the Scottish Ministers and the Welsh Ministers and take account of any views expressed in the consultation.

(3) Before exercising the powers of the Chancellor of the Exchequer under section 7, the Chancellor of the Exchequer must consult the First Minister of Scotland, the First Minister of Wales and the Northern Ireland Executive and take account of the views expressed in the consultation."

Member's explanatory statement

This amendment provides for there to be consultation with the devolved governments in relation to amendments of the Act under clause 2(6), the statement of strategic priorities under clause 3(1) and 3(3), and the appointment of directors by the Chancellor of the Exchequer under clause 7.

Lord Thomas of Cwmgiedd (CB): My Lords, I listened very carefully to what the Minister said but, in view of the great constitutional importance of ensuring that we put this into Bills and my wish to put down a marker on this point for the future, I would like to test the opinion of the House.

6.27 pm

Division on Amendment 21

Contents 73; Not-Contents 152.

Amendment 21 disagreed.

Division No. 3

CONTENTS

Aberdare, L.
Alderdice, L.
Allan of Hallam, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Brinton, B.
Bruce of Bennachie, L.
Campbell of Pittenweem, L.
Clement-Jones, L.
Cromwell, L.
Dholakia, L.
D'Souza, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Fox, L.
Garden of Frognal, B.
Hamwee, B.
Hannay of Chiswick, L.
Harris of Richmond, B.
Hayman, B.
Hope of Craighead, L.
Humphreys, B.
Hussein-Ece, B.
Hylton, L.
Jones of Cheltenham, L.
Judge, L.
Kerslake, L.
Londesborough, L.
Ludford, B.

Lytton, E.
Masham of Ilton, B.
McNally, L.
Morgan, L.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pinnock, B.
Purvis of Tweed, L.
Randerson, B.
Ravensdale, L.
Razzall, L.
Redesdale, L.
Roberts of Llandudno, L.
Russell of Liverpool, L.
Scott of Needham Market, B.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Shipley, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Teverson, L.
Thomas of Cwmgiedd, L. [Teller]
Thomas of Winchester, B.
Thornhill, B.
Tope, L.
Vaux of Harrowden, L. [Teller]
Wallace of Saltaire, L.
Wigley, L.
Willis of Knaresborough, L.

NOT CONTENTS

Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L. [Teller]
Balfe, L.
Barran, B.
Bellamy, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cormack, L.
Courtown, E. [Teller]
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dobbs, L.
Dodds of Duncairn, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Farmer, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Gadhia, L.
Geddes, L.
Glendonbrook, L.
Godson, L.
Goldie, B.
Goodlad, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Livingston of Parkhead, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
Marlesford, L.
McCrea of Magherafelt and Cookstown, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morgan of Cotes, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Robathan, L.
Rogan, L.
Rose of Monewden, L.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tyrie, L.
Vere of Norbiton, B.
Verma, B.
Warsi, B.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

6.40 pm

Clause 9: Reviews of the Bank's effectiveness and impact

Amendment 22

Moved by ***Baroness Penn***

22: Clause 9, page 4, line 2, leave out "Treasury must" and insert "Chancellor of the Exchequer must appoint an independent person to"

Member's explanatory statement

This amendment (and the others to clause 9 in the Minister's name) would require: reviews to be carried out by an independent person; the reviews to include consideration of "additionality", or the extent to which the Bank's investments encourage additional investment by the private sector; the independent person to give reports to the Treasury; the Treasury to publish those reports. The time limit for completing the first review would be 7 (rather than 10) years.

Baroness Penn (Con): My Lords, I turn to Clause 9 of the Bill, on the statutory review. We had an extensive debate on this in Committee and, reflecting on that debate, the Government have tabled several amendments to this clause.

On the timing of the review, in Committee I set out the rationale for the first statutory review of the bank taking place after 10 years. This was for two reasons: first, to ensure that we could accurately measure the effect of the bank's long-term investments and, secondly, to ensure that we do not overburden the bank with constant reviews. As I have previously noted, the Treasury is currently undertaking a review of the bank's framework document and will undertake a review by spring 2024 of the bank's capitalisation. The bank will also be subject to frequent Cabinet Office-sponsored arm's-length body reviews, which should be conducted by an independent person.

However, I understand the strength of feeling in the House and, for this reason, I tabled an amendment to shorten the timescale for the first statutory review. Bringing forward the initial review to take place no later than seven years after Royal Assent will mean

[Baroness Penn]
that the first statutory review will be conducted in 2029. This fits neatly with the timing of the levelling-up missions, which the bank's work will support, that are due to be achieved by 2030.

I turn to my other amendments to Clause 9. I heard concerns in Committee that the Treasury would, in these reviews, be marking its own homework. That was not the intention, and so I have brought forward an amendment to clarify that the Treasury will appoint an independent reviewer to conduct the review. Noble Lords will, I hope, be further reassured that the Cabinet Office-sponsored reviews, as I have just noted, will have a recommendation that they be conducted by an independent reviewer too. I hope noble Lords are content with these amendments. I beg to move.

Lord Vaux of Harrowden (CB): My Lords, I rise to speak to my Amendments 30 and 32. I am grateful to the noble Baronesses, Lady Noakes, Lady Kramer and Lady Bennett of Manor Castle, for their support. In fact, I think I may have achieved a world first in getting the noble Baronesses, Lady Noakes and Lady Bennett, to sign the same amendments. I hope, therefore that the Minister might take note of this extraordinary event and take the amendments seriously.

First, I thank the Minister for her amendments in this group, and for listening to and acting on the concerns that were raised by noble Lords as the Bill has proceeded. Her amendments are very welcome, especially those that deal with the issue that was previously raised about the Treasury marking its own homework. Having an independent person carry out the review is an important step. I also welcome the reduction of the period before the first review from 10 years to seven years. I think everyone agreed that 10 years was way too long, but even after that change, there will still be a review only every seven years, which I still think is too long. Amendments 30 and 32 would reduce this to every five years.

The argument in favour of the longer period seems to be that infrastructure investment is long-term, which it is, and therefore it will take a longer period before the success of the bank can be evaluated. I think this rather misses the point. Although it is true that the success of a particular investment may take more than seven years—indeed, it might be 20 or 30—to become clear, the review should be covering how effectively the bank has performed in making investments. Is it making enough investments, are they appropriate, are they in the appropriate parts of the country and, importantly, do they meet the additionality principle and, as we discussed earlier, the crowding-out problem? We do not need to wait until the investments themselves reach maturity to be able to see how well or badly the bank is performing in making investments.

6.45 pm

This is especially true now that the only way of assessing the bank's performance, in terms of additionality and crowding out, is through this review. Seven years is a very long time to wait before we can see whether the bank is achieving its additionality objectives; in particular, whether it is in fact crowding out private finance. A lot of damage will have been done in seven years if it is. It would be more difficult to change the direction if we wait that long.

Seven years is also substantially longer than the parliamentary cycle, and it does seem appropriate that the review period should be brought closer to that cycle. I have proposed a compromise of a five-year cycle, which is a balance between being too much of a burden on the bank and an appropriate level of scrutiny and transparency. I do not expect the Minister to accept this, and I am not going to push it to a Division, but she has mentioned in the past that the bank will be subject to all sorts of different reports, scrutiny, and so on. I ask her to at least confirm that the annual report and accounts will contain information on the progress of the bank, in terms of the sort of investments it is making and, in particular, that that will touch on the additionality question, even if it falls short of a formal review.

Baroness Kramer (LD): My Lords, I will be very brief. I thank the Minister, particularly, for establishing that the review will be carried out by an independent body. That is absolutely crucial; we really could not have had the Treasury marking its own homework. That is now going to be established on the face of the Bill.

In terms of the review period, I am totally with the noble Lord, Lord Vaux, on this one. I add one reason to the many powerful arguments that he made. The two issues that this bank is set to address, climate change and levelling up, have a great deal of urgency behind them. Therefore, the decisions that the bank makes in its early days, even if they have a long tail to them, will be crucial. If that direction needs to be changed, the bank needs to know that that is Parliament's view before we get to seven years out, at which point, particularly around climate change, it will be far too late to change a direction that is not meeting the needs of our climate change agenda. So, particularly for this bank, because it is tied to very specific objectives, a much earlier review phase is crucial.

I join the noble Lord, Lord Vaux, in being interested in how the Minister will lay out these other reviews that are meant to fill that gap. Why should we be having partial reviews that partially fill parts of the gap, rather than the comprehensive reviews on impact that could be managed under various amendments before the House today?

Lord Tunnicliffe (Lab): My Lords, although I see an attraction in a higher frequency than the Government are proposing, equally, I think that, in many ways, even five years is too long. I take comfort in what I hope to hear from the Minister: that we will have much of the information we need to come to a judgment about the success, and effectiveness—crowding in and all those issues—annually in the report. Her assurance on that matter is crucial, but I have confidence that she will be able to give it.

Baroness Penn (Con): My Lords, as I have said, I have listened to the concerns of the House around Clause 9, and it is for that reason that I have sought a compromise and tabled the government amendments to this clause, as I outlined earlier.

On the shortened timescale proposed by the noble Lords, Lord Vaux and Lord Tunnicliffe, and others, I have already set out the rationale for why the Government have gone for seven years. To reassure noble Lords on their questions about needing more regular information, quite rightly, on how the bank is performing, the bank's strategic plan set out a whole range of KPIs that it will be assessed against, including additionality, to address the point made by the noble Lord, Lord Vaux. Those KPIs will be reported on in the annual report and in the updates to the strategic plan in future.

So more regular information will be provided on the progress of the bank, not just through the statutory review. In addition to the other reviews that I mentioned in my opening speech, there is currently a review by the National Audit Office looking at the set-up of the bank. As I said in Committee in response to my noble friend Lady Noakes, the bank is also subject to reports and investigations by Select Committees of both Houses and has already come to give evidence before those committees. I reassure noble Lords that the statutory review is not the only avenue through which the work of the bank will be scrutinised. There will be ongoing scrutiny through several different avenues, including in its annual report and accounts, which will judge its progress against many KPIs. With that, I beg to move.

Amendment 22 agreed.

Amendment 23

Moved by ***Baroness Penn***

23: Clause 9, page 4, line 5, after "growth" insert "(including the extent to which its investments in particular projects or types of project have encouraged additional investment in those projects or types of project by the private sector)"

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

Amendment 24 (to Amendment 23) not moved.

Amendment 23 agreed.

Amendments 25 to 29

Moved by ***Baroness Penn***

25: Clause 9, page 4, line 5, at end insert—

"(1A) After each review, the independent person must—

(a) prepare a report of the review, and

(b) submit the report to the Treasury."

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

26: Clause 9, page 4, line 6, leave out "After each review," and insert "On receiving a report,"

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

27: Clause 9, page 4, line 7, leave out "a report of the review" and insert "the report"

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

28: Clause 9, page 4, line 9, leave out "published" and insert "submitted to the Treasury"

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

29: Clause 9, page 4, line 9, leave out "10" and insert "7"

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

Amendments 25 to 29 agreed.

Amendment 30 not moved.

Amendment 31

Moved by ***Baroness Penn***

31: Clause 9, page 4, line 11, leave out "published" and insert "submitted to the Treasury"

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

Amendment 31 agreed.

Amendment 32 not moved.

Amendment 33

Moved by ***Baroness Penn***

33: Clause 9, page 4, line 11, at end insert—

"(5) In this section, references to an "independent person" are to a person who appears to the Chancellor of the Exchequer to be independent of—

(a) the Treasury, and

(b) the Bank."

Member's explanatory statement

See the explanatory statement for the Minister's first amendment to clause 9.

Amendment 33 agreed.

CHOGM, G7 and NATO Summits

Statement

6.52 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in another place by my right honourable friend the Prime Minister.

"With permission, Mr Speaker, I will make a statement about the NATO, G7 and Commonwealth summits, held in Madrid, Schloss Elmau and Kigali respectively.

In the space of seven days, I have had the opportunity to work alongside more than 80 Governments—nearly half the entire membership of the United Nations—and to hold bilateral talks with more than 25 leaders, ranging from the new Presidents of South Korea and Zambia to the Prime Ministers of Japan and Jamaica, demonstrating the global reach of British diplomacy and the value of our presence at the world's top tables.

Our immediate priority is to join with our allies to ensure that Ukraine prevails in her brave struggle against Putin's aggression. At the Madrid summit, NATO exceeded all expectations in the unity and single-minded resolve of the alliance to support Ukraine

[Baroness Evans of Bowes Park]

for as long as it takes, and to explode the myth that western democracies lack the staying power for a prolonged crisis.

All of us understand that if Putin is not stopped in Ukraine, he will find new targets for his revanchist attacks. We are defending not some abstract ideal but the first principle of a peaceful world, which is that large and powerful countries cannot be allowed to dismember their neighbours, and that if this was ever permitted, no nation anywhere would be safe. Therefore our goal must be for our Ukrainian friends to win, by which I mean that Ukraine must have the strength to finish this war on the terms that President Zelensky has described.

When Putin claimed that by invading his neighbour he would force NATO away from Russia, he could not have been proved more spectacularly wrong because the single most welcome outcome of the Madrid summit was the alliance's agreement to admit Finland and Sweden. I hope I speak for the whole House when I say that Britain will be proud to stand alongside these fellow democracies and reaffirm our unshakeable pledge to come to their aid and defend them if ever necessary, just as they would for us. We were glad to smooth their path into NATO by giving both nations the security assurances they needed to apply for membership, and when I met Prime Minister Andersson of Sweden and President Niinistö of Finland last Wednesday, I told them I was certain that NATO would be stronger and safer for their accession.

Before Putin's onslaught, both countries had prized their neutrality, even through all the crises of the Cold War, and it is a measure of how seriously they take today's threat that opinion in Sweden and Finland has been transformed. It speaks volumes about Putin's folly that one permanent consequence of his attack on Ukraine will be a doubling of the length of NATO's border with Russia. If anyone needed proof that NATO is purely defensive, the fact that two quintessentially peaceable countries have chosen to join it demonstrates the true nature of our alliance.

Now is the time to intensify our help for Ukraine, because Putin's Donbass offensive is slowing down and his overstretched army is suffering heavy casualties. Ukraine's success in forcing the Russians off Snake Island by sheer weight of firepower shows how difficult the invader will find it to hold the territory he has overrun. We need to equip our friends now to take advantage of the moment when Putin will have to pause and regroup, so Britain will supply Ukraine with another £1 billion of military aid, including air defences, drones and electronic warfare equipment, bringing our total military, humanitarian and economic support since 24 February to nearly £4 billion.

To guarantee the security of our allies on the eastern flank, NATO agreed in Madrid to bolster its high-readiness forces, and we in the UK will offer even more British forces to the alliance, including almost all of our surface fleet. We have already doubled our deployment in Estonia, and we will upgrade our national headquarters to be led by a brigadier and help our Estonian friends to establish their own divisional headquarters. If you follow the trajectory of our programmes to modernise our Armed Forces, Mr Speaker, you will draw the logical conclusion that the UK will likely be spending 2.5% of GDP on defence by the end of this decade.

Earlier, at the G7 summit, the first full day of talks coincided with a Russian missile destroying a Ukrainian shopping centre, killing at least 18 people. This barbaric attack on an obviously civilian target strengthened the resolve of my fellow leaders to provide Ukraine with more financial, humanitarian, military and diplomatic backing for, and I quote the communiqué,

'as long as it takes'.

That is exactly the term later echoed by NATO. The G7 has pledged nearly $30 billion of financial support for Ukraine this year, and we will tighten our sanctions on Russia. The UK will join America, Japan and Canada to ban the import of Russian gold, which previously raised more export revenues than anything else except hydrocarbons.

The G7 will devise more options for ensuring that nearly 25 million tonnes of grain, trapped inside Ukraine by Putin's blockade, reaches the countries that rely on these supplies. Just as the world economy was recovering from the pandemic, Putin's war has caused a surge in global food and energy prices, raising the cost of living everywhere, including here at home. The G7 agreed to

'take immediate action to secure energy supply and reduce price surges…including by exploring additional measures such as price caps.'

We will help our partners in the developing world to meet their climate targets and transform millions of lives by constructing new infrastructure according to the highest standards of transparency and environmental protection. Through our Partnership for Global Infrastructure and Investment, an idea launched by the UK at the Carbis Bay summit last year, we will mobilise up to $600 billion of public and private investment over the next five years.

Many beneficiary nations will be members of the Commonwealth, and I was very pleased to attend the Kigali summit of this unique association of 56 states, encompassing a third of humanity. More countries are eager to join, and we were pleased to welcome two new members, Gabon and Togo.

It is an amazing fact that our familiar legal and administrative systems, combined with the English language, knock 21% off the cost of trade between Commonwealth members. It is because the Commonwealth unites that advantage with some of the fastest-growing markets in the world that we are using the sovereignty that the UK has regained to sign free trade or economic partnership agreements with as many Commonwealth countries as possible. We have done 33 so far, including with Australia and New Zealand, and we are aiming for one with India by Diwali in October.

It is true that not every member of the Commonwealth sees Putin's aggression as we do, or exactly as we do, so it was vital to have the opportunity to counter the myths and to point out that food prices are rising because Putin has blockaded one of the world's biggest food producers. If large countries were free to destroy their neighbours then no Commonwealth member, however distant from Ukraine, would be genuinely secure.

The fact that, in a week, the UK was able to deal on friendly terms with scores of countries in three organisations shows the extraordinary diplomatic assets our country possesses. As we stand up for what is right in Ukraine and advance the values and interests of the British people, I commend this Statement to the House."

7 pm

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble Baroness for repeating the Statement, and I am sure the whole House welcomes that we are able to put our differences aside to unite in support of Ukraine against Putin's aggression, just as allies have been able to do so at the G7 and NATO this past week.

Because this shocking war continues, we cannot afford to lose focus on this issue, so we fully welcome the reaffirming of opposition to the invasion and the new steps taken to support Ukraine's resistance. However, for as much as we should all welcome the unity on display in Madrid and the Bavarian Alps, it is disappointing that the Prime Minister used CHOGM to launch an unsuccessful and completely unnecessary campaign to remove the Secretary-General of the Commonwealth: our colleague and a Member of your Lordships' House, my noble and learned friend Lady Scotland. He should have been focusing on uniting members rather than stoking divisions, especially when it was clear that his was not a majority view. Can I press the noble Baroness and seek an assurance? Now that this issue has been resolved, I would like her to assure the House that the PM fully recognises the decision of the Commonwealth to support my noble and learned friend Lady Scotland, and, along with others, will give full support to her and the work that she and others will have to undertake. I would be grateful if she could make that assurance, because we all want to ensure the success of the Commonwealth.

This year's 26th Commonwealth Heads of Government Meeting in Kigali was all the more important given that it had been postponed since 2020. It was hosted by the latest addition to the Commonwealth, Rwanda, so was another reminder of the diversity among members. But it also reminded us of the inequality among members. The communiqué's focus, therefore, on governance, human rights and the rule of law, sustainability, health, youth, and technology and innovation made for very fitting themes. But the agreements they come to have to lead to some tangible actions, particularly when the Commonwealth is now lagging so far behind on the sustainable development goals. Can the noble Baroness commit to updating this House on progress towards meeting the actions for this year's CHOGM before the next meeting in Samoa?

The G7 really serves as another reminder that, just as in the same way as Covid impacted each country differently, recovery is also unequal. In the aftermath of the 2008 financial crash the then Prime Minister, Gordon Brown, offered real leadership in the global recovery, and he sought to bring countries together: to work together, to plan together, to take actions together. The global economy and the cost of living, of course, featured heavily in this summit. It is not to our credit that the leadership the UK offers is on sky-high inflation, and we are the only member of the G7 putting up taxes.

Leaders were right to focus significantly on the events in Ukraine. I am pleased that the communiqué emphasised the condemnation of Russia's invasion of Ukraine, with members agreeing financial support for humanitarian aid. The noble Baroness may be aware that the World Food Programme has warned that acute hunger globally is expected to rise by 47 million people due to the Ukraine war. What progress has been made in identifying alternate sources of food supplies to tackle what is a global crisis, and will the Government heed the call for the UN to convene an emergency global food summit this year?

Moving on to NATO, I am sure the whole House will welcome that Finland and Sweden are soon to join the alliance. Clearly this was not what Putin intended when invading Ukraine, but he has brought about the very thing that he least wanted: an expanded and stronger NATO. However, as much as the announcement on an extra £l billion in military support by the Government is welcome, it was frustrating to see that being undermined by Ministers having these public rows about defence spending. I similarly welcome the announcement of a further 1,000 troops being sent to Estonia but, if the noble Baroness could say something about how that plays into the cut of 10,000 troops from the British Army over the next three years, it would help to reassure those of us who have concerns that decisions taken by Ministers are going to make it harder for the UK to fulfil the NATO obligations.

I also welcome that allies considered recent actions by China, discussing

"malicious hybrid and cyber operations and its confrontational rhetoric and disinformation"

targets. Can the noble Baroness update the House on the work of our Government to resist such operations, obviously taking into account that we will have to work globally on these issues?

This is a fragile time for the global economy. The risks posed to our collective security are greater now, and the UK must be outward-looking, building alliances through trust. As the Summer Recess approaches, I hope the Minister can give an assurance that, should issues escalate, this House would be recalled to discuss any emerging problems. We hope those do not happen, but it has to be on record that we are willing to do so if it should be necessary.

I also hope that the Government can reflect on the long-term consequences of what has unfolded. If the UK and our allies are to look ahead to a more secure and prosperous future, we must accept that we can do so only through a focus and adherence to international law and order. The G7, NATO and the Commonwealth are all forums that can promote these principles when people work together, but those values have to be reflected at home, not just in summits abroad. First, can the noble Baroness say when we will see the full implementation of the recommendations in the Russia report? Given that foreign donations to political parties were made easier in the Elections Act, we need to be sure—and to be reassured—that the Government are serious about action.

[Baroness Smith of Basildon]

Also, the noble Baroness will surely understand how deeply regrettable it is that the Northern Ireland Protocol Bill is being brought forward in violation of international law. That damages the UK's moral authority and political credibility on the world stage. If there is one message for the Government, it is that Ministers cannot just pick and choose when to abide by international law. In the Statement, repeating the Prime Minister's words, she referred to the "extraordinary diplomatic assets" that we have. That is true, but there does seem to be a tension: that we are not using those to best advantage, and that we are undermining those who have spent many years developing them as an important asset for the UK. International co-operation and trust are essential. It is not a pick'n'mix just when it suits the Government, and that needs to be a theme running through everything that the Government do on the international stage.

Lord Newby (LD): My Lords, this Statement is probably unique, combining as it does three consecutive meetings of groups of the world's leading democracies. As the Prime Minister says, the NATO summit showed a commendable unity in expressing its support to Ukraine. However, as this weekend's Russian gains on the battlefield have shown, mere promises of more armaments are of little help to the Ukrainian soldiers on the front line. Speed is now of the essence in actually delivering them. Can the noble Baroness say how quickly it will be possible for the UK to get the additional weaponry which we have committed to Ukraine into Ukrainian hands, and into front-line operations?

Clearly, a major challenge in the provision of the latest weaponry is to train the Ukrainians in its deployment. The UK is obviously providing training to Ukrainian personnel in the use of the weapons which we supply, but I believe we have also offered to provide more basic training to very much larger numbers of Ukrainian recruits. Could the noble Baroness update the House on the state of discussions on this proposal, and whether—and if so when—we might expect to see significant numbers of Ukrainians coming to the UK for their military training?

The Statement says that, as part of our increased commitments to NATO, we will offer

"almost all of our surface fleet"

to the alliance. What does this mean for where ships will be deployed? Specifically, does it mean that we will no longer deploy our carriers into the South China Sea, but keep them within the European theatre?

More generally on our defence budget, the Prime Minister says that the UK is likely to spend up to 2.5% of GDP on defence by the end of the decade. Does the noble Baroness agree with the figures produced by the House of Commons Library last week, which show that the Ministry of Defence budget is actually being cut as a result of our soaring inflation, and is on course to have a 5.6% real-terms cut in day-to-day expenditure by 2024-25? Such a cut is, of course, in breach of the Conservative general election manifesto promise to increase the defence budget in line with inflation. When will the Ministry of Defence receive the funding to reverse that real-terms cut?

What thought has been given to where any extra resources might be allocated? The noble Baroness will be well aware of concern across the House on the precipitate fall in the number of soldiers in the Army. Do the Government intend to reverse these cuts, as they increase overall military spending?

On the crucial area of energy supply, the G7 committed to exploring oil and gas price caps. Which country is taking this proposal forward? In particular, what role is the UK playing in developing this potentially important option?

The G7 is committed to countering Chinese influence globally by spending £600 billion of public and private investment over the next five years. What part is the UK playing in achieving this? Specifically, how much public investment do the UK Government plan to allocate to this programme?

The Prime Minister bookended his Statement by extolling the reach and depth of British diplomacy. Although it is true that our membership of NATO, the G7 and the Commonwealth means that we were in the same room as half of the membership of the UN, being present is not the same as being influential. To be influential and effective, your opposite numbers must trust you to keep your word and stick to your agreements, but, under this Prime Minister, they simply cannot do so.

In the extraordinary article by the German and Irish Foreign Ministers in yesterday's *Observer*, they state of the Irish protocol:

"Instead of the path of partnership and dialogue, the British government has chosen unilateralism. There is no legal or political justification for unilaterally breaking an international agreement entered into only two years ago."

Every Government in the world will have seen these words and will be making their calculations. If we break our international agreements once, what is to stop us doing so again? With this Prime Minister, whose word counts for nothing and for whom facts are expendable, our stock internationally is low and falling. All the warm words in today's Statement cannot begin to reverse this fundamental failing.

Baroness Evans of Bowes Park (Con): I thank the noble Baroness and noble Lord for their comments. I will pick up on a number of their questions. On the noble Baroness's point, we have of course worked very well with the noble and learned Baroness, Lady Scotland; we have done so for a long time and will continue to do so, because we all want to do everything we can to strengthen the Commonwealth Secretariat and deliver for Commonwealth members. I am sure that my noble friend Lord Ahmad will be able to update the House, as the noble Baroness suggested.

On the noble Lord's questions on the G7, as he rightly said, the G7 communiqué said that to reduce price surges it is considering additional measures such as price caps to stabilise energy markets. Leaders have tasked the relevant Ministers to evaluate the feasibility and efficiency of these measures urgently so that action will be taken.

On the Partnership for Global Infrastructure and Investment, this is a G7 initiative to narrow the investment gap for sustainable, inclusive, climate-resilient and quality

infrastructure in emerging markets in developing countries. Through the G7, we will mobilise the private sector for accelerated action and support just energy transition partnerships. We launched the first of these JETPs with South Africa at COP 26, and we are currently working towards future partnerships with India, Indonesia, Senegal and Vietnam.

The noble Baroness rightly highlighted the grave concern about the food supply. As she and all noble Lords will know, 25 million tonnes of corn and wheat cannot be exported due to Putin's blockade. As the noble Baroness said, more than 275 million people worldwide were already facing acute hunger at the start of 2022, and that is now expected to increase by 47 million if the conflict continues. So, at CHOGM, we committed an additional £372 million, for instance, for countries most impacted by rising global food prices, including £130 million this financial year for the World Food Programme, which she mentioned, to fund its life-saving work around the world, including in Commonwealth countries. We committed £133 million for research and development partnerships with world-leading agricultural and scientific organisations to develop and implement technologies to improve food security, such as new drought-resistant crops. We also announced £52 million for the UN's global emergency response fund and £37 million for the UN International Fund for Agricultural Development.

Both the noble Lord and the noble Baroness mentioned defence spending. At the NATO summit, the Prime Minister outlined how we will need to invest for the long term in vital capabilities like future combat air and AUKUS. These investments mean that we are on track to spend 2.5% of GDP on defence by the end of the decade. Noble Lords will know that UK defence spending is projected to reach 2.3% of GDP this year due to the UK defence industry investment and the £2.3 billion of extraordinary support for Ukraine. We are increasing defence spending by over £24 billion over the next four years—the biggest investment in our Armed Forces since the Cold War.

The noble Lord asked about UK forces in NATO. As he rightly said, we announced our commitments to the NATO force model: we will make available RAF Typhoon and F35B Lightning fighter jets, royal naval vessels—including Queen Elizabeth-class aircraft carriers—and brigade-size land forces to NATO's Supreme Allied Commander Europe. We will significantly increase our availability, which will include the majority of our maritime forces. Either the noble Lord or the noble Baroness referred to our announcement of the expansion of our national headquarters in Estonia to ensure that we can provide rapid reinforcements with our high-readiness forces if needed.

The noble Lord asked about the new military support for Ukraine, and of course we will work with the Ukrainians to get that aid and support to them as soon as possible. But I point out how much we have done already: we are proud to have provided the equipment and help that Ukraine asked for. We have already committed over £750 million-worth of equipment, including Starstreak anti-aircraft missiles, new anti-ship missiles, 120 armoured vehicles, more than 6,900 NLAWs and more than 200 Javelin anti-tank missiles.

The noble Lord asked about the training of Ukrainian armed forces. We announced a new training offer, spearheaded by the UK, with a plan to train 10,000 Ukrainian soldiers every 120 days. Each soldier will spend three weeks on the training courses, receiving medical training, for example, and learning skills in cybersecurity and countering explosive attacks. Of course, this is on top of the 22,000 Ukrainian troops whom we have already trained under Operation Orbital since 2015, so it builds on the work that we have done.

The noble Lord and noble Baroness both asked about the Army in particular. We are creating an Army ready to fight the wars of the future, making it more lethal, agile and expeditionary. We are delivering the most significant modernisation of the Army in a generation. It will continue to recruit the talent that it needs to maintain a competitive advantage now and in the future, and it will continue to be one of the most technically advanced forces in the world. The Future Soldier transformation programme offers the best combination of people and equipment within the resources that we have. Under the Future Soldier transformation, the Army will have a whole force of over 100,000 troops.

As these three international meetings showed, we will continue to play a central role on the global stage and play our part in trying to help all our allies, particularly in light of the events in Ukraine.

7.18 pm

Lord McDonald of Salford (CB): My Lords, I thank the Leader for repeating the Statement. I have two questions. First, all these summits agreed that there needs to be an increase in defence spending; this was said most loudly in NATO, but it also came from the other two summits. Given that the British economy is growing so slowly, where will cuts be made to other expenditure to fund that increase? Will the Government lead the necessary national debate, as we get our minds around that consequence? Secondly, as the Minister outlined, we have been very generous to Ukraine; that has come from British inventory, so can she update the House on plans to fill the gaps that are now appearing in our inventory?

Baroness Evans of Bowes Park (Con): As I said, the investments that we have made and outlined mean we will be on track to spend 2.5% of GDP on defence by the end of the decade. Future spending decisions will be for the next spending review, and no doubt there will be many discussions about that in the run-up to it. In relation to our inventory, the Ministry of Defence is working hard to ensure that we have the right amount of munitions, weapons et cetera that we need.

The Lord Bishop of Manchester: My Lords, we on these Benches support Her Majesty's Government in their response to President Putin's invasion, as I am sure will our General Synod which is debating the matter this weekend. Aggression must not be rewarded. My right reverend friend the Bishop of St Albans has previously assured this House that the Church stands ready to use its reach and connections to pave the way to a solution, and we also stand ready to use our extensive links to humanitarian organisations. May I therefore ask the Minister to expand on what is being

[The Lord Bishop of Manchester]
done to ensure UK aid support reaches all those who need it, particularly through the informal volunteer groups, which have so far received only 0.24%—less than £1 in every £400—of direct donations, and to consider how faith organisations, including the Church, can pay their full part?

Baroness Evans of Bowes Park (Con): I thank the right reverend Prelate for his comments, and I pay tribute to the Church and other faith organisations for all the help and support that they provide in a whole array—both in the UK to refugees coming over here but also within the region. We will continue to work very closely with faith groups, but also civil society more broadly, to provide the support that communities around the world need. We are a world leader in development, having spent more than £11 billion on ODA in 2021. In 2021, we were the third-largest ODA donor in the G7 and the fourth-largest overall donor by volume, and we remain very proud of our work in this area.

Lord Browne of Ladyton (Lab): My Lords—

Lord Ashton of Hyde (Con): My Lords, I think that the noble Lord, Lord Browne, knows what I am going to say. I think that it is only right that, when a noble Lord arrives five and a half minutes after the start, he should not really speak. But I do accept that there are not many people here. I think it would be good if the noble Lord allowed people who were here at the beginning of the debate to speak, and if there is time afterwards then he might be allowed to speak.

Lord Sentamu (CB): My Lords, I thank the noble Baroness for the Statement, which has a lot of hope and a lot of challenges in it. I chair the board of Christian Aid, which has been working hard in Ukraine ensuring that incubators are provided, because two hospitals were destroyed, and there have been a lot of miscarriages and premature births taking place. We thank the Government for the disaster aid that has raised a lot of money, and through your offices, again, we have been able to help out.

On defence, during our debate on the humble Address I brought up the issue—as everybody is wanting to look at more lethal weapons—of the whole growth of unregulated, autonomous robots. These are very good at not being controlled by a person but have been set within themselves, and their destruction is unbelievable. What are Her Majesty's Government doing to create a treaty which will limit the way that these weapons are developed?

Baroness Evans of Bowes Park (Con): I thank the—

Lord Ashton of Hyde (Con): It is the noble and right reverend Lord.

Baroness Evans of Bowes Park (Con): I thank the noble and right reverend Lord for his comments—I apologise: it is a new one on me and I did not want to make a mistake. He is absolutely right that we all need to work internationally to tackle the many problems, a number of which he alluded to, to ensure that we have a safer and more peaceful world.

Lord Campbell of Pittenweem (LD): My Lords, does the Leader of the House accept that there are two damaging ambiguities in this Statement which undermine its credibility? The first is a passage that says:

> "our goal must be for our Ukrainian friends to win, by which I mean that Ukraine must have the strength to finish this war on the terms that President Zelensky has described."

Is that the United Kingdom indicating that it would provide support if an attempt is made to expel Russia from Crimea, with all the consequences which that would raise? The second is where the Statement says—"you" having introduced the Speaker into the exchanges—

> "you will draw the logical conclusion that the UK will likely be spending 2.5% of GDP on defence by the end of this decade."

But 2.5% of which GDP—of the GDP of today, or the GDP of 2030? Surely, we are entitled to detail of that kind.

Baroness Evans of Bowes Park (Con): As I have said, future decisions are for the spending review, but the Prime Minister has said that he expects it to set out a trajectory towards 2.5% by the end of the decade. In relation to the noble Lord's first comment, President Zelensky made clear during the Prime Minister's recent visit to Kyiv that Ukraine has no interest in surrendering sovereignty, and we want to support it to finish the war on the terms he describes.

Lord Howell of Guildford (Con): My Lords, my apologies for arriving a minute late to my noble friend's Statement; it came up a fraction sooner than I expected and quicker than I could run to get here. I wish, if I may, to ask a question, but first of all I agree with those who welcome the orderly transfer of the secretary-generalship of the Commonwealth. As I said in the debate which we had on Thursday on this subject, I think that is the right way for it to go: it gives the present secretary-general a chance, as it were, to wind up and complete her term of office—I know that she has some more leadership ideas for facing Commonwealth difficulties to share with us, so that is a good thing.

My question is this. Did I hear in reports, but not in this Statement, that at the G7 the Ministers and the Heads of Government entertained the idea of trying to create a counter to the belt and road initiative of the Chinese, which now involves memoranda of understanding with 141 countries, and two-thirds of the Commonwealth as well? This is a huge entanglement by China. I know that most of the first two gatherings were about Ukraine, but it is relevant because it is of course China's neutral stance that is influencing half the world not to support us in challenging the Russian atrocities, but instead apparently to condone them. As long as that goes on, and half the world is not with us against the Russian horrors, and against their attack on humanity and international law, then Putin is going to get some encouragement to continue, so I would like to know whether there is anything in the brief on that particular subject.

Baroness Evans of Bowes Park (Con): What my noble friend is asking about is the Partnership for Global Infrastructure and Investment, which I mentioned in response to the noble Lord, Lord Newby, which is the G7 initiative to narrow the investment gap for

sustainable, inclusive, climate-resilient and quality infrastructure in emerging markets and developing countries. We, through the G7, intend to mobilise the private sector for accelerated action and support just energy transition partnerships. As I mentioned, one has already been set up with South Africa, and we are currently working towards further partnerships with India, Indonesia, Senegal and Vietnam. It is that initiative that the G7 will be developing within that space.

Baroness Bennett of Manor Castle (GP): My Lords, my question follows on from that, on the Partnership for Global Infrastructure and Investment. Will the Leader of the House agree with me that it is crucial that this money avoids the errors that have happened so often in the past, where money has gone into the priorities of investors rather than the needs of the poorest in society? Will she agree that this money needs to take a rights-based, gender-sensitive approach, delivering a just transition rather than ensuring that the rich in some countries get richer and the global north benefits—particularly in ensuring that the global south does not get laid on with even further levels of debt burden when it is already carrying levels of debt that it is unable to afford?

Baroness Evans of Bowes Park (Con): I certainly agree with the noble Baroness that we need to make sure that this initiative delivers for the poorest countries in the world, and that we work in a collaborative and effective way. That is what is happening in the development of this partnership. As I have said, we already have the first one announced, we are working towards several more, and we will support partners in developing countries and emerging markets in a fair and sustainable way.

Lord Hylton (CB): My Lords, will the Government emphasise that we have no quarrel with the people of Russia, but only with their misguided leaders? As regards Ukraine, will they try their hardest to keep open all channels of communication, whether diplomatic or other? Finally, will they identify and use all possible intermediaries to end the war and open the way towards a verified and durable peace?

Baroness Evans of Bowes Park (Con): We have said before—I certainly have at the Dispatch Box—that we have no quarrel with the Russian people. I am happy to restate that. We will support our Ukrainian friends so that they do not have to suffer in the way that they have, and we will work with President Zelensky to achieve the outcome he wants.

Lord Marlesford (Con): My Lords, President Putin has more than once suggested that he stands ready, if he thinks it necessary, to use nuclear weapons in pursuit of the Ukrainian war. Has it been made clear to him that the first use of any such weapons, whether tactical or strategic, is out of bounds, and that any nation taking that step would meet retribution—which in the case of Russia could be terminal?

Baroness Evans of Bowes Park (Con): My Lords, we are already in a very fraught situation and I do not think that speculating on such things helps at this point. What we want to do is work with our allies to support the Ukrainians and continue to point out the fallacy and wrongness of what President Putin is currently doing.

Lord Ashton of Hyde (Con): My Lords, as we have had a question from my noble friend Lord Howell, we should allow the noble Lord, Lord Browne, eventually to come in. I withdraw my comments, with the leave of the House.

Lord Browne of Ladyton (Lab): My Lords, I apologise too for being late for the beginning of the Statement. I had expected it to be later in the evening and my office is in Millbank House. Anyway, I can assure the noble Baroness—to whom I apologise profusely—that I have read the Statement, because I have a very specific question and wanted to see whether there was any reference to it in the Statement, but there is not. As part of the US increasing its military presence across Europe, two more squadrons of F-35 stealth jets will be stationed at RAF Lakenheath, which is leased to the US air force. Can the noble Baroness reassure me that these will not be the dual-capable variant of the stealth aircraft, and that we will not, some time in the future, face the challenge of the United States wanting to base nuclear weapons in the UK once again?

Baroness Evans of Bowes Park (Con): I think the noble Lord will not be surprised to hear that I do not have that level of detail. I ask him not to take that as any answer; I am afraid I simply do not know. If I could write to him, it would be for the best. I am happy to share the letter, in the Library, with other noble Lords.

Lord Cormack (Con): My Lords, I apologise for being one minute and 30 seconds late, but may I return to a point raised by the noble Lord, Lord Campbell of Pittenweem? There is the figure of 2.5% of GDP by the end of this decade; we are investing troops in Estonia and there is the possibility of a European war that could escalate beyond this continent. Can we please keep these figures carefully in mind? Could my noble friend assure me that we have the ammunition—having rightly given so much to the Ukrainians—to sustain action for significantly longer than indicated in the rather authoritative article in today's *Times*?

Baroness Evans of Bowes Park (Con): Certainly; that is a priority of the Ministry of Defence. We have been clear that we need to invest for the long term, and that is what we will continue to do. That is why we have increased defence spending by over £24 billion over the next four years and have said that we will be making further investments to reach 2.5% of GDP being spent on defence by the end of the decade.

Viscount Waverley (CB): My Lords, I think I heard the Leader of the House refer to agricultural investment; as a consequence of the war in Ukraine and the difficulties we all now face, it is right to consider this with a global approach. Moving on, recognising Togo and Gabon as aspirant members of the Commonwealth should, I hope, send a very convincing message to all our friends in La Francophonie that we in the

[Viscount Waverley]
Commonwealth would welcome an in-depth discussion with them. La Francophonie has tremendous opportunity for the UK. On that point—the Leader of the House may not be aware of this—was any attention paid to the situation with regard to Cameroon, which is exercising the minds of many?

Baroness Evans of Bowes Park (Con): Yes, we were very pleased to agree the accession of Togo and Gabon. I do not believe that Cameroon was mentioned, but if that was the case, I will happily refer back to the noble Viscount. As for agriculture, he is absolutely right: as well as the various additional funds I mentioned, we also announced £17.7 million of funding through the FCDO's green growth centre of expertise to improve the effective use of fertilisers and increase food production in countries including Rwanda, Kenya and Ghana.

Lord Bilimoria (CB): My Lords, would it be possible to speak? I was a latecomer as well.

Baroness Evans of Bowes Park (Con): Did the noble Lord hear any of the Statement?

Lord Bilimoria (CB): I was here when the noble Lord, Lord Newby, was speaking.

Lord Ashton of Hyde (Con): No, sorry.

Lord Bilimoria (CB): But everyone else who was late was allowed to speak.

Lord Ashton of Hyde (Con): Some Members were late by a minute or five minutes, but the noble Lord missed the whole Statement and the remarks of the party leaders.

Lord Bilimoria (CB): I did not miss their remarks.

Lord Collins of Highbury (Lab): The noble Lord missed the Front-Benchers.

Lord Bilimoria (CB): I did not miss them; I heard the noble Lord, Lord Newby.

Lord Ashton of Hyde (Con): I think that proves the point that the noble Lord was not here for the Leader of the Opposition.

House adjourned at 7.36 pm.

Grand Committee

Monday 4 July 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, if there is a Division in the Chamber while we are sitting, which may be likely, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Procurement Bill [HL]

Committee (1st Day)

Relevant document: 3rd Report from the Delegated Powers Committee

3.45 pm

Amendment 1

Moved by ***The Minister of State, Cabinet Office (Lord True) (Con)***

1: Before Clause 1, insert the following new Clause—

"Procurement and covered procurement

(1) In this Act—

(a) "procurement" means the award, entry into and management of a contract;

(b) "covered procurement" means the award, entry into and management of a public contract.

(2) In this Act, a reference to a procurement or covered procurement includes a reference to—

(a) any step taken for the purpose of awarding, entering into or managing the contract;

(b) a part of the procurement;

(c) termination of the procurement before award.

(3) In this Act, a reference to a contracting authority carrying out a procurement is a reference to a contracting authority carrying out a procurement—

(a) on its own behalf, including where it acts jointly with or through another person other than a centralised procurement authority, and

(b) if the contracting authority is a centralised procurement authority—

(i) for or on behalf of another contracting authority, or

(ii) for the purpose of the supply of goods, services or works to another contracting authority.

(4) In this Act, "centralised procurement authority" means a contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities."

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, in moving Amendment 1 I will speak to the first group of amendments. Before so doing, I give notice to the Committee that Amendment 528—which I discovered only this morning had been grouped with this group, but which refers to matters relating to the health service—has been degrouped, because it is logical and to the benefit of the Committee that we discuss issues relating to the NHS part of the Bill together. I will address all the other amendments in this group.

I start by acknowledging and sincerely apologising for the number of government amendments. At Second Reading, in what I thought was all candour at the time, I said that I recognised there were areas of the Bill that would need refinement in Committee. However, the volume of amendments is still regrettable. I assure noble Lords that many of the amendments in this group and others are narrowly focused and technical in nature. We are putting them forward now only to ensure that the Bill functions properly and effectively.

We have issued a Keeling schedule setting out where the range of government amendments will fit in if your Lordships are pleased, eventually, to accept them. The bulk of the amendments in this group and others do not change the general policy intent of the Bill. Indeed, some of them serve to reflect more fully the original policy objectives as set out in the Government's Green Paper and subsequent responses to it. I know from discussions at Second Reading and in the engagement I have already had with many of your Lordships—which I undertake to continue, not only between Committee and Report but, in the light of concerns that have been expressed, during Committee to clarify anything that is concerning noble Lords—that many noble Lords wish to get closer to the original policy objectives. That is evident from the number of non-government amendments that have been proposed, which we will be discussing. That is not an indication necessarily that we will have a meeting of minds on those, but some of them flow from that.

In many cases the need for amendments has been highlighted by external organisations. We are grateful for their scrutiny and input into improving the Bill. The interconnected nature of the Bill inevitably means that a single small amendment to a definition in one clause leads to multiple amendments to reflect the same definition where it features in later clauses to ensure coherence and consistency. Obviously, that frequently happens in the passage of legislation.

I repeat that I accept with all sincerity that the number of government amendments is not welcome and is undesirable. However, their end effect, when your Lordships have had the opportunity to reflect on them fully, of providing greater legal clarity will be beneficial to the Bill as a whole and to the large procurement community that will use it for many years to come.

The first group contains some of the Government's amendments with the most general effect on provisions in the Bill, though these remain technical in focus. Amendments in this group relate to the introduction of the concept of "covered procurement" and to the devolved Administrations.

The proposed new clause before Clause 1 includes technical amendments to the definition of procurement and, as I just said, the introduction of the term "covered procurement" to distinguish between the categories of contract subject to different obligations under the Bill. "Covered procurement" refers to those contracts fully regulated by the Bill's provisions; "procurement" refers to those contracts that are less regulated but none the less catered for to an extent, such as the below-threshold

[LORD TRUE]
contracts and international organisation procurement. These changes recognise obligations under various trade agreements. The group also contains a number of consequential amendments to reflect this amended definition throughout the Bill.

Other amendments in this group did not originate from the Government but were requested by the devolved Administrations to amend how the legislation applies in Wales or Northern Ireland. As I said at Second Reading, we have been very grateful for discussions with and input from colleagues in Wales and Northern Ireland. These amendments include a small number of derogations from particular provisions in the Bill where they do not align with those Administrations' policy goals. We have listened to the concerns of the devolved Administrations, and I hope noble Lords will agree that it is sensible to make these changes at an early stage to ensure that we have legislation that works for all contracting authorities in England, Wales and Northern Ireland.

Lord Wigley (PC): I realise it is unusual to intervene on the opening speech, but it may be for the convenience of the Committee to understand the changes with regard to the devolved Administrations. Can the Minister confirm that these have all been agreed with the Welsh Government, in the case of Wales, and, where they relate to Northern Ireland, in Northern Ireland, or are there some here that, because of the time pressure, there has been no opportunity to discuss with the devolved Administrations?

Lord True (Con): My Lords, I will have to be advised on that. I have been advised that they are the result of discussions. If that is not the case, I will set the position clearly and straightly when I come to wind up the debate. I have been led to believe, and know from my own involvement in the matter, that there has been a good deal of agreement between the United Kingdom Government and the Government of Wales. I will certainly confirm that in winding up.

The group also contains a number of technical amendments which are required to ensure that provisions relating to the Bill's application in the devolved Administrations function properly.

To repeat what I said at Second Reading, I regret that the Scottish Government have opted not to join the Bill. They will retain their own procurement regulations in respect of devolved Scottish authorities. I am sure we would all welcome our Scottish friends if they wished to join the new system proposed by the Bill. Taxpayers and public services alike across the whole United Kingdom would benefit from that. However, at this juncture I am able to lay only those matters requested by the devolved Administrations in Wales and Northern Ireland. I beg to move.

Lord Fox (LD): My Lords, I thank the Minister for his apology at the beginning, which I believe to be sincere and heartfelt. I also thank him, I think, for his introduction of the first of these 50 amendments; it was relatively short, given that they come with little explanation. It is said that there is a productivity crisis in this country—not so in the Cabinet Office amendment-generation department. The Minister can be proud of its performance.

More seriously, I commend the Bill team and the Government Whips' Office, who have been wrestling with this leviathan of amendments, not least over the weekend. I thank them for their hard work. I will return to the process we are facing after making a few comments on the amendments, particularly around the covered procurement element.

Amendment 1 and several others seek to clarify things by defining covered procurement. I remain confused about where this phrase comes from and why it was necessary. There was no sense from the Minister's introduction as to why it was necessary to come back after Second Reading with a new phrase. Can he say where this term comes from? Is it employed elsewhere in legislation? I think it is in contract law but it was difficult to find other manifestations of it. I should remind the Minister that, every time a new term like this arrives in legislation, it proliferates a great deal of other legislation because each new word or term will be tested to the limit in the law. If we start bringing in new terms such as this, the Bill will be a lawyers' enrichment fund—I can see the lawyer opposite nodding in agreement—and that is not a good thing for the country or for government.

In his discussions, the Minister said that many of these new amendments came from consultation that was subsequent to Second Reading. Avoiding the obvious question as to why Her Majesty's Government did not consult more beforehand, I would like to know which organisations and individuals put forward the need for this change. My guess is that it was not an external force but an internal one, and possibly that the Cabinet Office, having used one lawyer, decided to use a different one who had a whole set of different opinions on the legal nature of the Bill, and that is where the vast majority of these amendments have come from. Far be it from me to say what the benefits are of changing a horse half way across a stream, but we are, I suspect, reaping the consequences. If I am wrong, I am happy for the Minister to tell us so or to publish the consultation that happened subsequent to Second Reading. I will be happy to admit that that was not the truth.

As we noted at Second Reading this is an important Bill, dealing as it does with the technical process for managing a considerable amount of money spent on behalf of the British people by public institutions. We support this process. We noted that it needs to be in the public interest, as well as providing value for money. The objective of this Committee process should be, and should remain, to have a proper debate around how such issues are brought to the fore in this legislation. However, because of the sheer incompetence of the Cabinet Office—a Cabinet Office that, I note, recently published its guide to improving the quality of the legislative process—we are instead pulled into a debate around process.

During Second Reading, there seemed to be a measure of good will. My noble friend Lord Wallace spoke about the need for a co-operative process and the Minister seemed to agree. Subsequently, as the Minister has pointed out, with fewer than four days before the first day in Grand Committee, we were confronted

with 350 government amendments. That could have been managed in a co-operative way, but that did not happen. Even if we had to have the amendments, to drop them with no warning so near to the process was an inappropriate way of being co-operative.

Then, at 8.56 am on Sunday, which I remind everybody was yesterday, we all received an updated grouping of amendments. In this, there were 77 changes from the document we had received on Friday—I repeat, 77 changes—with the shape of the groups radically changed. For Members to be presented with so many changes, and then for those changes to keep on moving, right up to the wire, is unacceptable. I stress again that this is not the fault of the Government Whips' Office, which I suspect was kept at work all weekend thanks to this process and the Minister's insistence that we plough on with the Bill in the way that was originally planned.

4 pm

In the House, the Chief Whip made much about the availability of the Keeling schedule, as did the Minister. As your Lordships know, this is essentially a marked-up or tracked version of the Bill. As far as I am aware, it has not been made available in a printed version and has been circulated by email only to interested parties. I will take correction if it has now been made public.

Baroness Noakes (Con): We have not received it.

Lord Fox (LD): I will correct my speech. It has not even been received by all the interested parties, which makes it worse.

Furthermore, to date, the Cabinet Office has not provided proper explanatory statements for each of the new government amendments. There is nothing in the current Marshalled List. The eighth group, which we had planned to debate today, contains a group of amendments that was wholly absent from the Minister's original letter and the table that some, if not all, of us received when that letter came. Essentially, we have had no time—hours, at best—to consider these amendments.

More than that, the Minister stressed the value of the external community and the input we get from interested parties in this legislation. Those interested parties have not had a little time to consider these amendments; they have had no time. They are not on the record for those bodies that can feed in and positively reinforce your Lordships' legislative process. We are missing all that. So never mind the unintended consequences of this legislation—we do not even know what the intended consequences are.

For this reason, I put the Minister on a warning that I will object to each of his amendments. When the Question on Amendment 1 is put, I will be not content. My understanding of the process is that, in Grand Committee, this will mean that the amendment will need to be withdrawn.

Baroness Hayman of Ullock (Lab): My Lords, where do I start? This is a really important and long-awaited Bill, so it is incredibly disappointing that, after so much time, the Bill was not fit to have been published when it was. With all these amendments, it is quite different from what we debated at Second Reading, even if many of the amendments are technical and there to tidy up. The Government really should have thought about this and got their act together before the Bill was published in the first place.

I know that the Minister is someone we can work with constructively on Bills—I appreciate that—but the Government's incompetence over the weekend and the way this has been done challenge our ability to work together constructively. That is something else that disappoints me personally. As the noble Lord, Lord Fox, pointed out, it puts too much pressure on staff, who were expected to try to pull this Bill into shape over the weekend.

I reiterate completely what the noble Lord, Lord Fox, said about providing proper Explanatory Notes rather than annexe A, which was very thin on information and, in some cases, did not cover everything that the amendments were about. I spent most of the weekend trying to get my head around a lot of these amendments and cross-reference with the annexe. This is an important Bill and a lot of it is technical. I am not a procurement law expert, so I need support in the Explanatory Notes to understand exactly what is happening and what the amendments will do. When we are cross-referencing and trying to make sense of things, it is hard. As a member of the Opposition, let me say that this is not just about holding the Government to account; as I said, it is about working constructively to make legislation better. The Government have not helped us to do this.

My plea to the Minister is that we really need to move on from this and make sure that we can scrutinise Bills in a much better way. We are where we are with the Procurement Bill.

I totally understand and support what the noble Lord, Lord Fox, said about objecting to some of the amendments, because all this has been deeply unhelpful. Okay, we will do only three groups today, but at some point we have to get stuck in. It took me over two hours yesterday to go through all the amendments in group 1—group 2 has about three times that number. If we are going to do this properly, and actually look at the amendments rather than take the Government's word on what is in them, it will be very time consuming.

I am afraid I am going to share with noble Lords some of what I did yesterday. It needs to be spelled out how complicated and confusing it is when we try to manage something such as this. Obviously, I started with group 1 and the proposed new Clause 1, which is about procurement and covered procurement. I read the amendment. I did not really understand what covered procurement it is, so I looked at section 5 of annexe A, which is just definitions; there is no further information. I still do not really understand the implications of changing this terminology. That is something we need to get across to the Government. We need to know exactly what is happening. This also has an impact on Amendments 55, 301, 405, 406, 408, 411, 416, 453 and 454. This affects many parts of the Bill, so we have to understand what is going on here.

I then looked at Amendment 172 to Clause 30, which would delete the word "procurement" and insert "the award of a public contract".

[Baroness Hayman of Ullock]

Apparently this is in annexe A, sections 3 and 8. Section 3 just says "replaces references to associated supply with associated person and expanding the concept", but again, why? Why is that important? Why do we have to do that? Section 8 is about ensuring clarity on how a contracting authority must treat a supplier. Why do those changes do that? What is the purpose behind changing the terminology?

We have talked about the devolved Administrations. Amendments 282 to 285 to Clause 51 are about Northern Ireland. This is covered by sections 26 and 27 of annexe A, which say that "contract deal notices in respect of light-touch regime contracts must be published in 180 days." Again, there is no proper explanation of how that affects Northern Ireland and what it means for the way it carries out procurement.

Moving on, I came to Amendments 342, 349, 356, 378, 380 and 383, which also refer to Northern Ireland, and Amendments 392 and 433, which refer to Wales. But the annexe also mentions Wales for the amendments that are supposed to be about just Northern Ireland, so it does not cover everything that the amendments say they do. I had had about four cups of coffee by this point just to try to keep going.

Amendments 377, 381, 385 and 387 would insert the word "was", but the parts of the Bill they would amend already have the word "was". Again, I am really confused about why we need another "was".

Amendments 379, 382, 386 and 388 would insert

"as part of a procurement".

If that is something that needed to be spelled out, I find it extraordinary that it was not written in in the first place.

Amendment 389 would delete subsection (10), which says:

"This section also does not apply to … defence and security contracts, or … private utilities."

That is not tidying up or technical; it would delete a subsection that says something. I ask the Minister: what does that actually mean? What does it do? Why is that subsection being deleted? What is the purpose behind it?

Amendment 390 would delete a paragraph that reads,

"the value thresholds in subsection (2)".

Again, it is not a tidying-up but a deletion. What does this actually mean? I am sure I am confusing everyone here because they do not have the Bill in the right places in front of them—I could read out the actual page numbers, if noble Lords want.

Amendment 391 would delete "in subsection (7)" on page 46, line 9. Why are those words being deleted? What is the purpose behind it?

Amendment 395—there are a lot like this—would delete "supplier" and add "person". If this terminology was wrong, why was it not picked up so much earlier, when the Bill was being first drafted?

Amendment 424 would delete

"the award of a contract"

and insert "procurement". Again, if that is the terminology that should have been used, why was it put in wrong in the first place?

In Amendment 425, "unless it is awarded" is to be deleted and "other than procurement" inserted. Those do not really seem the same to me, so what is the point of that change? What are the Government trying to do?

Amendment 426 would delete paragraph (c) on page 50, line 18:

"in relation to the management of such a contract."

Why do we need paragraph (c) deleted? What is the purpose of it? Annexe A does not tell us any of this information.

Amendment 437 says:

"Page 53, line 3, leave out paragraphs (a) and (b)".

Why are we deleting paragraphs (a) and (b)? What is the purpose and what are the consequences?

Amendment 438 says:

"Page 53, line 17, leave out 'or services' and insert ', services or works'".

That seems the sort of thing that should have been drafted correctly in the first place.

Amendment 439 says:

"Page 53, line 26, leave out from 'procurement' to end of line 27".

That is also the same in Amendment 462. Again, it looks to me like something that should have been done properly in the first place.

Amendment 440 says:

"Page 53, line 37, at end insert",

and noble Lords can see the words on the Marshalled List—there is a lot there, and I really do not think that anyone wants me to read it all out. Again, this is not a technical adjustment but inserts quite a substantial amount of text. What are the implications? These may all be marvellous changes that benefit the Bill, but the point is that we do not know because we do not understand what is going on here.

Amendment 463 would delete subsection (8) on page 57, line 7. Amendments 439 and 462 do the same thing. What is the purpose of deleting subsection (8)?

I will not cover Amendment 528, because it has been moved to a different group. Noble Lords will be glad to know that I have only two left.

The annexe says that Amendment 540 is to define expressions. It inserts "covered procurement" and "debarment list". What does "covered procurement" mean? Why does it reference the "debarment list"? That is similar to Amendments 542 and 543.

I will finish there. I just wanted to get across to the Committee and the Minister how very confusing this is and how little back-up information we have. We want to work constructively with the Minister. We want this to be a good Bill. For goodness' sake, we just need to be able to get it sorted.

Lord Lansley (Con): My Lords, I am the bearer of a simpler brain than the noble Baroness, so I may not cast too much helpful light, but I will do my best. I come to this more in general terms than trying to work from the specific to the general.

I thank my noble friend very much for taking out Amendment 528. I was going to ask him to do that, because we should consider the health service issues together, including Amendment 30 relating to the scope of the light-touch contracts.

4.15 pm

I fear I agree with the noble Lord, Lord Fox: I do not understand where the term "covered procurement" came from and why it was inserted. I looked back to the public contract regulations, thinking that perhaps we were reintroducing something, but it is not there either. We have lived without the term "covered procurement" for a very long time. What does it add now?

Let me put it to my noble friend, and if I am wrong, his explaining why I am will help me and, I hope, other noble Lords. I am working on the basis that, as things stand, the Bill defines procurement by reference to the management, et cetera, of a public contract. In Clause 2, public contracts exclude below-threshold contracts, so "procurement" for these purposes under the Bill relates to contracts above the threshold, not below.

In my understanding, Amendment 1 then introduces two concepts of procurement. There is procurement in its normal meaning and "covered procurement", which is the procurement of a public contract—public contract later defined by reference to the threshold. In Amendment 1, we bring within the scope of the Bill—on things such as those in Clause 12 and the question of the national procurement policy statement—all the procurement undertaken by contracting authorities in relation to below-threshold values; otherwise, they would be left out, because procurement under Clause 12 would mean procurement above the threshold, not below.

In my understanding, that is what "covered procurement" does. If it did not, Clause 12 would introduce a national covered procurement policy statement, but it does not and there is no such amendment. Clearly, the intention is to have two concepts running through the Bill: procurement, which is every kind of procurement, and covered procurement, which is above the threshold. I do not understand why that is necessary, but at least I think I see what is going on. If I am wrong, I am happy to be put right.

Lord Berkeley (Lab): I found the explanation of the noble Lord, Lord Lansley, quite interesting, but whether he is correct, we will have to wait for the Minister's response to find out.

My problem, as has been mentioned by my noble friend and the noble Lord, Lord Fox, is that of definitions and the lack of reasons for change. For me, procurement is the process of awarding a contract. We need to know the definition of what is a public contract—perhaps the noble Lord is right; perhaps he is not—and what is not. In Amendment 1, the only difference between procurement and covered procurement is the word "public", as he said. Where is the definition of uncovered procurement, if you like? We need that, and we also need an explanation of all these amendments, but I shall not go on, because my noble friend has delivered a massive argument. She said she spent all weekend on this, but she is just scratching the surface—which is even more frightening.

At the end of Amendment 1, we get something called the "centralised procurement authority", which seems to be the top level—perhaps they are very large contracts. Can the Minister give some examples of what kind of contracts will be covered by that? It states that that is a

"contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities."

We can all give examples of those, and I am sure we will come to them later, but it is important that we have a definition of "public" and of "procurement", and of how that is different from awarding a contract. Procurement, to me, is a process. It starts with tendering and ends up with, you hope, an award of contract. Why all these changes? There needs to be a definition and explanation against each one.

I will say just one more thing, because I am sure that everyone else will have spent the weekend going through each of these amendments. Amendment 440, which a noble Lord—I cannot remember who—just mentioned, refers to

"a supplier's association with a state".

"State" is an interesting word. What is a state? Is it Scotland or Wales? My noble friend next to me will have views on Wales but there needs to be a definition of "a state". It suddenly pops up in Amendment 440. Presumably, if it means separate states, such as Wales and England, there will be frontiers between the two to make sure that goods go in the right direction.

I wanted to cover those two small issues, and want explanations from the Minister. I end by wishing the Minister well in taking the Bill forward. Noble Lords who have already spoken, in particular my noble friend Lady Hayman, have done a magnificent job but we are probably going to have several weeks of going through each of these amendments and asking the questions that she so rightly asked.

Lord Wigley (PC): My Lords, I will speak briefly, as I intervened on the Minister's opening speech. I want to reinforce the points that have been made and perhaps add a little to them.

I come to this from the viewpoint of the Welsh Government, who have worked closely with the UK Government on this matter over a period of time; designated civil servants from the Welsh Government have been co-operating on it. Therefore, this is not a matter of contention in that way; it is a question of making sure that there is an understanding and that the end product will work for both. Where it is necessary to have some fine-tuning for the sake of Wales or Northern Ireland, but not Scotland in this case—

Lord Berkeley (Lab): Why not?

Lord Wigley (PC): Scotland may come in but, at the moment, it is doing its own thing. This is a matter of getting a process where fine-tuning is possible.

It is not so much the content that concerns me—frankly, I was engaged in other things yesterday and did not have an opportunity to work through the amendments. As I said in the Chamber, the previous Sunday I worked through every one of the 80-odd amendments, so that I could have a coherent conversation with the Welsh Minister, civil servants in Cardiff and noble

[Lord Wigley]
Lords who were involved, including the noble Baroness, Lady Humphreys, and the noble and learned Lord, Lord Thomas of Cwmgiedd. I did so in order to get their understanding. To be fair, they were constructive about this Bill—as the Bill stood, relatively few points were of contention to them. But as I indicated earlier, I am concerned that they have an opportunity to see whether any of the changes that are now being made through this large number of amendments might have an effect on their understanding of its slightly different application in Wales than in England.

That is the general intention: to get a system of procurement that can work for the Welsh Government in delivering their economic targets, which they have using successfully over the past few years, and to do so in a way that does not disrupt the UK market. A balance must be struck there. It is essential that both ends of the M4 understand each other on this. I am sure that the noble Baroness who opened for the Opposition will have had conversations with Welsh Ministers and will know about their concerns.

This is not about undermining or opposing the Bill. It is about making sure that it works properly, as intended, for both sides. That is what I hope for. If it is necessary to step back at this point, check and make sure that that is the case, it would be far better for us to do that now rather than pass into law things that become challengeable in the courts, at which point we will end up with all sorts of mess.

Lord Purvis of Tweed (LD): My Lords, I regret I was unable to participate in Second Reading. However, I followed that debate and have read the Minister's letter to those who took part. I also have amendments that we will be discussing later in Committee.

The noble Lords, Lord Fox and Lord Lansley, the noble Baroness, Lady Noakes, and I are now veterans of legislation that the Government have sought to change quite radically. There were at least two iterations of the Trade Bill, and then there was the Professional Qualifications Bill. That has raised a wry smile on the noble Baroness's face, and it has brought back significant memories.

The difference, however, is that, for those Bills, the Minister was able to recognise not only the mood of the House but the practical consequences of bringing forward significant changes without there being a degree of consensus—as the noble Baroness, Lady Hayman, has said—at least on understanding what the Government were intending to do before they brought forward the changes. The passage of the Professional Qualifications Bill was paused. The Government recognised that their case had not been made, preparations had not been in place and that the materials were not available for Parliament to do its constitutional duty to scrutinise. I hear the Minister repeat time and again in the Chamber how much he values this Parliament, and this House in particular, doing our job. However, on this Bill, which he is responsible for, he is denying us the very tools to carry out this proper scrutiny work.

There is a precedent of other Ministers and other departments recognising that a pause is not a government defeat but will strengthen their case when they bring back their properly worked out amendments. Indeed, on the Professional Qualifications Bill and Trade Bill, there was consensus on the amendments brought forward at the end. It helped the Government carry out their job, as we were sincere in believing that they had faith in their proposals.

If we are to be soothsayers as far as understanding what the Government are seeking to do, then the noble Lord, Lord Lansley, made a reasonable fist of trying to interpret Amendment 1—the Minister chose not to do so. If the noble Lord is right or wrong, we should at least know what the Government intend when changing that proposal because, as my noble friend Lord Fox, and the noble Baroness, Lady Hayman, indicated, not a single government amendment has come with an explanatory statement.

I refer to the Cabinet Office *Guide to Making Legislation* from 2022, which the Minister is responsible for—I am certain the Minister has a copy; I can lend him mine if he wants. Section C is on "Essential Guidance for Bill Teams"; I think the Bill team is sitting behind him. In paragraph 22, on Amendments—this is from the Cabinet Office's own guidance, not from me—it says:

> "All government amendments require an explanatory statement, in plain English, setting what an amendment will do."

So, why did the Minister refuse that on this Bill? It is a mockery of the guidance.

The Minister, after making his apology to the Grand Committee, chose not to outline any of the amendments. He did not explain whether Amendment 1 and the others will have significant policy implementation differences. If the noble Lord, Lord Lansley, is correct, then they will. That is how all of those who will be putting together procurement and replying to tenders will interpret the legislation, so of course it will have an implication on that. That is why we look at impact assessments to consider what level of consequence there will be.

The Government have not felt it necessary to bring any changes to the impact assessment—unlike for the Professional Qualifications Bill, I remind the Minister. However, this is also stated categorically in the *Guide to Making Legislation* in paragraph 13, on impact assessments:

> "The … impact assessment … will need to be updated during parliamentary passage to reflect any changes made to the bill".

I therefore ask the Minister: why has there been no update to the impact assessment to take into consideration any changes made to the Bill?

If the noble Lord, Lord Lansley, is correct, there will need to be some quite significant changes to the impact assessment, because the cost is all predicated on the streamlined approach that has been presented under the Bill before the Government sought to amend it. The Committee does not need to be reminded that the Government now want a far more competitive, flexible, streamlined procedure, moving from seven systems to three. If it is now the dance of the three and half veils, of "covered" or not covered, and organisations are having to work out which area they are going to fill in, of course there will be impacts that need to be outlined.

4.30 pm

Another reason why we expected to have explanatory statements was so that we could see what some of the consequences are—such as those outlined by the noble Baroness, whose perseverance I admire in going through all of the list. I was hoping that the Minister might have taken the opportunity, at the very least, to speak to the other amendments in his group but, unbelievably, he chose not to. Why? There was nothing in his speech about changes to non-discrimination on goods as well as suppliers and interaction with the internal market. There was nothing to do with the light-touch regimes on public contracts and modifications. Why? There was no explanation as to why Northern Ireland was forgotten about in the drafting of the legislation and has now been recalled in Committee. There was nothing with regard to the potential implications of the impact on Scots law when it comes to some of the changes to domestic legislation on civil law reform in Amendment 349. The list goes on. Depressingly, I do not think that the noble Baroness's list was exhaustive.

There was nothing from the Minister outlining any of the consequences beyond the covered and not covered. I hope that, when he sums up, we will hear, in lieu of explanatory statements, exactly what these amendments are, because we have nothing to go on. I reread the Government's consultation response; there was no mention of covered or non-covered, of course. There was no indication as to what some of the consequences could be, but perhaps that was because of the TCA with the EU. Perhaps the Government have now realised that the Bill as drafted is not consistent with those elements in the TCA. There is nothing from the Government with regard to how this legislation will accommodate elements of the TCA on a single point of contact for interest; on ability to take into consideration the track record of those previously applying, or indeed if there is an interaction with the subsidy regime, which is a requirement of the TCA but absent from this Bill; or on why social, environmental and labour considerations are not spelled out for procurement under this, given that they are there.

If the amendment which the Minister has introduced but not spoken to has consequences that go far beyond simply the below-threshold—as the noble Lord, Lord Lansley, had to indicate—the Minister must explain it. This set of amendments should be withdrawn or not moved so that, before the next day in Committee, explanatory statements can be attached to them. The Minister must give me the commitment now that the impact assessment will be updated and that there will be a new, entire set of explanatory statements. That is the least that the Minister could do, as other Ministers have done in situations far less bad than this.

Lord Davies of Brixton (Lab): My Lords, I totally agree with everything that has been said. The rubric "technical amendments" has been bandied about in these discussions. The next group of government amendments, and the one after that, are described in the email from the Whips' Office as "technical". This group is not described as technical. If it is not technical, my presumption is that there are substantive changes involved and that no one, least of all the Minister, has told us what they are. I cannot see how we can agree the amendments today unless we are told what the substantial changes involved are.

Baroness Humphreys (LD): My Lords, I apologise for not having spoken at Second Reading. I have taken a keen interest in the Bill, particularly in the devolution aspects. I will speak to government Amendments 355, 392 and 433.

I share the concerns of my noble friend Lord Fox, who speaks for the whole Lib Dem team, and other Peers who have spoken about the manner in which the Bill has been presented to us. Like others, I am particularly concerned about the large number of new government amendments tabled last week, the vast majority of which had no Member's explanatory statement attached to them. The confusion over the weekend, when some amendments were removed from groupings and others were duplicated, must have been as stressful for staff as it was for Members trying to prepare for today. I echo my noble friend Lord Fox's admiration for the efforts of the Government Whips' Office staff.

Had the Government withdrawn the Bill after Second Reading, taken some time to incorporate the 300-plus amendments into the body of Bill and presented us with an entirely new document, life would have been so much easier for us all, including the Minister. Of course, it is not the Government's job to make life simpler or easier for us, but it is their job to help us make good legislation, as the noble Baroness, Lady Hayman, said. We have the potential to be, as we are now, in a situation fraught with difficulties, confusion and recriminations.

Having made my own personal protest about the Bill, I must commend the UK Government and the Welsh Government on the working relationship between them as they work together on issues in the Bill. We heard from the Welsh Finance Minister about the excellent working relationship and the efforts of all concerned to approach discussions in a cordial and constructive manner. I thank the Minister for that.

I understand that a number of amendments have been agreed between the two teams and that some of them are in this group, but I am slightly worried that in all the confusion with the tabling of 342—or is it 350?—new government amendments, key agreements might be missed out or overlooked. It would help us greatly to scrutinise the devolution aspects of the Bill if we could receive a list of the agreements between the two Governments and the amendments to which they refer.

I am pleased that the three amendments I am speaking to recognise the role of the Welsh Ministers. In Amendment 355 to Clause 64, "An appropriate authority" is replaced by the more specific

"A Minister of the Crown or the Welsh Ministers",

recognising the role of Welsh Ministers in the publishing of payment compliance notices.

Amendment 392 adds new subsection (12) to Clause 70:

"A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the percentage thresholds."

In Amendment 433 to Clause 80, the reference to

"A Minister of the Crown or the Welsh Ministers"

[Baroness Humphreys]
confirms the amending power of Ministers in relation to changing the number of days within which sums may be paid.

All these are very welcome, but I would have been grateful for explanatory statements to help me decipher which of the other 300-plus amendments have implications for devolution. Can the Minister confirm that all the amendments requested by the Welsh Government have been included? Are there any outstanding issues that would prevent the Senedd passing an LCM for the Bill?

Lord Wallace of Saltaire (LD): My Lords, I do not want to prolong the debate. I must say that, having spent the weekend worrying whether I was thick-headed in not understanding the concept of a covered contract, I am relieved to discover that I am by no means alone. In a different tone, we on the Liberal Democrat Benches are very grateful to the Minister for the extremely helpful briefing we had today on the digital platform. That is precisely the sort of relationship we should have as we approach a Bill such as this one.

The Minister should remember that, while the Government are having their own consultations with outside interests, we are doing the same, with rather fewer staff. We have had some very helpful conversations over the past two weeks with various outside interests and groups, and will continue to have others. But, of course, we have had no opportunity to discuss with them the implications of the latest amendments which the Government have tabled. Some 60% of the current amendments are government amendments, and a minority come from outside the Government.

We have heard so far that this Committee is in no sense convinced that Amendment 1 is necessary. We have all struggled to understand why the Government have introduced all these amendments, and some of us have struggled with various other concepts in the Bill. I am grateful to the officials who explained the concept of dynamic markets to me; I am still not entirely sure that I understand the difference between a centralised contracting authority and a contracting authority, and we have tabled an amendment on that. These things are important in getting the Bill through. It takes time and it takes sympathy between the Government and those trying to scrutinise the Bill. As the first House to do this, we are now clearly in some difficulty over where we have got to.

Lord Hope of Craighead (CB): My Lords, I want to raise a question about the wording of the definition in Amendment 1. I am troubled by the word "covered". It does not spring off the page as an explanation in itself as to why there is a distinction between procurement pure and simple and this other procurement, described as "covered". Having looked at the language in paragraphs (a) and (b), I think the obvious word to choose in paragraph (b) is "public" procurement. However, having listened to the analysis of the noble Lord, Lord Lansley, I am doubtful as to whether that distinction is what the definition seeks to describe. But if it is not doing that, and the word "public" would be wrong, is it not possible to find a more obvious word than "covered"?

The choice of language is crucial in a definition clause. It ought to be possible for the reader to take from the definition an immediate explanation as to why there is a distinction between the types of procurement in paragraphs (a) and (b). If it is necessary to go through the hoops that the noble Lord, Lord Lansley, did, I wonder whether it is possible to achieve anything sensible by ordinary language—which is a reason to say it might be better not to have the definition at all. However, if the definition is thought to be necessary, please could a better word than "covered" be found, so that the definition helps us, at the beginning of this complex Bill, to truly understand the distinction between paragraphs (a) and (b)?

Lord True (Con): My Lords, I am grateful to all those who have spoken, although I cannot say it always made for the easiest listening. I have been in opposition, and will be again one day, so I fully understand where those noble Lords who expressed concerns are coming from. I have also been on the Back Benches on my side, and will be again one day, so I fully understand where my colleagues are coming from as well.

It is unsatisfactory that so many amendments have been laid. I apologised for that. It is not, in any of your Lordships' submission, sufficient. I could tell a few tales out of school, but I am a believer in the old concept that the Minister at the Dispatch Box takes full and personal responsibility for the criticisms that are made. I accept that. The amendments should have been brought forward in a more informative—to use the word from the very impressive speech by the noble Baroness opposite, whom I look forward to working with on the Bill—and timely manner.

4.45 pm

I hope we can do better as we go forward. I will certainly pass on to my right honourable colleague who is leading on the legislation the concerns expressed by your Lordships. I will certainly take away and act on the request your Lordships have made in different guises in this debate.

I regret to learn that the Keeling schedule has not been available to all. I was informed that it had been published on the Bill's website, but perhaps not enough was done to bring it to the attention of interested noble Lords. I will make sure that access to it is made available to all those participating in your Lordships' Grand Committee.

On the amendment before us—I will deal with the rest of the group in the broadest terms—my understanding is that, as a result of frank and useful discussions in the usual channels, there is an understanding that many of your Lordships are unhappy about proceeding at this juncture without further explanation. Without going through each amendment at this stage, given it is likely that many of them will come forward at a later stage—although this remains to be the outcome of ongoing negotiations—I certainly give an undertaking that I will ask insistently that the Committee has the kind of explanation that the noble Baroness asked for on the amendments that the Government have tabled. We will begin on Wednesday with another clump of government amendments. I fully take the criticisms

and will ask that a much clearer schedule is put before your Lordships, bit by bit, on each of the matters we are asking you to deliberate on. Indeed, I heard what was said about the dearth of detailed explanatory statements on the matter. We will do better. I will take that concern away.

Lord Purvis of Tweed (LD): My understanding is that the only way this could be done better is for the Government to withdraw the amendments and bring them back with explanatory statements. Explanatory statement cannot be tabled separately, so if the Minister is sincere that the Committee will not face continuing lists of government amendments without explanatory statements, the sensible course of action would be for him to withdraw them and bring them back with explanatory statements so that we can consider them properly.

Lord True (Con): That was, in a sense, the implication of what I was saying. We are debating only Amendment 1 at this stage, but for the avoidance of doubt, if it helps the noble Lord, at the end of these remarks I will beg leave to withdraw Amendment 1. Your Lordships could indeed obstruct these matters, but I will withdraw the amendment and see that we fulfil the undertaking that I have given.

More generally, important questions were asked about definitions. I must say to the noble and learned Lord that, until relatively recently—I use that word because I do not want to define it more narrowly—I was not familiar with the concept of "covered". However, it has come forward after careful reflection by the Cabinet Office and the Bill and legal teams. It is intended to make the concepts in the Bill clearer to use and understand. I mentioned "covered procurement" in my opening remarks. "Covered" was intended to refer to those contracts that are fully regulated by the Bill's provisions, whereas "procurement" refers to those contracts that are less regulated but none the less catered for, such as below-threshold contracts and, as the noble Lord, Lord Purvis of Tweed, said, international organisation procurement.

Lord Hope of Craighead (CB): I think the problem may be in the language of paragraph (b), because it does not fulfil what the Minister has been saying is the intention of "covered". You could keep "covered" but reword paragraph (b) so that it explains more fully what "covered" means, which is what I think the Minister is attempting to do. As it stands, it is very confusing. A confusing definition is a bad way to start a Bill.

Lord True (Con): My Lords, I listened carefully to the noble and learned Lord's remarks. We will take them away. I have said that I will withdraw the amendment.

My noble friend Lord Lansley was accurate in divining the Government's intention with this. The intent is to distinguish between the fully regulated—I will not use the word "covered"—and the less regulated.

Lord Lansley (Con): I am sorry to interrupt my noble friend, but I am glad that I was not misdirecting myself.

On the noble and learned Lord's point, I understood what it meant only when I looked at what "public contract", as defined by Clause 2, means. Once one looks at Clause 2, it becomes very straightforward to check it. I looked at Clause 1 and realised that it is not a national covered procurement policy statement but a national procurement policy statement. None of the amendments change that bit, which told me that what we are dealing with here is the Government proposing that there should be a mechanism for talking about procurement in its broadest sense, while intending to regulate procurement in a slightly narrower sense by regulating everything above the value threshold. This did not seem intrinsically confusing to me once I understood what it is we are trying to do here.

Lord True (Con): I do not think that, in public remarks that will be recorded for all eternity in *Hansard*, Ministers should ever agree to the idea that anyone might be confused by the crystalline words that come before the Committee, but I must say that I did not, at first blush, understand these proposals when they were put forward and laid. I understand the objective, and think that both the noble and learned Lord and my noble friend have understood and divined it. We believe that it meets the requirement but, in the light of what your Lordships have said, I am sure that we can reflect on that. I will withdraw this amendment so that we can come back to it.

My advice from legal advisers is that this amendment adequately achieves the objective we sought. As to the elegance of it, I am not going to go into a disquisition of other circumstances in which "covered"—

Lord Purvis of Tweed (LD): While the Minister is reflecting, might he be able to comment today on the legal advice that he has clearly received? He kindly referred to my reference to international obligations, including the TCA. In the legal text of the TCA, "covered procurement" is stated as the area where the TCA and the UK have an agreement. It is unclear whether the definition, and what the Government are seeking to do in this Bill, will have the same meaning as "covered procurement" in the TCA. Can the Minister clarify that point?

Lord True (Con): My Lords, I was going to make a proposal. The legislation obviously reflects our existing international obligations, including the TCA, but this is not the only definitional point that has been raised. I cannot find the others in my notes but the noble Lord, Lord Berkeley, for example, asked about a centralised procurement authority. A centralised procurement authority is a body that sets up procurement or purchasing arrangements for use by other contracting authorities; examples would be the Yorkshire Purchasing Organisation or the Crown Commercial Service. That is one definitional issue. The noble Lord asked about the meaning of "state" in Amendment 440. That refers to a country with which we have an international agreement.

It is regrettable that this should happen after we have had this debate. Having heard the strength of feeling expressed by your Lordships on these amendments, especially the definitional ones such as the definition

[Lord True]
of "covered procurement", I will ask my officials to hold a technical briefing on these matters for interested Peers. I will ask for invitations to be sent out by my office after the debate, in the hope that some of these points can be clarified. I know that is not to the greatest convenience of your Lordships because the Committee is due to come back on Wednesday, but it should help further to explain the rationale and necessity for some of these late amendments, which were advised on us by our legal advisers. I or my office will be in touch with noble Lords who are here with that offer, so that we can undertake that.

I was asked by the noble Lord, Lord Purvis of Tweed, about the impact assessment. Again, we will reflect on that point but my advice, even in the light of these amendments, is that as there has been no change to the general policy intent of the Bill, there is therefore no change to the costs and benefits of the impact assessment. I am therefore not advised that it is necessary to revise it, but I will second-guess that advice in the light of the noble Lord's contribution. Although there are wording changes, to take up what my noble friend Lord Lansley said, the general intent of the Bill remains the same.

On the question of the devolved Administrations—obviously, there is a particular issue at the moment in the case of the Northern Ireland Executive, which is why some of these matters are ongoing—I am grateful for what the noble Baroness, Lady Humphreys, and the noble Lord, Lord Wigley, said about the sense of co-operation. I believe that is reflected in both directions. I was asked whether all these things had yet been formally agreed. As I understand it, most of these amendments have been; some have been agreed and discussed at official level but may not technically have been signed off by Ministers. It is certainly our intention and, I believe, the Welsh Government's intention that we will reach full and constructive agreement, which will enable the proposals to be recommended to the Senedd. This has been an area of good and striking co-operation. I say publicly to the Committee again how much we appreciate that, as I did in my opening remarks.

I hope I have briefly dealt with the question of "covered", "not covered" and some of the other definitional things. I hope that the further formal briefing I have offered can be arranged at a convenient time for most Peers tomorrow, and will go some way to answering this. I give a commitment that, when we go forward, I will not accept to lay before your Lordships and take to a vote something where there is no proper explanation of the individual amendments in the manner that the noble Baroness opposite quite rightly asked for. There should be a clear explanatory statement. I will ask for that to be done in respect of the amendments that are coming forward to explain the whys and whats in detail, and how the various groups interlock. Again, I will not tell tales out of school, but one of the issues is that there are interconnections between these different groups and how they have been sliced. I repeat that commitment.

Lord Fox (LD): I thank the Minister for that. I do not think he answered the question my noble friend asked. Accepting that government Amendment 1 will now be withdrawn, will the government amendments in this group, from Amendment 47 to Amendment 543, be retabled for us to have a proper debate on each of them? As the noble Baroness set out, there are a lot of questions around each of them, none of which have currently been addressed. I am unclear on the mechanism by which those amendments will be retabled. Can the Minister confirm that that will happen so that we can have a proper debate on those amendments?

Lord True (Con): I will have to take procedural advice on that. My understanding is that if I withdraw Amendment 1 it is not the case that the group has been negatived and therefore that the other amendments do not lie on the Order Paper. The Government would obviously have preferred, despite all the justified criticisms—

The Deputy Chairman of Committees (Lord Geddes) (Con): I hate to interrupt the noble Lord in full flow, but a Division has been called in the Chamber.

5.02 pm

Sitting suspended for a Division in the House.

5.12 pm

Lord True (Con): In order to finish, as I was just about say, we wish to facilitate proper discussion. Obviously, how to proceed is a matter to be discussed in the usual channels. There are matters in the amendments in this group which are technical and one or two raise definitional issues, and so on. We will work on the advice to your Lordships that I promised. In parallel—I cannot speak for usual channels—we will have discussion in the usual channels about how best to proceed in a way that does not lead to a recurrence of this undesirable situation, for which I repeat apologies. There are important, specific and thematic amendments—I like amendments to be thematic. The Government sometimes have good ideas and the Opposition have good ideas—sometimes—and the best way is if all these things are grouped thematically, which is why, when I saw that this health amendment had suddenly crept in, I said, "We should surely do that later."

We will have usual channels discussions. I hope we can proceed, but we will find which way we can proceed that is best for your Lordships and does not result in a situation such as this. As I said, I shall not come back without explanations that are clear and timely—I cannot remember the phrase I used. We will see what we can do.

With that undertaking and that for usual channels discussions, in the light of the brief earlier discussion with the noble Lord, Lord Wallace, and the noble Baroness, Lady Hayman, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

5.14 pm

Sitting suspended for a Division in the House.

5.25 pm

Clause : Contracting authorities

Amendment 2

Moved by ***Baroness Neville-Rolfe***

2: Clause 1, page 1, line 10, leave out sub-paragraph (iii)

Member's explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Baroness Neville-Rolfe (Con): My Lords, I am glad that we have been able to move on to this group of amendments, all of which were tabled in good time. I thank my noble friend the Minister for his apology, tone and constructive response on the last group. I have some sympathy with him since, when I was on the Front Bench, I used to do Lords starters and they can be difficult because you have less stakeholder involvement and input than in the Commons. However, there is more scope to change a Bill that starts in the Lords, and that can be a good thing. I thank the Bill team for passing me its copy of the Keeling schedule, and I look forward to the child's guide to procurement.

I apologise for not having spoken at Second Reading. If I had been able to, I would have brought my experience of procurement in government and in the EU, and in buying and selling everything from services to beans at Tesco. We were even stopped from selling cars alongside groceries by EU rules. I am a former director of Capita, and I register a current interest as chair of Crown Agents, the not-for-profit international development company with considerable expertise in procurement.

First, I am particularly interested in delegated powers and in supporting the noble Lord, Lord Wallace of Saltaire, on that issue. Secondly, I am keen to find a way of helping small businesses to better access procurement opportunities and encourage productivity and growth. Thirdly, as ever, I am concerned about costs to businesses and citizens—I know the noble Lord, Lord Purvis of Tweed, is too.

I also want to understand and test the reach of this legislation, which is the subject of my 12 amendments on private utilities, starting with Amendment 2. It is kindly supported by my noble friend Lord Moylan and the noble Lord, Lord Berkeley. We all sit on the Built Environment Committee together and are steeped in the problems of public transport in towns and cities at present.

In his Second Reading speech, my noble friend Lord Moylan questioned whether we needed this Bill at all, certainly on its current scale, and he bemoaned the bureaucratisation of procurement. I also worry about this, because of its enormous cost both to the state and to bidders and deliverers of contracts. When I was in retail, we always tried to reduce red tape and cut costs, and pass on the benefits in lower prices, which helped to attract customers. There is less sign of that here than I had hoped. There are fewer regulations, but I fear that the burdens imposed are in fact greater than those being removed, particularly in this area of public utilities. In my direct experience, it is not only the number of rules that matters but their impact.

It seems wrong for a Bill about public procurement to cover private utilities. I appreciate that there is an EU directive and UK implementing regulations that the Government want to replace, but I am not entirely sure that this should be done here. Indeed, the Government seem a little hesitant themselves, as they have taken a power to remove private utilities from the scope of the Bill or alter the rules as and when they legislate elsewhere. This is wrong and novel. As the excellent report by the Delegated Powers and Regulatory Reform Committee says, this appears to be the use of

"a tool to cover imperfect policy development."

I compare the situation to my time as a civil servant heading a Bill team—imagine it—when we were generally obliged to have the subordinate legislation in draft to accompany a Bill and, as a result, we avoided a lot of errors that would have required corrective Bills or regulations later. In the EU, many utilities are in public hands, as some are here, which I am sure explained the need for the original utilities directive. In the UK, many transport, water and telecoms utilities are in private hands and make a huge contribution to the economy as a result. I see that electricity has already been taken out in Schedule 4, at least in some respects.

Some might say, "Why not cover private utilities and force them to embrace transparency and comply with the many cross-compliance measures set out in this Bill?" "Government knows best" seems to be the modern approach. Because they are in private industry, not government or local government, we should be extremely careful about regulating private utilities. If I worked in a private utility, my advice to my shareholders on reading the Bill would have been to get out of the sector. It is proposed that they should embrace public sector bureaucracy—which is still very substantial, despite all the good efforts of the Cabinet Office in putting the Bill together—but they continue to have a private sector degree of risk.

5.30 pm

I would add that the transparency proposed here may be especially helpful to overseas suppliers. This is not necessarily a benefit to the UK overall; it is certainly rarely, if ever, reciprocated, as I know from my experience as a Minister working overseas, and indeed from my working life.

I look forward to the Minister's answer and would particularly request an impact assessment on these provisions. This should compare the EU way with what is now proposed, and the cost to business of all the bureaucracy it will encounter as it becomes clear which bits of legislation it will be subject to and which it will not. Of course, I would very much appreciate a fleshing out of the Government's current plans for private utilities.

Lord Berkeley (Lab): My Lords, I added my name to Amendment 2, and tabled Amendments 25 to 27. The noble Baroness raised some interesting questions. I will start by trying to establish some definitions. Clause 1(1)(b)(iii) refers to "a private utility". We all know what a utility is, but there are subsets of risk and government involvement. It would be nice to know what exactly the Government mean by "a private

[Lord Berkeley]
utility" in the context of this Bill. That is my first question and the reason for my putting my name to this amendment. The Bill defines a "public authority" and a "public undertaking", but it does not define a "private utility". I think it should. I have lots of questions and examples that I could ask the Minister to come back on, but I will not do that now.

When one reads about the problems of utilities, whether water, gas or transport, they all have regulators of some description but they often have slightly different powers. I have noticed over the past 10 or 15 years in the water sector that, when the regulator changes the instruction or whatever that it gives a company, it sometimes changes dramatically. If the Government do not like it, they can either advise the regulator quietly, "Would you mind doing it slightly differently?", or, in extremis, I believe they can sack the regulator.

Then we get into the question of whether these utilities should be in the Bill at all. We had a Question in your Lordships' House today about a passenger franchise rail operator that was roundly criticised by a number of noble Lords for its bad performance. Should the appointment of those operators be subject to competitive tendering? Should they be appointed by the regulator? They are certainly not at the moment. The regulator is supposed to keep an eye on them, but they are effectively appointed by the Government. One could argue, "What's wrong with having it in here?", but I believe they are an excepted utility at the moment anyway.

I am afraid I get confused by all this. I hope that the Minister can explain the exact reasons for excluding these utilities. I am in a bit of a quandary as to whether they should be excluded. It probably comes down to the risk the noble Baroness referred to and whether you like what they are doing. That is not a good reason for doing it, because what we might individually or collectively like is not necessarily the same.

I come back to this question of "a public authority", "a public undertaking" and "a private utility". I will give one other example. Some noble Lords will know I have been involved in trying to get the Council of the Isles of Scilly, where I live, to put in a proper bid to get a new ferry. Unfortunately, it has decided that it would like to get £48 million from the Government to give to the monopoly supplier of transport services without any competitive tendering. To me, competitive tendering for all these things is vital because you get not only value for money but a much better service on the whole.

On the whole, the contracting authority should be able to make changes if the people it is contracted with are not performing. I therefore ask the Minister: why are utilities excluded? Is it for the right reason, or will the Government find another way of doing what they presumably want to if the regulators—I think the noble Baroness, Lady Neville-Rolfe, said that the regulators have the last say in this—do not have the scope to award contracts?

As I said on the previous group, we need explanations and definitions. I am afraid that I shall go on a bit about this, because it is very difficult to understand it all if you do not get them.

Lord Moylan (Con): My Lords, I hesitate to appear to disagree with the noble Lord, Lord Berkely, but I shall humiliate myself by doing so. I venture to suggest that there is a definition of a "private utility" in Clause 5. It is only to be understood in its fullness if read with Schedule 4, at page 84, which specifies what "utility activities" are. If one looks at Clause 5 and Schedule 4, one can see what the Government are trying to do. However, I am not sure that what the Government are trying to do is worth while or appropriate. To that extent, I support the comments of my noble friend Lady Neville-Rolfe.

The background is that we are starting from an EU procurement directive that applied to the whole single market of 27 states, and which needed to take account of the fact that most utility activities in most of those states are effectively provided by arms of the state, whereas in the UK we have blazed a successful path of privatisation, so many utility activities that in other parts of the single market are carried out by the state are carried out here by private companies. The noble Lord, Lord Berkeley, makes a very important point when he says that those private companies are, in nearly all instances, subject to some form of regulation.

Before I go further, I draw attention to Schedule 4, which specifies those activities. The subheadings, which I know are not technically part of the Bill, include "Gas and heat", "Electricity"—

Baroness Neville-Rolfe (Con): I think electricity is later taken out, as I mentioned.

Lord Moylan (Con): Oh well. I shall just work on the text I have; I mean, what is one meant to do? There is "Water" and "Transport". "Ports and airports" and "Extraction of oil and gas" are also mentioned, but it is the first few that matter. It is striking that the rollout of broadband, the internet and such things do not count as a utility; I should have thought that they were characteristically examples of a utility. My noble friend will no doubt be able to give me a compelling rationale why they are not included.

I come back to the point I made a moment ago about the regulator. I read out the subheadings because noble Lords can see that the activities we are discussing are nearly all regulated, funded by the commitment of private capital with an assumption that private capital will be reasonably efficient in procurement, even if simply for the benefit of shareholders. This does not preclude defalcation, fraud, bribery or giving contracts to your best mate but, as I explained at Second Reading, the Bill does not deal with those issues. If they arose, be it in a public authority or a private company, they would be dealt with through the criminal law because they are all criminal offences. One would not pursue them for a trivial breach of a procedural requirement under the Bill; one would go after them for fraud, taking bribes or all these other criminal things, which are nothing to do with the Bill.

All that makes me think that including private utilities is not entirely appropriate. If it were felt that procurement undertaken by private utilities needed some form of statutory control it would be better in a separate Bill that actually focused on the principles, rather than the procedure, allowing private companies

to pursue those procedures appropriate to achieving their shareholders' ends, just as we allow Tesco to do—with the exception of selling cars next door to fruit. I cannot contemplate for a moment why the European Union should take exception to that, but apparently it did. Essentially, we leave Tesco to decide what procurement processes to follow because it is a private company risking private capital. That is the essential ground on which I make my point.

Finally, I turn to transport, because I have more direct experience of it as a utility than I do the others. There are some distinctions to be drawn. I take as an example Transport for London; as noble Lords may know, I served on the board. Transport for London perhaps should be subject to procurement regulations of this character, but Transport for London is in part categorised as a local government body. It is covered by some local government legislation, as well as by its own Act. That might be the rationale for including a body such as Transport for London, or some of its equivalent bodies that have been created around the country.

5.45 pm

However, when it comes to saying that a bus company which has been franchised—my eyes do not work quickly enough but I am now looking at Clause 5(4), the subsection which captures the activities—a private bus company, shall we say, should be subject to the full panoply of this regulation and lumped in with a body such as Transport for London, which is partly an arm of local government, that goes too far. I would have thought that a distinction along those lines should commend itself to the Government and that. largely speaking, with the exception of the sort of body, such as Transport for London, which I referred to, at least as relates to transport, the private companies could be removed from the ambit of the Bill altogether.

I look forward to hearing what my noble friend has to say and whether he can explain the rationale, along with the question of the internet and broadband. Unless I have mistaken it, that is not in Schedule 4 and if it is somewhere else in the Bill, I have not found it.

Lord Berkeley (Lab): I am grateful to the noble Lord for expanding fully on these amendments but in the case of some of the categories in Schedule 4, there is no regulator with the power to appoint companies to do things. Ports and airports come to mind; the Government will probably do those. Are we happy that the Government can do that without any sort of regulatory oversight?

Lord Moylan (Con): Since that is technically an interruption to my speech—

Lord Berkeley (Lab): I am sorry.

Lord Moylan (Con): No, I am delighted. It adds much illumination.

Lord Fox (LD): We can have more of you.

Lord Moylan (Con): You could have more of me, my Lords, but I will simply say that I know nothing about ports. However, I know a little about airports and they are technically subject to economic regulation by the Civil Aviation Authority. It is true that that authority has, through its own risk assessment, decided that only Heathrow Airport will be subject to full economic regulation. Gatwick and Stansted are subject to some, while most other airports are not economically regulated; that is, they can set their own charges and if people do not want to fly into their airport, they will fly to another. It is not entirely true, it is fair to say, that where it matters airports are not economically regulated, because they are. I suppose that the Civil Aviation Authority could always reverse its decision, if it saw fit. It has the power to expand economic regulation to other airports if that were felt necessary. Having added that, I shall subside and look forward to my noble friend's response.

The Earl of Lytton (CB): My Lords, this is my first intervention on the Bill because on the day of Second Reading I was convalescing at home and not allowed to go anywhere.

On this business, regarding utilities, I am afraid I come at this from a simple property professional's standpoint. It always used to be gas, water, electricity, drainage and telecoms; those were the utilities on which people relied for the use of buildings and property of all sorts. We seem to have dropped drainage, for reasons I cannot quite understand, when it is merely the dirty-water function of the clean-water provider of drinking water, which is referred to.

I declare my interest as one of those who serve under the chairmanship of the noble Baroness, Lady Neville-Rolfe, on the Built Environment Committee, as do the noble Lords, Lord Moylan and Lord Berkeley. I am very privileged to do that. Last week, when we were talking about the Product Security and Telecommunications Infrastructure Bill, it was noted that the very purpose of the telecoms giants was to try to convince government that they were a utility, should have utility powers and should, encompassed in that, have certain powers of coercion. They have come into that from the private sector, whereas dear old British Telecom, aka Openreach and a few other things, has come at it from the other direction—the hardwired traditional utility standpoint that was protected, with all sorts of powers to acquire wayleaves and so on.

The noble Baroness referred to imperfect policy development. I almost got up and said "Hear, hear" to that, because we need to start sorting out what exactly we mean by these utilities that look in lots of different directions. Some of them are very commercial—some are very controversial—and others come from a highly and necessarily regulated background because they are important for health, stability and all sorts of other basic things that require regulation as to quality and quantity in the essential needs of the public. It is not so much the voluntary needs, and perhaps even less the voluntary needs of business, but the essential needs of the public.

We seem to have an increasing muddle between what may be regarded as that essential element that has to be regulated for the purposes I have suggested and the wider commercial endeavour that goes with it. Because that distinction has been made ever less clear, for reasons that I perfectly understand—the utilities were privatised for reasons to do with funding, and I

[The Earl of Lytton]
do not pass judgment on that—like Voltaire's Candide I stand here noting both cause and effect. This is exactly the situation we are in; utility activities are mired in this very issue. I look forward very much to the Minister's answer on that. He has a great grasp of these intellectual refinements, and I hope he will be able to enlighten us. I think a bit of a distinction needs to be made here between essential purposes and processes that are essentially voluntary and commercial.

Lord Fox (LD): My Lords, I am sure the Minister will pick up on the noble Earl's Voltaire reference and tell us that we live in the best of all possible worlds. In my previous intervention, I mentioned the Government's productivity. The noble Lord, Lord Moylan, appears to be spoiling that, trying to do in two Bills what the Minister is trying to do in one. I think one Bill on this may be enough.

The point raised by the noble Lord on utilities, developed by the noble Earl, is extremely pertinent. It is a wider question that spreads into things such as the Building Safety Act, for example, where there is an assumption that utilities have a particular role to play. Are hardwiring, broadband and things such as that utilities or not? There are wider implications in this than simply the nature of the Bill. There are questions to be answered.

There is also a precedent already forming in the Bill about public services being carved out. That is the NHS issue, of course, where separate legislation is pulling out some aspects of the jurisdiction of this Bill. I do not expect to have that debate on this group, because the Minister has helped us to move everything into one group. We can have that debate later, but the principle of carving things out has been accepted by the Government. In that respect, the tablers of these amendments have something to go on. The interesting question they are providing through these amendments is: what is in and what is out? In a sense, that covers part of our curiosity around the Bill.

We should not be too obsessive about this, and nor should the noble Lord opposite, because Clause 109,

"Power to amend this Act in relation to private utilities",

allows the Government to turn the whole thing upside down anyway. Clause 109(1) says:

"An appropriate authority may by regulations amend this Act for the purpose of reducing the regulation of private utilities under this Act."

In fact, none of this debate makes any difference because, by regulation, the Government can ignore themselves in any case. We already have a problem, Houston.

The noble Lord talked about the difference between private delivery of services and the noble Baroness, Lady Neville-Rolfe, talked about the fact that these organisations took on risk. With the train operating companies, when the risk turned around they just surrendered their licences. It is not real risk in the sense we might understand it in the private sector; it is a different world.

For that reason, I find it very difficult to go along with the amendments that try to extract private delivery of public service from the Bill's ambitions. Large sums of money that have, lest we forget, originated from the pockets of UK citizens in the form of tariffs, fares or subsidies are then disbursed, or potentially disbursed, by the private companies as they procure things to deliver from their private sector the public services they are pledged and allowed by licence to supply. The Bill may, as the noble Baroness, Lady Neville-Rolfe, set out, interfere with the board's licence to operate on a wider scale when it decides how to go about making purchases, but that is not unreasonable, given that it has hitched its wagon to a public service. When capital enters the business of delivering a public service, in my view it sacrifices the true independence to operate that it would have if it delivered a private service to private individuals. That is the deal: business gets to ply its trade on the condition that government and usually a regulator, but not always, meddle with its business model. It is a condition to operate.

For this reason, I am very interested to hear how the Minister will respond to your Lordships' questions. These have been very worthwhile amendments and I thank the tablers. I look forward to the Minister explaining, first, what a "public service" is, secondly, what a "utility" is and, thirdly, where they sit in the context of the Bill.

Baroness Hayman of Ullock (Lab): My Lords, this has been an interesting debate. It has been interesting to listen to comments on this area, particularly from the noble Baroness, Lady Neville-Rolfe, and my noble friend Lord Berkeley in their introduction to their amendments. Clearly, the changes proposed could have huge implications for utilities. There was a greater amount of flexibility for utilities in the Utilities Contracts Regulations 2016 that this Bill loses. The Government have acknowledged that consolidating the UCR with the Public Contracts Regulations will be a major and complex legislative exercise. Considering the issues we debated earlier, I hope that this is an area where we can work together to make sure we get it right for everybody involved.

One of the things we have to be careful about is not increasing bureaucracy when at the heart of the Bill is the desire to speed up procurement processes. I will note a few things in the briefings I have had on the Bill. First, it is worth noting the international Agreement on Government Procurement, which is within the framework of the WTO. It establishes rules requiring that

"open, fair and transparent conditions of competition be ensured in government procurement."

Although it does that, it does not require WTO members to implement procurement rules for the utilities sector.

Furthermore, as we have heard, the UK is no longer obliged under EU law to implement procurement rules for the utilities sector. The UK's utilities sector is, of course, very different from those in many of its European counterparts. Therefore, using solutions that were originally designed for European markets may not be appropriate for the UK. We need to take note of all that.

6 pm

The Law Society of Scotland sent over a very interesting briefing. It draws attention to the fact that Clause 5 reintroduces the purpose test for a contract

to constitute a utility contract, which was previously contained in the 2012 regulations but is not in the 2016 regulations, under which a contract will be a utilities contract only if the goods, services or works are

"mainly for the purpose of",

rather than relating to, a utility activity. Its concern is that this may lead to a return to the pre-2016 view, where the courts were required to consider whether a given good, service or work was required for the purposes of a utility activity.

This is very interesting and there is quite a lot to consider, so I am interested to hear the Minister's response. I guess we all want to understand how the decisions around the utilities part of the Bill were reached.

Lord True (Con): My Lords, it has been an interesting and important debate, which we will reflect on as we go forward in the normal way between Committee and Report. I was asked a couple of definitional questions again, including: what is a public undertaking? Clause 1(2) defines a public undertaking as

"an undertaking that is not a public authority but … is funded wholly or mainly from public funds, or … is subject to contracting authority oversight."

Public undertakings differ from bodies that are also funded wholly or mainly from public funds, or are subject to public authority oversight but which are considered to be public authorities, in that public undertakings do not have functions of a public nature, which means their activities may be more economic and commercial in nature—these are some of the things we have been discussing. For example, although it is no longer a public undertaking, before the Government sold their share in 2015, Eurostar International was a public undertaking. I am sure that people will examine that definition in *Hansard*. I will come on to some other points shortly.

On the question of what a private utility is, utilities are public sector bodies—public authorities or public undertakings—that carry out utility activities, or certain private organisations carrying out utility activities, which are the private utilities. The Bill covers private utilities only where they have been granted a "special or exclusive right" to carry out a utility activity. Rights are "special or exclusive" where they have been granted by a statutory, regulatory or administrative provision, and the granting of that right in itself substantially limits other utilities from carrying out those activities—it is a competition issue. This effectively puts them in a position of a natural monopoly and therefore they could, however unlikely it may be, engage, for example, in preferential treatment that favours their own affiliates or strategic partners and discriminates against other suppliers bidding for contracts, which could negatively impact the market and customers. That would not be good for the industry or consumers.

Furthermore, though I listened with great interest to what the noble Baroness opposite said in relation to international agreements, the UK is required by various international agreements to ensure that private utilities do not discriminate against foreign suppliers with rights under international trade agreements, known in the Bill as "treaty state suppliers", and that they adhere to the rules we have agreed for utilities procurements. This is why the Bill regulates private utilities but only to the extent required by those international agreements and where we consider it appropriate or necessary to make the regime work.

There has been a lot of debate in relation to the extent of coverage; I will come on to that. A philosophical question was posed by the noble Earl, Lord Lytton, and the noble Lord, Lord Fox: what is in and what is out? I am sure that we will debate and discuss this in our engagement as the Bill goes forward. There was a slight difference of opinion. Behind me, I have been hearing, "Everybody out", whereas, on the other side, the noble Lord, Lord Fox, seemed at one time to stray towards a definition of private delivery of public service. That sounds like the kind of concept that might have led Mr Benn or Mr Corbyn to say, "Let's have them all in. They provide food, the banks and all these things". I do not think that one would want to go that far but obviously there is a question of how far; indeed, my noble friends behind me have posed the question of "if at all".

I was alarmed by what my noble friend Lady Neville-Rolfe said, with her immense experience both in the public sector in Europe and in business. She said that, as it is drafted, she would find the Bill a deterrent to applying for public business. That is certainly not what the Government intend at all.

I will come back to the question of coverage shortly but we have included a number of measures that will reduce the regulatory burden for private utilities. For example, the Bill contains a number of provisions unique for all types of utilities, such as the higher financial thresholds and the utilities dynamic markets, which are available only to utilities. In framework agreements, public utilities can let closed frameworks for up to eight years and there is no maximum term for frameworks entered into by private utilities. In addition, with contract amendments, there is no 50% financial cap on the value of permitted modifications.

Obviously, the Bill seeks to reduce the regulatory burden on private utilities in terms of transparency. The transparency requirements for private utilities are the minimum required by international agreements—that is, the tender notice, the transparency notice in cases of direct award and the award notice. Regarding mandatory and discretionary exclusions, the Bill retains the flexibility under the current regime where the application of mandatory exclusions is discretionary for a private utility. Private utilities are not restricted in the duration of closed frameworks, which is generally four years for non-utilities. The terms of any closed framework are their commercial decision. Private utilities will also not be subject to oversight by the procurement review unit, which we will come to discuss later in the Bill.

I was asked about broadband and drainage. I am not sure that I have an answer on drainage except to say that I always evoke the great spirit of Bazalgette. Schedule 4 sets out that the Bill covers utilities operating in the water, energy and transport sectors that are regulated in our international trade agreements to minimise the burdens on utilities. Broadband is not covered by those trade agreements so we have not chosen to regulate public or private utilities in that area.

[Lord True]

In relation to that, I was asked about private bus companies and Transport for London. Private utilities that run transport services, such as private bus companies, are regulated as they operate services where they have special or exclusive rights to do so. That limits competition and is reflected in international trade agreements; for example, the World Trade Organization government procurement agreement specifically lists Transport for London as being covered by that agreement. The Bill exempts it under paragraph 17 of Schedule 2 as it will be regulated by Department for Transport regulations.

The noble Lord, Lord Berkeley, asked about the reasons for excluding certain utilities. I will turn to his amendments now. Schedule 4(8) includes certain utility sectors that are exempt from the regulations. As they have proved to the European Commission, they are exposed to competitive forces. Schedule 4(8) provides an exemption determination for those decisions. If other sectors can do similarly, we will be able to exempt them from procurement regulations.

Regarding the amendments tabled by the noble Lord, Lord Berkeley, Schedule 4 sets out the scope of utilities activities, largely mirroring the coverage of the existing regime domestically. I repeat: this reflects our commitments in trade agreements such as the WTO's GPA. Amendment 25 would extend the exclusion for the supply of gas and heat produced as a consequence of carrying out a non-utility activity to all contracting authorities where this is currently available only to private utilities and public undertakings. This would breach our commitments in the WTO government procurement agreement and other international agreements where this exemption applies only to private utilities and public undertakings. It does not apply to contracting authorities that are public authorities.

Amendments 26 and 27 seek to remove from the scope of the Bill utility contracts related to public transport services and contracts associated with activities for the provision of airports and ports, as was discussed by the noble Lord, Lord Berkeley, and my noble friend Lord Moylan. Both activities are covered under the existing regime, and are required by our international commitments under the WTO GPA and other international agreements that require access to utility contracts in the transport, ports and airports sectors. The Bill therefore regulates these utility activities to comply with our international obligations.

As my noble friend Lady Neville-Rolfe said, the Bill provides for a mechanism in Schedule 4(7); this was alluded to in a different context by the noble Lord, Lord Fox. This will be developed to permit an appropriate authority to exempt utilities operating in these sectors where they are exposed to competition. This would apply to all utilities and is permissible under our international obligations.

I will reflect carefully on—

Lord Scriven (LD): Can the Minister clarify what an appropriate authority is? Who are the appropriate authorities and what is the process for that appropriate authority to amend the private utilities provision?

Lord True (Con): I was asked that at Second Reading. An appropriate authority is a Minister of the Crown or a Welsh Minister. Indeed, the noble Lord's colleague, the noble Baroness, Lady Humphreys, referred to this when we discussed the earlier group of amendments. We clarified it in some of the amendments that we tabled but were not brought forward earlier. Among them was an amendment to replace "appropriate authority", although I cannot remember with what exact words—a Minister of the Crown or a Welsh Minister, I think.

Lord Moylan (Con): I think that my noble friend is approaching his peroration. May I ask him for a little clarity? Take the example of the bus company. Bus companies operating under a franchise—for example, those in London—appear to be covered because they have a special and exclusive right. That appears to be what my noble friend is saying; if I am wrong, please correct me. Even though they have bid competitively for that special and exclusive right, and even though it generally lasts only for a number of years—this is to justify the balance of capital investment that might be required for them to allow—then comes back into competitive tender, they appear to be covered.

Bearing in mind that I am sticking with the text of the Bill as circulated, my noble friend says that Schedule 2(17) exempts them. However, that is not what it appears to do. It exempts a contract rather than a contractor, and says:

"A contract for the provision of public passenger transport services".

In simple terms, is my noble friend saying that, when a bus company procures a building, a new piece of plant, some equipment or even some buses, it is or is not covered by the procurement regulations, even on the assumption that it falls into the special and exclusive category?

6.15 pm

Lord True (Con): My noble friend has very characteristically not only picked up an onion but begun to peel it into various levels of the commitment and nature of the activity. I will look into the particular issues in relation to buses referred to by the noble Lord, Lord Berkeley, and my noble friend Lord Moylan.

What I was going to say does not really amount to a peroration. Indeed, at this time, one does not really need a great peroration. What I am here to do is to listen. A range of very interesting and important points have been raised by noble Lords on all sides in relation to the operation of the legislation on private utilities. I will look carefully at *Hansard* and undertake to have discussions on these matters between now and Report. I am grateful to all noble Lords who have spoken—

Lord Fox (LD): I sense that the Minister is winding. I have a quick question, which I think is best responded to by a letter. It is regarding international agreements and particularly telecoms, which were mentioned. The Australia agreement carves out specifically kit and hardware, but not telecom services, which appear to be left in. Will the Minister write to us about what the carve-out on broadband services is in, for example, the Australia trade deal and other trade deals?

Lord True (Con): Yes, my Lords. I have committed to write in relation to that and I will pick up other questions that have been raised, including by the noble

Lord. Obviously, there are existing international agreements that are, if you like, deposited, and which we have to work with, as well as issues of how we move forward case by case, but I will certainly address in a letter the point the noble Lord asks about. It is a legitimate question. The status of international agreements was also raised from the Front Bench opposite, and I will write to the noble Lord on that matter and copy it to colleagues in the Committee.

Baroness Neville-Rolfe (Con): My Lords, this has been a workmanlike discussion, the unpeeling of the onion—the first of many unpeelings of onions, I think. I thank my noble friend Lord Moylan for his support, and the noble Lord, Lord Berkeley, the noble Earl, Lord Lytton, and the noble Lord, Lord Fox—the philosophy of scope is a good phrase. The noble Baroness, Lady Hayman of Ullock, made a strong point about the WTO, which leads me to ask the Minister whether in his follow-up letters he will be able to give us a little more feeling about what is in and what is out for each of the utilities.

I am concerned about that because when we come on to talk about what is covered, it makes a difference—for example, doing special things for small businesses, could we have rules that are not too bureaucratic? Schedules 6 and 7 look quite burdensome through the eyes of a small company. It seems that a lot is covered and then there are executive powers to decide what is taken out and excluded, so the power is with the Minister. I would like to come back to that when we debate the amendment tabled by the noble Lord, Lord Wallace of Saltaire, on delegated powers. It is an important issue.

Can we find a way of not making things too bureaucratic? The noble Baroness, Lady Hayman, made the same point from the other side. Can we improve productivity and growth, which we all desperately want to do in the current circumstances? Can this Bill be a vehicle for that and for improving our international competitiveness? I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by ***Lord Lansley***

3: Clause 1, page 1, line 21, at end insert—

"(3A) A university is not a public undertaking for these purposes."

Lord Lansley (Con): My Lords, I am glad to have the opportunity, by way of Amendment 3, to probe—I think it is literally that—how the Bill is to be interpreted in relation to the activities of various organisations. I am using universities as a way of trying to understand how it works. Clearly, universities are charter bodies. I assume they are not included in a definition of public authorities, since they do not exercise an authority of a public nature. That is question No. 1.

Question No. 2 is: if they are not a public authority under Clause 1, are they a public undertaking in that they are

"funded wholly or mainly from public funds"

or

"subject to contracting authority oversight"?

Are they subject to such an oversight? Is the Office for Students such a contracting authority? I suspect it might be, and might have oversight. Is the intention that universities, purely by way of an example, should be included in the definition of public undertakings for these purposes? If they are, I come back to Amendment 3 and say: perhaps they should not be because, as charter bodies, they are self-governing institutions and, I would have thought, can be perfectly comfortable outside the scope of the legislation.

I will not comment on other amendments in the group, other than to say that they afford an opportunity, not least for my noble friend Lady Noakes—I think she is not intending that hers be moved—to explore the way in which public contracts are to be defined, the extent to which there are exempted contracts within those and the rationale behind the listing of the exempted contracts in Schedule 2. I will leave that to my noble friend. Suffice it to say that I am, as my noble friend the Minister said, generally in a position of us trying to regulate less rather than more and to get to the point where people are clear where they are pursuing things competitively, where they are self-governing institutions and where they have other forms of accountability. Where we are not required by our international obligations or other reasons to impose regulatory requirements on them, we should try to avoid doing so. I would be grateful if my noble friend if he uses the example of universities as a way of helping us understand how the specific provisions in Clause 1 are to be interpreted. I beg to move.

Baroness Noakes (Con): My Lords, I have a number of probing amendments in this group and throughout the Bill. The majority of them have been inspired by Professor Sanchez-Graells of the Centre for Global Law and Innovation at the University of Bristol Law School. I am grateful to him for sending me his research-based analysis of the Bill, which listed 50 areas to explore further. Noble Lords will be relieved to know that I have whittled this down to a smaller number of probing amendments.

In this group I shall speak to Amendments 4, 8, 9, 23 and 29 in my name. Amendment 4 is a probing amendment in relation to the definition of "public authority" in Clause 1. Subsection (2) includes authorities or undertakings

"subject to contracting authority oversight",

which is defined in subsection (4). That says "contracting authority oversight" exists

"if the authority is subject to the management or control of … a board more than half the members of which are appointed by a particular contracting authority."

My amendment probes whether this is the right definition.

The Bill's definition appears to turn on whether board members are actually appointed by a contracting authority. Company boards are appointed by shareholders, so who is appointed by whom depends on whether the shareholders exercise their voting rights in any election of directors. A contracting authority may own a majority of shares and hence be capable of appointing a majority, or even all, of the directors but may not in fact exercise

[Baroness Noakes]
its rights, whether by accident or design. Nevertheless, the authority will be capable of voting for board appointments and would, in normal parlance, be treated as having control. Most definitions of "control" in other legislation use that concept and I suggest that the Bill would be better drafted on the ability to control, rather than on what votes have taken place in the past.

My Amendments 8, 23 and 29 probe why the Bill, with its admirable aim to consign EU procurement code to history for the UK, has persisted in using language that can only have been derived from the EU and is not part of UK usage. I raised this at Second Reading. When I searched online for "pecuniary interest", which is the particular phrase used, the only references that came up were to declarations of pecuniary interests in connection with standards in public life. The term is used in that way in secondary legislation dealing with local authorities. It never seems to be used in the context of contracts.

My amendments propose replacing "pecuniary interest" with "consideration", which is a term that has a long-standing pedigree in contract law. An alternative could be to remove the words entirely, as it is not clear why it is necessary to restrict contracts that state a consideration, monetary or otherwise.

My last amendment in this group is Amendment 9, which probes another term that is used in Clause 2. A contract within the scope of the Bill is one for the supply of goods, services or works to a contracting authority. The context in which I tabled this amendment was to see whether it covered contracts where a contracting authority contracts for services to be provided to some other person; for example, where social care services are procured. This is clearly the intention of the Bill, but I am not clear that it has been drafted to achieve that.

On reflection, I query whether the words "to a contracting authority" were at all necessary in the clause. It may be a hangover from the EU rules, which we have by no means escaped with this Bill. Every time words are put into legislation, there is a question about what they mean or do not mean. This came up earlier when the noble Lord, Lord Fox, was speaking. It is important to be clear that we use words only when we absolutely have to and that they have definite meaning.

6.27 pm

Sitting suspended for a Division in the House.

6.37 pm

Baroness Noakes (Con): I shall finish by offering a comment on another amendment in this group. Amendment 5, in the name of the noble Lords, Lord Wallace of Saltaire and Lord Fox, is a bit like déjà vu all over again.

The Member's explanatory note says it is probing why ARIA is excluded from the scope of the Bill. The noble Lord, Lord Fox, is well aware from his involvement in the passage of the Advanced Research and Invention Agency Act that it is excluded because Parliament has already decided to exclude ARIA from procurement regulations. I know he did not like it then and he clearly does not like it now, but it is clear government policy that has been approved by Parliament in order that ARIA can be a nimble research body, free to pursue its aims without being shackled by a lot of unnecessary bureaucracy. Nothing has changed since that Act was passed.

Baroness McIntosh of Pickering (Con): I am delighted to follow my noble friend with a few brief remarks. I say at the outset that I regret that I was unable to contribute to Second Reading. I shall limit my remarks today to my arguments probing why Clause 2 and Schedule 2 are part of the Bill. This raises a more general question as to why we actually need the Bill, as I understand that we are already in the GPA. We have had a number of Statements about this and discussions in this regard with the Minister responsible for trade, my noble friend Lord Grimstone. I would be grateful if my noble friend could elaborate on what I am about to put to him.

As I understand it, the purpose of the Bill is twofold: first, to reform the UK's public procurement regime following our exit from the EU; and, secondly, to create a simpler, more transparent system that better meets the country's needs rather than being based on transposed EU directives. I understand that we are to have a separate exercise where we go through all the retained EU law, when we come to what is euphemistically known as the Brexit freedoms Bill, to decide which of those retained EU directives we may wish to keep.

My understanding is that much of what is before us today, as my noble friend has explained, is already covered by the World Trade Organization Agreement on Government Procurement—the GPA, as it is called. The aim of that agreement is to mutually open government procurement markets to those party to that agreement. The threshold values are, curiously, almost identical to the thresholds that had to be met through our membership of the European Union, which was roughly €136,000. We are now looking at £138,760 as the threshold for the general agreements for goods; for services, it is the same amount and, for construction, it is £5 million-plus.

As my noble friend Lord Lansley rightly assumed, I am trying to ascertain through this debate the way in which public contracts can be defined. I am assisted in this regard by paragraph 16 of the Explanatory Notes, which sets out that:

> "The Public Contracts Regulations 2015 will be repealed and new rules on procurement will be set out in the new regime. Most central government departments, their arms-length bodies and the wider public sector including local government, health authorities and schools will have to follow the procedures set out in the Bill in awarding a contract with a value above set thresholds to suppliers."

If, for example, there is a public procurement contract for food, for vegetables and meat, for a local school, hospital, prison or some other public body, what is the procedure that will have to be followed after the adoption of the Bill and, more specifically, the regulations that will flow from it?

That is the specific question that I would like my noble friend the Minister to address. How will public procurement for contracts over the threshold be treated? For the purposes of the Act, will they be treated differently from those that already apply under the GPA? How will the contracts apply for those that are

under the magic threshold of £138,760? In effect, will the same procedures apply as before we left the European Union? I am particularly interested in food, fruit and vegetables, for the reason that we were all told this was going to be a benefit—a Brexit dividend from leaving the European Union—but I am struggling to see how this dividend will be delivered in this regard. When these contracts are put out for tender, whether they are above or below the threshold, how will that procedure apply? Can those that are under the stated threshold be awarded to local suppliers without being put out for international tender, or could we have Spanish or, indeed, African companies applying to deliver these?

I admit to being confused, because we were told that this was something that would happen after we left the European Union, and I am still struggling to see how these contracts are going to happen. We were told that it would boost local growers in this country to have these contracts put out for tender once we were no longer in the European Union. I look forward, with great anticipation, to my noble friend the Minister's reply.

Lord Fox (LD): My Lords, up to her final couple of sentences, I was going to recommend that the Minister listen very closely to the advice from the noble Baroness, Lady Noakes. This group of amendments essentially carries on the theme of what is in and what is out, which is the existential theme of almost everything we are debating that is not a government amendment. In that respect again, it is a welcome set of amendments and I think, all joking aside, that the noble Baroness's points are really important points for the Minister to clear up. I do not understand where we are on this and if the noble Baroness, Lady Noakes, does not then it probably is not understandable.

6.45 pm

The noble Lord, Lord Lansley, spoke in favour of removing universities. Of course, universities will spend an awful lot more public money than ARIA ever will—if ARIA ever gets off the ground and spends any money. To some extent, perhaps the Government are looking at the right end of the telescope.

My understanding of legislation is that if a subsequent Bill legislates law that is different from a preceding Bill, the subsequent Bill wins, but the noble Baroness, Lady Noakes, may correct me on that.

The purpose of this probe is really to investigate. If one listens to the Minister and listens to some of the briefings we have had, there is potentially enormous benefit from this platform for purchasers of public services. If there is this benefit, deliberately excluding ARIA from potentially having it seems to me a bit stupid. I agree with the noble Baroness, Lady Noakes. If we are talking about procuring quantum physics services from someone, I do not imagine that this platform will be at all useful. But if it is buying utilities or basic services such as cleaning, that, it seems to me, is what this platform is there for. To deliberately exclude ARIA totally from it does not make a great deal of sense.

The other point that I would like to make is about the three areas excluded in the legislation in Clause 1(5)(a), (b) and (c). Paragraph (a) concerns the "devolved Scottish authorities" and there is a Scottish Parliament which oversees that. Paragraph (b) is:

"the Security Service, the Secret Intelligence Service and the Government Communications Headquarters".

All of those have scrutiny, albeit secret.

Then we have

"the Advanced Research and Invention Agency"

which essentially has no scrutiny at all. It has the Secretary of State, who may or may not choose to scrutinise it. Within those powers, ARIA can buy property for example. It can buy things—anything it likes, effectively—with essentially no public scrutiny. We are dealing with a Procurement Bill, and to deliberately put in place an organisation that can spend hundreds of millions of pounds—if, as I say, it ever manages to find a top team and get itself in order—with no scrutiny whatever is remiss. It would be remiss of your Lordships on this Committee not to consider this and it would be remiss of the Minister not to respond directly as to why there should not be some form of scrutiny. It could be the same sort of scrutiny that the Security Service enjoys or something different, but simply relying on the Secretary of State, as currently, is not good enough.

Lord Scriven (LD): My Lords, I shall speak on this set of amendments, particularly Amendment 42. It is the first time that I have been able to speak on the Bill. I was not able to participate in Second Reading, but I have followed the debate and, like many noble Lords, spent the weekend probably losing a little hair trying to make sense of the number of amendments that have come out. I thank the Minister for the withdrawal of Amendment 1 and for looking to find a way forward with some of the issues that those amendments made.

Particularly with Amendment 42, I raise my interests in the register, particularly as a vice-president of the Local Government Association and as an adviser to the Robertson group of organisations, which does work with the public sector. Amendment 42 is genuinely probing. It addresses what is in, what is out and what is the autonomy and the role of local authorities within the Bill. In particular, when a local authority works with others, how do some of the provisions within the Bill work—whether it is a central purchasing authority or not—particularly when they overlap with other procurement legislation in, for example, the Health and Care Act?

I shall put a couple of scenarios to the Minister and genuinely look forward to hearing some of his replies. First, local authorities are being asked to significantly integrate social care and health. They will be part of integrated care boards, which are purchasing organisations. Some public sector money from local authorities will come forward as part of that. When they are purchasing as an integrated care board and significant amounts of local authority money is put in there, which provisions will the local authority be asked to enact? Will it be the provisions within this Bill or the provisions under Sections 79 and 81 of the recently enacted Health and Care Act? There will be potential conflicts of interest as to by which procurement rules two different partners procuring a public good will be bound. I hope the Minister can help to explain that scenario.

[Lord Scriven]

There are also lots of local authorities that have significant public-private partnerships. Again, what rules will the public-private partnership be bound by, particularly when the local authority purchases significant services or goods with a private sector organisation which are to be used for public procurement? How will the private sector organisation be bound by that? For example, what rules will there be for that public-private partnership when purchasing a good, depending on whether the 51% amount has been put forward by the public sector—the local authority—or by the private sector entity?

I understand from reading the Bill that there will be the national procurement policy statement. I just need to understand from the Minister what autonomy local authorities will have to move away from the procurement guidelines that will be in the NPPS.

Finally, it would be helpful if local authorities could be put in the Bill as centralised procurement authorities. Is there any particular reason why the Government did not take that on board in the Bill?

There are many general questions about local authorities; those are a number that I wish to probe. I genuinely look forward to the Minister's answers.

Baroness Neville-Rolfe (Con): My Lords, I very much welcome the question of the noble Lord, Lord Scriven, about local authorities. They are so often underappreciated and undervalued, and we need to know what can and cannot be done in a collective way—the question he is rightly probing. For example, a simple question would be: for planning services—where my committee has identified a huge shortage of talent and resources in some planning authorities—could you have a collective procurement, and would that be caught by this Bill?

I also ask what the GPA does on telecoms and the internet infrastructure. I must say that I tried in vain, as a Minister, to get contracts for the roll-out of infrastructure around Washington DC—there was not a level playing field. I fear that overseas interests will benefit preferentially from this Bill, as they have done in some other areas, such as contracts for difference in energy. Can the Bill help to hold the GPA to level the playing field?

I strongly support my noble friend Lady Noakes, both on her brilliant technical points, which I barely understand, and on ARIA. On the latter, I agree with her that it must be free from hassle—I think we agreed that in our debates in this House. It probably does not have enough money, but it is important to ensure that it can proceed without the benefit of lots of new regulations, which could be quite bureaucratic to them.

Lord Berkeley (Lab): My Lords, I shall speak to my Amendment 7. I do not think I need comment on any of the other amendments in this group. I tabled this probing amendment to ask why this particular piece of text is here:

"This Act does not apply to Her Majesty acting in her private capacity."

That is quite unusual in Bills. Usually at the end there is a clause that says something along the lines that Her Majesty and, often, the Duke of Cornwall have given their consent to that piece of legislation. Sometimes when I ask the Minister what relevance the Bill has to the Duke of Cornwall they cannot answer; no one seems able to because it is nicely confidential.

Obviously I can see why Her Majesty acting as the Crown is included in this Bill because effectively the Crown is the Government. However, why is the Duke of Cornwall not included in the Bill in his private capacity? He usually appears alongside Her Majesty. The Duchy of Cornwall has said it is in the private sector, which means, whatever we are going to call it, that it is a private sector organisation that presumably will have to comply with every other part of the Bill.

It is interesting to see where the sovereign grant for transport comes in. I happened to get a Written Answer today. I asked who funded the return charter flight of the Duke of Sussex from the United States for the jubilee. According to media reports, it was the most expensive charter plane that you could possibly get, and it seemed to me that, as in so many of these matters, they could actually have gone on the scheduled service. The answer I had was that it was not funded by the sovereign grant because that

"only covers expenses incurred by other Members of the Royal Family when they undertake official duties on behalf of Her Majesty",

and clearly that was not the case. When it comes to the sovereign grant and the award of contracts for helicopters or planes across the world that the Royal Family—or even occasionally members of the Government—might take, presumably that will be subject to competitive tendering because they are acting in their public capacity.

It would be good to hear from the Minister what correspondence, if any, took place before Clause 1(9) came into the Bill. Are the Government quite happy with it? I look forward to hearing his answer.

Lord Wallace of Saltaire (LD): My Lords, my name is on some of these amendments. My colleagues have spoken to several of them so I shall merely add a few things.

I was particularly concerned by the term "centralised". The context in which we are operating is that England is by far the most centralised country in the developed world. The concept of a centralised procurement authority implies, "Whitehall tells the rest of you what to do". For that reason, we think it important to put a number of phrases into the Bill emphasising that local authorities have a part to play. In particular, we should put here the idea that consortia of local authorities—for example, the local authorities of West Yorkshire operating together—have the ability to co-operate as centralised procurement authorities.

There will be a number of other occasions in the Bill where I and my colleagues will want to put in social enterprise, social values, non-profits and charities. They were strongly emphasised in the Green Paper and the consultation; they are not in the Bill. We think that including those elements will help to broaden the way in which Ministers and officials will approach outsourcing and public contracting. This relates also to the issues that my noble friend Lord Purvis raised about the international dimension and the importance of trade and co-operation agreements, and the point the noble Baroness, Lady Neville-Rolfe,

made about the unbalanced way in which these occasionally operate: we are much more open to others than they are to us.

7 pm

I was very struck and, indeed, appalled at the outbreak of the Covid pandemic that one of the contracts for test and trace was given to a multinational company headquartered in Miami, Florida. It seemed so obvious that knowledge of the ground, local circumstances and where to put your test and trace things was held already by local public health officers across the country. The outsourcing then should probably have been done through local authorities and the services they could provide; giving it to a multinational with very little experience of operating in England was clearly counterfactual, counterintuitive and likely to be grossly inefficient, as indeed it proved. The importance of putting in the Bill that local authorities and consortia of local authorities can operate as these unfortunately named "centralised contracting authorities" is because we want to make sure that this does not end up with Whitehall and Ministers taking yet another large bite out of what used to be local autonomy and local initiative, and so that the Bill gives adequate space for those local contracting authorities and others to be involved as fully as possible.

Lord Purvis of Tweed (LD): My Lords, I shall speak to my Amendment 19 and comment very briefly, because it was a pleasure to follow my noble friend, simply to emphasise the point that he and my noble friend Lord Scriven made about local authorities. I want to add just two other elements of that and combine it with a comment, since we started on this group with the noble Lord, Lord Lansley, about universities. In the case of my former constituency, Heriot-Watt University was part of a number of consortia with other universities and other organisations, which included charitable trusts, research trusts and other groups. Since they became procurement bodies themselves, it would be very useful for the Government to be very clear as to how this Act will consider an institution as a procuring body, including as part of a consortium of which the partners are not covered by this legislation.

On the point about local authorities, I would be grateful if the Minister would clarify for those local authorities that work cross-border. There is the borderlands consortium of local authorities in England and Scotland. In my understanding of how the Bill is drafted, that consortium would not come under the Bill because only local authorities, or local authorities in Scotland that operate on fully reserved matters, would do so. The consortium does not operate on fully reserved matters but it is a single consortium that receives a borderland deal from the Treasury and is a procuring authority. It would be very helpful if the Minister would clarify the status, under the legislation, of the border consortium of local authorities.

The purpose behind Amendment 19 is to develop that probing and to ask for consideration of the treaty state suppliers and the international agreements. What comes under the terminology of international agreements? The noble Lord, Lord Lansley, and I have raised questions on many occasions about what the Government consider to be a treaty for international agreement purposes. I understand entirely that the Government's purpose behind this legislation is flexibility, but also transparency. I support those, particularly the transparency angle. We therefore need to look carefully at the areas that are exempted.

The noble Baroness, Lady Noakes, raised the point about ARIA; I will not intervene in the mutual relationship between her and my noble friend Lord Fox on the relationship with ARIA, and I know that UK Research and Innovation is not linked with ARIA. However, I found it interesting that UK Research and Innovation is included in our trade agreement with Australia under the procurement chapter by virtue of it being a listed body. If we need to look at which bodies will be included in this legislation, there are exhaustive lists—it says: "This list is exhaustive"—in our trade agreements, which are now in scope of this legislation but which many Members may think are not. For example, at 6.9, UK Research and Innovation is included.

Most interestingly, the Bill excludes Government Communications Headquarters, but it is included in the list of bodies in our FTA with Australia under the procurement chapter. I do not know how they will interact. We will come to this when we come to the elements of international trade, but where does GCHQ sit as regards procurement? We are obliged to cover it under the Australia FTA but we are seeking to exclude it under the Bill. I simply do not know the answer, so I look forward to the Minister clarifying that point.

The amendment on international agreements is to clarify what the Government consider an international agreement. Paragraph 19 of Schedule 2 states:

> "A contract awarded under a procedure specified in an international agreement of which the United Kingdom is a signatory relating to … the implementation of a joint project between the signatories to that agreement."

That could be extraordinarily wide, and if it includes agreements which are not under FTAs it could be enormously wide.

I just need to look at two contemporaneous cases under memoranda of understanding. These are agreements which the Government say are underpinned, with commitments to honour them. One is the Rwanda MoU on immigration—I visited the centre in Kigali two weeks ago. There is procurement that could be under that agreement, whether for the aircraft which have been brought from Spain to fly individuals out there, or indeed the Hope Guest House Ltd, a private limited company in Kigali that is to be the reception centre for these people and which I visited myself. I asked the authorities there: "If it is a limited company, how do I know what the details are—the terms and conditions?" They told me that it was under a one-year rolling contract but I have no idea how it was procured, and the same goes for the British side. This is a joint agreement with joint procurement, and I believe that it should be transparent, but under the Bill the Government are seeking to exclude that.

There are a number of different areas. There are international higher education partnership agreements. Even if the noble Lord, Lord Lansley, is successful with his amendment, it would be rendered useless under paragraph 19 of Schedule 2 because the

[Lord Purvis of Tweed]
Government will be able to say that it is under an international higher education agreement. We have signed between 15 and 18 agreements with China on preferential market access, including investments through UK pension funds, which potentially come within scope of this as well. We have an investment partnership with the UAE, the details of which have not been published; I have not been able to find them and the Library has asked the DIT for the text but it has not been forthcoming. However, these are potentially joint procurement agreements. Some may be beneficial; others I look at with a cautious eye. Depending on how they are defined and on how the Government wish to use them, the transparency elements of procurement could be bypassed because of paragraph 19 of Schedule 2. Therefore, I would like the Government to explain.

In closing, because it links to a number of international agreements and has been previously referenced on treaties, I recognise the 24 treaties listed in Schedule 20, but the impact assessment relates only to 20, so I do not know why there is that discrepancy. It would be helpful if the Minister could clarify the discrepancy between the two.

Lord Coaker (Lab): My Lords, it is a pleasure to follow my noble friend Lady Hayman after her remarks. I apologise to the Committee for being a few minutes late; I was unavoidably detained on other business. I also thank the noble Lord, Lord True, for dealing with a really difficult situation with—as we might all agree—his normal courtesy. I think it was the best that could be done in the circumstances; withdrawing government Amendment 1 allowed us to move to this group of amendments. We all appreciate his offer of continuing discussions in the next day or so to consider how we take all this forward. It would be remiss to not start with thanks to the Minister for that, otherwise the Committee would have been a complete and utter catastrophe. As we can see, however, with this group of amendments we have got on to the real purpose of the Committee, which is to get to the real detail, as seen in the various contributions made by all noble Lords. All the amendments put forward have asked very reasonable questions, which seek to clarify the Government's intentions. I shall certainly make those points in the few minutes that I speak for.

I start by saying that I was really interested in the amendment of the noble Baroness, Lady Noakes, because it goes to the heart of the issue. You can read "pecuniary" in all sorts of ways. I looked it up with the help of my noble friend Lady Hayman and it has to do with money, so I was quite pleased to read that—from a non-legislative point of view—because I thought it meant that it was about the supply of the contracts, the pecuniary interests would not matter and it was a "standards in public life" type of approach, but of course it is not. The amendment of the noble Baroness, Lady Noakes, has clarified that for me. What "pecuniary" means in this context is a really interesting point: why are the Government including it and why would the amendment of the noble Baroness, Lady Noakes, not be an improvement? Again, the details of some of these amendments are really worthwhile points to look at.

I wanted to raise some of the points that the noble Baroness, Lady McIntosh, started to get to in the debate on whether Clause 2 and Schedule 2 should stand part. There is also the question of where Schedule 1 takes us. The noble Lord, Lord Fox, will be interested in this, having asked who will police this. The Government use the term "estimated value" in Clause 2 and, to be fair to them, that is very important for this aspect of a public contract. Clause 3 deals with how estimated value is worked out; then, in Schedule 3, it is done by regulation. Schedule 3 lays out how the estimated value may be set, so I will not go through it. What I could not find out—a point also made by the noble Lord, Lord Fox—is who ensures that it is properly done; in other words, that the estimated value is a proper estimated value and that the system laid out in Schedule 3 works. If I understood the Minister, he said that it is a matter for the Minister—a matter for the Crown. Could he just clarify who polices this? Who ensures that the estimated value is indeed a proper estimated value? That would be helpful to the Committee.

7.15 pm

In Schedule 1, as the noble Baroness, Lady McIntosh, and the noble Lord, Lord Lansley, pointed out, it is all laid out for the purposes of public contracts. Where have all these threshold amounts come from? I think the noble Baroness, Lady McIntosh, said that they were in the EU legislation in euros and that all we have done is convert them into pounds. I do not know whether that is true, but how have those threshold amounts been worked out to be the appropriate ones for each of the contracts in the 12 circumstances laid out in the Bill? It is really important to know how these amounts have been arrived at.

How these amounts can be changed will be set out by regulation. But as we will hear later, the Delegated Powers Committee report—I hope the noble Lord, Lord Wallace, does not mind me referring to it—is very worried about the use of regulations. Can these thresholds be moved up or down—presumably the Minister decides that? Can the Minister confirm whether these thresholds can be moved up or down by negative or affirmative procedure? I think it is negative, but I will be corrected if I am wrong. I would have thought that, as we are debating whether Schedule 2 stand part of the Bill, changing these threshold amounts—which are crucial to the determination of whether a public contract is awarded because it is above or is exempt because it is below—would be very important from that perspective.

I cannot find anything in the Explanatory Memorandum setting out the reasons for that or in what circumstances these thresholds could be changed. I am a pretty reasonable man. If the Minister turned around and said that it is laid out that it will be an inflationary increase according to whatever, that would be fairly reasonable, to be honest, but suppose that someone had another reason. We need greater clarity on that.

We have all sorts of use of regulations in Schedule 2. Can the Minister say something about how all these different bodies were arrived at? We have a list of all the various contracts which will be exempted—I

understand that some are defence and security contracts. How was this list arrived at? It would be useful to know the criteria used to determine that these are the appropriate contracts to be exempted from the provisions of the Bill. I think the Committee would find that helpful to understand.

We are discussing whether Schedule 2 stand part, and we will discuss this in more detail when we come to the debate on group 5 and the amendments from the noble Lord, Lord Wallace. Page 10 of the Delegated Powers and Regulatory Reform Committee's report on the Procurement Bill specifically gives an example of where the committee is worried about the use of regulations and the inability of Ministers properly to explain the power they are giving themselves.

The committee uses as an example

"paragraph 17 of Schedule 2—power to exempt from regulation under the Bill contracts for the provision of public passenger transport services",

but there will be others. It states:

"According to the Memorandum, this power is being taken because … procurement for public passenger transport services by rail and metro is to continue to be regulated by separate legislation and reflecting this in the Bill would be problematic because it 'would involve provision for a number of complexities in UK legislation and retained EU law and how they interact'; and … the regulation of such services is to be 'the subject of forthcoming changes'… However, it does not explain why it is considered appropriate for the power to be so broad that the issue of which kinds of contracts for the provision of 'public passenger transport services' are to be exempted is left entirely to regulations."

There is nothing of substance in the Bill which explains any of it. There is real concern about that.

It also states:

"Example 5: paragraph 34 of Schedule 2—power to exempt from regulation under the Bill concession contracts for air services provided by 'qualifying air carriers' specified in regulations".

The Government have failed to provide any justification for leaving entirely to regulations the question of which concession contracts for air services provided by air carriers are to be exempt from the Bill. We will come to this later but, in Schedules 1 and 2, there are numerous powers given to the Minister, through regulation, to determine real issues of policy.

To conclude on this, later on, the report is scathing in its criticism of one of the powers that the Government are taking to allow them to change primary legislation through negative secondary legislation. That cannot be right. We cannot expect secondary legislation to change primary legislation through the negative process, although admittedly that happens in another part of the Bill. Can the Minister confirm that nothing we are passing in Schedules 1 and 2 will allow the Minister, through negative secondary legislation, to change primary legislation? That is the only example the committee gives but are there other examples, specifically with respect to Schedules 1 and 2? I know that the Minister will seek to answer these questions but this goes back to the points made in the amendments from the noble Lord, Lord Lansley, the noble Baroness, Lady McIntosh, and other noble Lords, such as my noble friend Lady Hayman.

At last, now that the process is starting to be sorted out, the Committee can start doing its job, whether that is in the amendment of the noble Baroness, Lady Noakes, or in any other amendment. We seek to scrutinise the detail of the Bill to understand what is going on. The purpose of the Committee is to improve the legislation and make it work, even if sometimes there is an ideological clash about some of it. Everybody wants this Procurement Bill to work because having a better system of purchasing that conforms to the standards we all want is in everybody's interest. It is in Committee that we can examine the detail in order to do that.

Lord True (Con): Again, my Lords, I am very grateful to all those who have spoken. There have been some interesting speeches. Indeed, I will certainly take the final speech by the noble Lord, Lord Coaker, in which he seemed to deplore the idea that the Government should have any regulatory powers, back to my right honourable friend. We will certainly watch for that as we go forward.

On his more general point in relation to the Delegated Powers Committee and so on, I do take what he said seriously. We will have a debate on that in the next session. I will look into his specific point about secondary and primary legislation. If there is an answer that is an advance on what is already in the public domain, I will certainly have that for the next session when we will look at delegated powers.

I am not really a fan of wide-ranging groups that cover a whole range of different subjects. They seem to have become the habit of our times. When I first had experience of your Lordships' House, we had quite short debates on relatively narrow subjects, which enabled the Minister and the House generally to concentrate. So I will endeavour to answer all the various points that have been made but some of them may have to come in writing. We will look very carefully at *Hansard* because there was a very broad range of questions, which started with the questions on universities.

Lord Fox (LD): Can I just point out that the grouping comes from the Government Whips' Office? We could have extracted all our amendments, one by one, and created a larger number of groups but, probably in deference to the will of the Government, we did not. The future of how many amendments you have in a particular group lies very much in the hands of the Government, not Her Majesty's loyal Opposition's or ours.

Lord True (Con): My Lords, they are negotiated in the usual channels. Sometimes it is a fatal thing in your Lordships' House to express an opinion, in all respect to your Lordships, of how I think things may be done. We are all imperfect—I am sure the usual channels are not perfect—but having a large group does raise challenges in terms of accountability.

I will try to address the various points raised. I apologise if they were so broad that I may miss some of them, for whatever reason. We started on universities with Amendment 3 from my noble friend Lord Lansley. His amendment would exclude universities from a definition of public undertakings within the definition of a contracting authority, and consequently from the scope of the public procurement rules. He asked about public undertakings and public authorities. Public undertakings are relevant only in the context of the

[Lord True]
utilities that we were discussing. The universities will be public authorities if they meet the public authorities test, and not caught if they do not meet it.

Universities are included in the UK's coverage commitments under the World Trade Organization's Agreement on Government Procurement as contracting authorities that are subject to the rules, where they are publicly funded. The existing definition of a contracting authority in the Public Contracts Regulations 2015 contains tests of the extent to which a body is publicly funded or publicly controlled. These tests are then applied by the body in question to determine whether they are caught by the definition. The definition of a contracting authority in the Bill is intended to capture the same bodies. Universities are therefore in scope of the procurement rules, but only to the extent that they are mainly publicly funded or controlled. The position is likely to vary depending on universities' funding streams, and those that derive the majority of their revenue from commercial activities would likely be out of scope.

Amendment 4 in the name of my noble friend Lady Noakes would adjust the definition of a contracting authority in such a way that bodies would be brought into scope where they are subject to control by a board if more than half the members are "capable of being" appointed by a contracting authority. I think there was some interest in that proposition on both sides of the Committee. Our initial feeling is that it would mean a more prescriptive and potentially wider scope than the proposed definition, which brings into scope only bodies controlled by a board that has been

"appointed by a … contracting authority."

Again, the definition of contracting authority in the Bill is intended to capture the same bodies as in the existing Public Contracts Regulations. We are not seeking to change the scope of bodies covered in any way, though some adjustments have been necessary to replace references to European concepts such as bodies governed by public law with the more relevant UK analogous concept of bodies undertaking public functions. Ensuring consistency is necessary not only for practical continuity purposes but in respect of the United Kingdom's international market access commitments in free trade agreements, which use the existing definition as the basis of the UK's coverage offer.

The current definition brings into scope bodies that have a board more than half of whose members are appointed

"by the State, regional or local authorities, or by other bodies governed by public law".

The definition in the Bill is consistent with this by bringing in bodies that are subject to the management or control of

"a board more than half … of which are appointed by a … contracting authority."

The existing definition in the Public Contracts Regulations does not contain any reference, as per the proposed amendment, to the notion of board members "capable of being" appointed by a particular contracting authority. Whether or not an authority chooses to exercise its right to appoint members to a board is not addressed, and was not intended to be addressed, within the definition. For that reason, we do not currently consider that it would be appropriate to adjust the definition in the way the amendment suggests.

However, I have listened carefully to what my noble friend has suggested. We will consider further whether it is possible to exercise control without making appointments by the threat of control. For the moment I ask my noble friend not to move the amendment, which we cannot support as it stands.

7:30 pm

Amendment 5 is in relation to the Advanced Research and Invention Agency and others have spoken about the fact it is excluded. I know there is a good old thing in a nice Italian opera house: when an aria is sung, if the crowd shout "bis" then, luckily, it is sung again. However, I say to the noble Lord that he has really now had two goes at this and I am not going to shout three times. As my noble friend has pointed out, ARIA was covered by an Act passed only on 24 February this year. While it is perfectly possible for Parliament to change its mind, it would be odd when presenting a Bill to your Lordships' House for it not to be in line with what Parliament had approved only a month or two before. We have not changed our view and that is where we stand.

Amendment 7 from the noble Lord, Lord Berkeley, on another theme, would extend the Bill to Her Majesty acting in her personal capacity. The noble Lord is right to say that procurements undertaken by the Crown in its public capacity, such as by government departments and executive agencies, are regulated under the Bill as the Government obviously govern in Her Majesty's name. Procurement conducted using the Crown Estate's vote expenditure forms part of the UK's offer under the World Trade Organization's Agreement on Government Procurement and will also be regulated under the Bill.

Procurement rules are, however, designed to regulate the purchasing activities of public bodies and not those of private businesses or individuals, with the exception that we discussed earlier of private utilities operating under a special or exclusive right. The current rules do not therefore extend to Her Majesty acting in her personal capacity. While the Crown activities I have described would be included, it would not be appropriate for the Bill to include Her Majesty in her personal capacity.

Turning to the next set of themes—I am trying to respond to as many as possible—my noble friend Lady Noakes put forward amendments to make an identical change to three corresponding definitions. The noble Lord, Lord Coaker, also asked about the meaning of the definition of the

"contract for the supply, for pecuniary interest, of goods, services or works".

The amendments, as my noble friend explained, would replace part of that with the notion of consideration.

I was asked why "pecuniary interest" was selected. First, it has the benefit of consistency with the definition it replaces in the long-standing regulatory scheme. "Pecuniary interest" is used in the definition of public contracts in the Public Contracts Regulations 2015, and is consistent with the long-standing definition of

concessions contracts in the Concessions Contracts Regulations. Secondly, "pecuniary interest" has a more precise meaning than "consideration", which could take any form. Doing something, not doing something or promises can all be forms of valid consideration. This is important because the Bill is not intended to capture purely compensatory or supportive arrangements, such as grants or sponsorship agreements. The third reason for "pecuniary interest" is that it is well understood by the legal community and practitioners alike. However, I heard what my noble friend said about the experience of practitioners. Again, we will consider her remarks.

We believe that the notion of "pecuniary interest" achieves the desired effect of capturing contracts made with profit in mind and ensures consistency in the switchover from the existing scheme to the new one. The word "consideration" could lead to wider scope for the Bill, and to regulation of arrangements made without any idea of profit in mind. This might have the unintended consequence of stifling innovation and removing the flexibility for the Government to support schemes which are purely compensatory in nature or provide non-pecuniary support which helps foster the development of British businesses.

Amendment 9 makes explicit that the definition of "public contract" includes contracts

"for the benefit of persons other than the contracting authority."

I assure noble Lords that it is implicit that even contracts let by contracting authorities for the benefit of other persons will still fall within the definition. Indeed, many of the contracts let by contracting authorities will be for the benefit of communities or persons other than the authorities themselves. It would be a significant reduction in the scope of the regime if that were not to remain the case. For these reasons, I hope I have reassured my noble friend that there is no need to adjust the definition to clarify this matter and that the proposed definition maintains the same approach as the long-standing rules.

Amendment 19 in the names of the noble Lords, Lord Purvis of Tweed and Lord Wallace of Saltaire, which seeks to remove sub-paragraph 19(b) of Schedule 2, would seriously impair the UK's current ability under the Public Contracts Regulations 2015 and the Defence and Security Public Contracts Regulations 2011 to conduct joint projects with our international partners, particularly in the field of defence. I will write to noble Lords on some of the particular points made in relation to government communications; defence and security matters will partly be covered by my noble friend Lady Goldie, but obviously they will understand why I will do that.

Lord Purvis of Tweed (LD): I am grateful. Just so that the Minister writes the correct letter to me, I am fully aware that sub-paragraph 19(a) relates to agreements about

"the stationing of military personnel".

However, sub-paragraph 19(b) is so broadly drawn that it is not directly linked to military agreements. I hope that the Minister does not write to me concerning anything to do with military procurement because that is absolutely not what I raised. My concern about sub-paragraph (b) regards the other agreements that are not military.

Lord True (Con): I was actually coming on to the rest of that but, with respect, the noble Lord asked me a specific question about government communications in his utterance; therefore I was responding to it.

Going further, in line with the existing exemption under the current regime, as provided for in the GPA, partner nations will typically agree to the rules for the award of contracts in a joint project by one or more of the partners in an international agreement. We cannot expect our international contracting partners, each with different national procurement procedures in some cases, to follow the specific procedural rules in this Bill. The ability to switch off the procedural rules in the legislation where there is a clash with what was agreed with the parties to the international agreement is essential to facilitate arrangements; however, I will clarify that further for the noble Lord. Again, I ask that this amendment be withdrawn.

I turn to Amendment 42, which relates to local authorities. I apologise for the length of my speech but a number of different themes came out here. Given my life and my having been involved in setting up joint arrangements with other authorities, I understand where the noble Lord, Lord Wallace, is coming from in seeking to add to and amend Clause 10 to make it explicit that a group of local authorities forming a consortium may constitute a centralised procurement authority. As an old local government hand, I do not particularly like that phrase; on the other hand, earlier, I cited the Yorkshire procurement arrangements as the type of thing that would be permitted and would be a centralised procurement authority.

Lord Wallace of Saltaire (LD): My Lords, I suggest looking at the definitions in Clause 112. I note that the terms "central government authority", which clearly does not apply, and "centralised procurement authority" occur together. I suggest that, in introducing an amendment on Report, the Government may care to consider something that replaces "centralised" with "combined"? That would not have the implication of being run from Whitehall and would express much more explicitly what is intended.

Lord True (Con): I will certainly reflect on anything that is said in Committee. "Combined authority" has a particular meaning and understanding. Local authorities can procure things together without being a combined authority; perhaps the noble Lord, being a good Liberal Democrat, might like to propose a federalised approach. I will take away the point he made. I was going to say that I agree with him and the noble Lord, Lord Scriven, that it is correct that local authorities can band together to form consortia to undertake procurements; that is something we wish to encourage. I will look into the particular case of border lands that the noble Lord—

Lord Purvis of Tweed (LD): It is a federal question that I am asking, about states that border combined authorities.

Lord True (Con): I am not sure that the First Minister is looking for a federation.

[Lord True]

Where a procurement is being undertaken by one or more local authorities that are in the business of carrying out procurement for others, as when they form a consortium to undertake several procurements over a period of time, those authorities would constitute whatever we call it—a centralised procurement authority, for the purpose of the Bill—without the need for the amendment. Conversely, where a group of local authorities come together to undertake joint procurement on a one-off or ad hoc basis, they are entitled to do that as joint procurement under Clause 10(4)(a).

There are other aspects in relation to local authorities. The Government have a clarifying amendment in the megagroup that comes up next, which I hope will also give some reassurance to noble Lords opposite that we want freedom for local authorities—although they will have to have regard to the priorities and national procurement strategy, as any other body will. Ultimately, they will remain accountable to their electorates for their own procurement decisions.

I was asked about how integrated care boards fit into the Bill. I understand that we are still in discussion with the Department of Health to agree what matters are within the health and care procurement rules. This will be debated later on in the Bill; I hope to come forward with more clarification on that.

Finally, a lot of general matters were raised relating to Clause 2, not only by my noble friend but by the noble Lord, Lord Coaker, opposite. My note-taking was running out a bit but I will obviously pick up as much as I can of the remarks and write further.

Baroness McIntosh of Pickering (Con): I was delighted that the noble Lord, Lord Coaker, was able to pursue some of things that I touched on. What concerns me most, particularly given what my noble friend the Minister said about the earlier amendments in this group, is that I am at a loss to understand why we need this Bill if so much of it is already set out in the GPA or in existing law. Can my noble friend explain the role of the thresholds, particularly in the provision of food to public authorities?

Lord True (Con): My Lords, we need the Bill because we need a national procurement structure. I hear what my noble friend says but there has been agreement across the Front Benches and from the Liberal Democrats that we need to establish a framework that will last. People may have different views on whether it diverges enough or not at all from the arrangements we have—doubtless that will be explored—but we need to have such a framework and a body.

Clause 2, which is probed, classifies three types of contracts that are public contracts. The first category covers contracts for the supply of goods, services and works, provided that they are not subject to an exemption. I was asked about how each of those exemptions was arrived at. I cannot answer on all of them here but I can certainly provide information to the noble Lord. The second category covers frameworks—that is, contracts providing for the future award of other contracts. The third is concession contracts, which we will discuss.

I turn to the concerns around what Schedule 2 is about. It sets out the types of contracts where the contracting authority does not need to apply the rules for the contract award procedure; they are exempted from the procurement rules. The Bill needs to ensure that contracting authorities have the freedom to carry out the most appropriate procurement where the rules in the Bill might otherwise be unsuitable, for example where it is necessary to protect national security interests and the procurement is too sensitive to advertise; where the contract award procedures are governed by other legislation, as in rail services, which are currently awarded under a separate regime operated by the Department for Transport; or where it is necessary to protect the Government's ability to make public policy interventions, such as on broadcasting content.

7.45 pm

The noble Baroness asked how above-threshold and below-threshold procurement will be different. The GPA threshold will still apply. Above-threshold contracts will benefit from the simpler rules in the Bill compared to the old EU-based rules, and below-threshold contracts involve some light transparency obligations but can also be reserved below threshold for United Kingdom firms. As for who ensures a proper estimation of contract values, these are contracts, and ultimately there are remedies for rule-breaking in a contract, and wilful misestimation would be a breach of contract rules. There is also a proposed procurement review unit to monitor compliance.

As for the thresholds, they are set by the GPA, which is why they are funny figures. I am not quite sure the original currency in which they were denoted, but they are translated into sterling. They will be adjusted by negative secondary legislation when they are changed by the WTO GPA.

Above all, the Bill maintains the current exemptions in domestic procurement law and, we contend, simplifies how the exemptions are framed and ensures the terminology used reflects domestic law and current practice on the ground. The exemptions are compatible with our international obligations—in particular, those in the WTO government procurement agreement. I hope that explanation has reassured noble Lords about the necessity for Clause 2 and Schedule 2, and that they will feel content that they stand part of the Bill.

I am sorry to speak at such length, but a large number of matters were raised and, if I have missed any, I apologise to colleagues in the Committee; we will pick them up in correspondence.

Lord Lansley (Con): My noble friend should not feel he has to apologise for responding to colleagues in Committee who raised a number of points. That is precisely what we are here for, and we are grateful to him for that; he did so extremely well, and it helped us to realise some of the important links in the Bill, how it is structured and why it is structured as it is. For example, the fact that we have for a long time been signatories to the Agreement on Government Procurement, the GPA, has been reflected in EU legislation; in the absence of EU legislation or carrying it forward as retained EU law, we want our own legislation, but the GPA does not apply in the United Kingdom unless we legislate for it. That is how our domestic legislation works, and we have to have a structure to do that.

Coming back to my Amendment 3, I had not understood that the GPA itself was the basis for the interpretation of whether universities are public authorities for these purposes. Happily, I do not think it will distress universities too much, as it is a continuation of their existing situation. When we look at exempted contracts, we see that research and development and employment contracts are out, which are probably their two main elements of expenditure. I should think they would be perfectly comfortable with that.

On that basis, I will not detain the Committee any longer. I beg leave to withdraw Amendment 3.

Amendment 3 withdrawn.

Amendments 4 to 7 not moved.

Clause 1 agreed.

Clause 2: Public contracts

Amendments 8 and 9 not moved.

Clause 2 agreed.

Schedule 1 agreed.

Committee adjourned at 7.50 pm.