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HOUSE OF LORDS
OFFICIAL REPORT

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
Non-afl	Non-affiliated
PC	Plaid Cymru
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 11 July 2022

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Retirement of a Member: Lord Harrison

Announcement

2.37 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Harrison, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much-valued service to the House.

Information Commissioner's Office Report

Question

2.37 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what steps they will take to implement the recommendations of the Information Commissioner's Office report *Who's Under Investigation: The processing of victims' personal data in rape and serious sexual offence investigations,* published on 31 May.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government are committed to improving protections for victims of rape, so that they are not subjected to unnecessary and intrusive requests for information. We have changed the law to minimise requests for digital information, and we are consulting on new statutory duties to ensure that police requests for third-party material are both necessary and proportionate. We are working closely with the police and other criminal justice partners to consider the ICO recommendations.

Baroness Thornton (Lab): I thank the Minister for that Answer. It is hardly surprising that rape prosecutions fell by nearly 60% in four years, even though the number of reports to the police increased, and that the proportion of rape complainants dropping out of cases has risen from 25% to 43% over the last five years. It must be partly due to the fact that, when someone summons up the courage to make a complaint about rape, they are asked to sign a form agreeing access to any information that the police or CPS might care to go fishing for—counselling, school reports and, of course, social media. Does the Minister care to confirm whether, if a rape victim seeks support and rape counselling during the period between reporting the rape and the case coming to court, the police may also access that information if they choose? As the ICO put it, "If you don't comply, we will come back with an enforcement hat on". What is the timescale for the change?

Baroness Williams of Trafford (Con): That point about "If you don't comply" is absolutely the opposite of what the Home Office, the police and the CPS's approach will be. The aim is to encourage victims through a very clear process on whether to hand over digital information. Our aim is to have that processed within 24 hours, because it is not right that someone feels compelled to hand over their phone or feels that the prosecution will not go accordingly if they fail to do so.

Lord Paddick (LD): My Lords, yet again it appears that the law, and the rules set by the police and the CPS restricting access to rape victims' sensitive personal information, are not making a practical difference. Is this not a reflection of a culture in the police, the CPS and the courts that does not treat women fairly? What will the Government do to address this?

Baroness Williams of Trafford (Con): I cannot disagree with the noble Lord that the rape review and the things we are doing for victims now are long overdue, and that there has been a culture along the chain of letting women down. Indeed, we should be making sure, and we are, that both referrals and prosecutions go forward.

Lord Morris of Aberavon (Lab): My Lords, concern about non-disclosure of evidence was an issue a long time ago, when I was Attorney-General. The balance has swung the other way, to excessive intrusion. As defence counsel in many rape cases, there is an even more fundamental problem in ensuring that justice is done, as juries are reluctant to convict where the defence is consent. Will the Attorney-General lean on the DPP to publish statistics distinguishing consent cases from stranger-rapes, so that effective prosecutions can succeed in the former?

Baroness Williams of Trafford (Con): I think that is the whole point of the criminal justice system: that evidence that comes forward distinguishes between consent and non-consent.

Baroness Chakrabarti (Lab): My Lords, can the Minister readdress my noble friend's question about counselling? It is a real concern of women that after they have made a report, they should be able to get some help—some therapy or counselling—in the considerable period before trial. The fear that that might be exposed to a fishing expedition will affect attrition rates.

Baroness Williams of Trafford (Con): I do apologise: I only answered one part of the noble Baroness's question; I am glad that the noble Baroness, Lady Chakrabarti, has come forward. I do not know if she is aware of Operation Soteria, a process through which the victim would be supported through the system from end to end, notwithstanding the need to secure justice and the right outcome based on evidence. I believe that five forces were initially part of the pilot. There are now 14 more, so I hope this will be a way of following due process and being consistent nationally, and a model for the future.

Baroness Uddin (Non-Afl): My Lords, the Minister will be well aware, as is widely reported in the media, of children not being believed by police officers when they report rape, including in places such as Rotherham. Does she believe there are some significant changes in that pattern of behaviour by police officers in particular forces? On the question from the noble Baroness, Lady Chakrabarti, about support for women and children, organisations that offer such support, particularly those through which women support women, have been decimated. Does she believe that adequate resources are available through the Government and local authorities?

Baroness Williams of Trafford (Con): On funding, our VAWG strategy comes with a significant amount of funding. On children and Rotherham, I could not agree more with the noble Baroness. In fact, I can think of other parts of the country where the culture makes some of its leaders completely blind to what is going on under their noses.

Baroness Burt of Solihull (LD): My Lords, the Minister has already confirmed that she does not believe that the price for justice for rape victims in this country should be that their whole personal life is laid bare. It is causing victims to walk away before their case even reaches court, making them feel doubly victimised. The recommendations in this report are very modest to say the least. Why can the chief constables and the CPOs not just get on with implementing them now? Do they seriously need to be officially told to work together to implement consistent and proportionate treatment of victims—or will we just stand by as our already dismal prosecution rates get even worse?

Baroness Williams of Trafford (Con): One thing I feel a bit disappointed about is that the report does not reflect some of the powers that I know the noble Baroness was instrumental in bringing forward within the PCSC Act. They will both help to protect privacy and, I hope, improve consistency across the piece.

Baroness Fookes (Con): My Lords, no one is more concerned than I am that people who have been the victims of rape should be dealt with sensitively and properly, but could I put a point which may not prove popular here? Surely, there is always the possibility in the system that someone might make a malicious charge. It is therefore important to have sufficient evidence and if all, or a lot, of that evidence is closed off it could again cause problems and injustice for somebody else.

Baroness Williams of Trafford (Con): I totally agree with my noble friend and refer her to the comments I made earlier. Nevertheless, it is also important in that whole balancing act that people do not feel they have to hand over their mobile phones or that their prosecution will not go forward if they do not.

Baroness Bryan of Partick (Lab): My Lords, other victims of crime are not expected to hand over such sensitive information as in the case of rape; that is what is unfair. Actually, the victim in such cases can be asked to divulge far more information than the person accused. I hope the Minister can confirm that women should not expect to have personal information about the impact that attack has had on them shared with the defendant—the person who has raped them.

Baroness Williams of Trafford (Con): I hope the noble Baroness will agree that I have made that point throughout my answers. It is all about the balance between justice being served and evidence being brought forward but victims, in particular, not feeling coerced into having to do it.

Baroness Berridge (Con): My Lords, it is clear that things are complex in relation to charges of rape and the information you may or may not have to hand over. Obviously, at that moment somebody has had an enormous trauma, whether it turns out to be a criminal offence or not. Can my noble friend please outline what awareness and publicity the department is providing to make sure that women generally are aware of what you can and cannot be asked at that moment, before they are in that unfortunate situation?

Baroness Williams of Trafford (Con): What we are working towards and hoping to implement by the beginning of the next Parliament is that the process and the regulations around it are absolutely clear about what is expected of the police, and that there is training to back this up on what people will be asked to hand over. There is an aim towards it being for not more than 24 hours because for many people, it is not only their phone but their entire life.

Financial Inclusion

Question

2.48 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government what steps they are taking to improve financial inclusion in the United Kingdom.

Baroness Penn (Con): The Government want to ensure that people, regardless of their background or income, have access to useful, affordable financial products and services. To tackle financial exclusion, the Government convene the Financial Inclusion Policy Forum, which brings together Ministers, regulators, industry and the third sector to provide leadership and promote collaboration. Since 2019, the Government have allocated £100 million of dormant assets funding to support Fair4All Finance's work to improve access to affordable credit.

Lord Holmes of Richmond (Con): My Lords, does my noble friend agree that financial inclusion brings not just economic benefits to the individual but economic, social and psychological benefits to all of us? To that end, does she agree that it is high time that we revisit the question of a "have regard to" financial inclusion duty for the FCA?

Baroness Penn (Con): My Lords, I absolutely agree with the sentiments expressed by my noble friend about the importance of financial inclusion. The Government recognise that there has been strong interest

in the proposal for the FCA to be given a separate "have regard to" financial inclusion duty. However, at present the Government's position remains that the FCA's existing objectives and regulatory principles are already well aligned with the objectives of financial inclusion. We do not believe that a separate "have regard to" financial inclusion duty would necessarily lead to a different approach or tangible improvements over the current arrangements with regard to the aim that we all want to see: greater financial inclusion and less exclusion.

Lord Watts (Lab): My Lords, the Government say that they are in favour of this, but they are watching as banks close in many communities. Many poor areas have no bank, at a time when those banks have seen soaring profits. When are the Government going to act to do something about this, to make sure that people have access to banking services?

Baroness Penn (Con): My Lords, there are existing obligations, which are enforced by the Payment Systems Regulator, but noble Lords will also know that the Government are committed to legislating to protect access to cash. Those measures will be included in the forthcoming financial services Bill.

Lord Howell of Guildford (Con): My Lords, does tangible improvement include wider social ownership of assets—wider ownership of popular capitalism? At the moment, capitalism is not very popular at all. So maybe there should be some reinforcements to spread the benefits of capital, beyond those who benefit anyway because they have capital in the first place?

Baroness Penn (Con): I agree with the sentiments expressed by my noble friend. Access to capital is something that should be offered to the widest range of people so that they can benefit from it.

Lord Sikka (Lab): My Lords, the biggest barriers to financial inclusion are poverty and regressive taxation which robs people of disposable income. Some 14.5 million people already live in poverty. The poorest 10% of households pay 47.6% of their income in direct and indirect taxes, compared with 33.5% by the richest 10%. Can the Minister explain how and why the Government have created this shameful position of exclusion?

Baroness Penn (Con): I say to the noble Lord that the £37 billion of financial support offered to people this year to support them with the high costs of living has been targeted at those on the lowest incomes and those least able to pay. So the Government have taken progressive measures to help protect people against rising costs of living.

Lord Bird (CB): Does the Minister agree that if you fail 35% of our children at school, then you are going to have a lot of financial exclusion?

Baroness Penn (Con): My Lords, I agree that school is a very important place to start for people's life chances, and also their financial understanding. I am pleased to say that under this Government, the achievement gap for children at school between those in the poorest households and those in the wealthiest households has narrowed. That is something that we need to continue to make progress on.

Baroness Tyler of Enfield (LD): My Lords, pursuing the point on poverty that we have just heard about, is the Minister aware that the poverty premium—the extra costs that people in poverty or on low incomes pay for essential products or services—costs the average low-income household some £430 a year? That is the equivalent to some 10 weeks' grocery bills. Could the Minister explain why she does not think that giving the Financial Conduct Authority specific powers to tackle financial inclusion, including the poverty premium, is a good idea? I just do not understand it.

Baroness Penn (Con): My Lords, I am aware of the poverty premium: it can exist in different ways in different sectors. There is already work under way to tackle that poverty premium; for example, the other week in Questions I spoke about work in the insurance sector to ensure that those with pre-existing conditions or those who are older can access products. We are continuing to work through the Financial Inclusion Policy Forum to make sure that things such as the poverty premium are tackled.

Lord Knight of Weymouth (Lab): My Lords, according to evidence from the National Centre for Financial Education, financial habits are formed at around the age of seven. It also says that only 20% of primary schoolchildren are receiving financial education, despite personal, social, health and economic education being a compulsory subject—it is probably too wide for many teachers to cover everything that is required. What is the Treasury doing to work with the Department for Education to ensure that every child gets decent financial education from primary school upwards?

Baroness Penn (Con): Financial education is taught in schools through a number of different avenues, including the maths curriculum, citizenship education and PSHE. The Government are well aware of the importance of this topic and continue to work with the Department for Education to make sure that schools and teachers have the resources to ensure that children can learn about it.

Baroness Bull (CB): My Lords, following on from the question asked by the noble Baroness, Lady Tyler, about the poverty premium, which sees those who can least afford it being forced to pay more for essential goods and services, what are the Government doing to work with energy providers to prevent them charging more for electricity that is accessed via a pre-payment meter?

Baroness Penn (Con): My Lords, pre-payment meter customers are covered by the price cap, so they receive protection from that, but they pay a higher rate, which Ofgem believes is necessary to reflect higher operational costs and risks. However, a robust set of rules is in place to protect pre-payment meter customers, ensuring that, if suppliers identify that they are in a vulnerable situation, including where they are self-connecting or self-rationing their supply, they must be offered additional

[Baroness Penn]
support credit. In doing so, suppliers must also consider people's ability to pay back that credit. So a robust set of support is available to people in that situation.

Lord Forsyth of Drumlean (Con): My Lords, although the Government have done well in reducing the taper rate, is it not still the case that people in work on universal credit are paying an effective marginal tax rate of 55%, which is 10% more than the highest-paid people in the country? So, while we are talking about tax cuts, as we appear to be doing in the Conservative Party at the moment, would it not be a good idea to reduce the effective marginal tax rate of those who are poorest in order to encourage people back into work and to encourage those who are in work to value their contribution to society?

Baroness Penn (Con): I agree with my noble friend's sentiments. As he pointed out, a cut to the taper rate of universal credit is essentially a tax cut for those on the lowest wages, and it makes sure that the incentives are aligned for them to take on more work and bring home more money. So I totally agree with him, but I cannot speculate on any future policies in that direction.

Lord Tunnicliffe (Lab): My Lords, I congratulate the noble Lord, Lord Holmes of Richmond, on his tenacity on this subject, which has made this fact stand out to me: 22% of adults have less than £100 in savings. They are not just unlucky; they are victims of the policies of firms, ranging from car parks to banks, to reduce costs and hence make more profit. We need a comprehensive and holistic approach, and the Government are going some way down that road, but the Financial Inclusion Commission wrote to Mr John Glen, setting out a comprehensive way forward, including the concept of a "have regard" duty on the FCA. Is that letter being responded to, and how does it fit in with the Government's general approach?

Baroness Penn (Con): My Lords, I am sure that that letter will be responded to, although I take this opportunity to pay tribute to the work of my honourable friend John Glen, to whom the letter was addressed, as Economic Secretary to the Treasury. He has done a huge amount in post to promote financial inclusion, and I reassure noble Lords that that work will continue. For example, the FCA has consulted on its new consumer duty. The noble Lord referenced those who do not have access to savings. Of course, the Government have the Help to Save programme to ensure that those who are on lower incomes get more support to save so that they have a financial buffer for when times are tough.

Broadcasting Sector White Paper

Question

2.59 pm

Asked by ***Baroness Bonham-Carter of Yarnbury***

To ask Her Majesty's Government how their white paper *Up Next—the government's vision for the broadcasting sector*, published on 29 April, will support (1) original British content, and (2) the creative industries in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, as set out in the White Paper, the Government are taking action to support British broadcasters and our creative industries more widely. Among other things, we are supporting original British content by including it in a new and more focused public service remit for television. We will continue to support our highly skilled and innovative creative industries through world-leading creative sector tax reliefs and by protecting the UK's hugely successful terms of trade regime.

Baroness Bonham-Carter of Yarnbury (LD): I thank the Minister for his reply. Our PSBs are the backbone of our creative industries; they support original British content, talent, skills and exceptional journalism. Does the Minister agree that this will become increasingly difficult as BBC funding continues to be depleted, coupled with the commitment to sell Channel 4 off? This is something that the independent film, TV production and advertising sectors are against. Will the Minister accept that pursuing this is completely inappropriate, considering that it is deeply unpopular among the industry and the public—92% of those responding to the Government's own consultation were against it—it is not a manifesto commitment, and the noble Lord is now a Minister in a caretaker Government? I see no mandate there.

Lord Parkinson of Whitley Bay (Con): My Lords, it remains the policy of Her Majesty's Government to ensure that our public service broadcasters are equipped for the decades ahead. As we have discussed, although we may disagree on this issue, I hope all noble Lords agree that Channel 4 needs the investment to be able to compete with the American streaming giants. I look forward to debating this more with noble Lords.

The BBC will continue to receive around £3.7 billion in annual public funding, which allows it to deliver its mission and public purposes.

Lord Fowler (CB): My Lords, does the present political interregnum not give the Government the opportunity to think again about their whole broadcasting policy—and not just for television? If they are pushing ahead, will the Minister say what the Government's future policy is on supporting BBC Radio, which still has a massive audience in this country—and abroad, for that matter—and today serves us well in its reports on the Ukraine conflict?

Lord Parkinson of Whitley Bay (Con): The noble Lord is absolutely right about the vital role played by BBC Radio, including both national and local radio stations. I greatly enjoyed the programme last night celebrating the centenary of *The Waste Land*, which, like the BBC, turned 100 last year. That is the sort of distinctly British content that only the BBC can provide. I am sure that any incoming Prime Minister and Administration will see the same challenges that beset the BBC and Channel 4 in continuing to do their excellent work in an increasingly competitive field. They would want to address things such as the declining number of people paying the licence fee for the BBC and Channel 4's reliance on live advertising to ensure that they continue to be sustainable in future.

Lord Vaizey of Didcot (Con): I congratulate my noble friend the Minister on staying in his post; he is a sea of calm amid a frenzy of turbulence. I also congratulate the Government on the broadcasting White Paper; I know my noble friend the Minister had nothing to do with it, but it is a truly excellent piece of work. I thought I would be dramatically changing the subject, but the noble Lord, Lord Fowler, already raised the importance of radio. I point out that radio is one of our most successful creative industries, so can my noble friend the Minister update us on the progress of digital radio, where Britain leads the world?

Lord Parkinson of Whitley Bay (Con): I am conscious that I still have many years to go to equal my noble friend's length of tenure in office. The Government remain committed to legislating to give effect to the conclusions of the 2017 consultation on radio deregulation as soon as parliamentary time allows. We are also very keen to continue the co-operation between the BBC and both commercial and community radio, as the digital radio and audio review encouraged.

Lord Wigley (PC): My Lords, the Minister will be aware that Wales has a vibrant television and film industry and that back-to-back films have been exported to over 100 countries. Given that ministerial responsibility for the creative arts in Wales is devolved but that for television is not, will he ensure that S4C is adequately funded to maximise the benefit that comes from this sector?

Lord Parkinson of Whitley Bay (Con): The forthcoming media Bill will remove the current geographic broadcasting restrictions so that S4C can broaden its reach and offer its content on a range of new platforms throughout the UK and internationally. The recent funding settlement ensured that S4C was able to continue the work that is much valued in Wales and more widely.

The Lord Bishop of Chichester: My Lords, the Government's *Up Next* policy paper claims that

"public service broadcasters … develop skills and talent, drive growth right across the creative industries".

Will the Minister undertake to widen the Government's vision for broadcasting to ensure that we also hear how skills and talents will be developed among pupils, students and young performers and designers when at present curriculum incentive and public investment are so often lacking in this area in our schools, colleges and universities?

Lord Parkinson of Whitley Bay (Con): The right reverend Prelate points to an important issue in talking of skills. The British Film Institute has looked at this very carefully and published its film and high-end TV skills review at the end of last month, which we strongly welcome and look forward to discussing with the industry to see how it engages with the findings. The Government are doing their bit by, for instance, the new pilots of flexible apprenticeships and through our regular support of more than £2 million a year to the National Film and Television School.

Lord Bassam of Brighton (Lab): My Lords, given that the current cost of living crisis is problematic across all sectors and can have a particularly adverse impact on the creative industries, which are sensitive to changes in economic conditions even without the continued fallout from the pandemic, what assessment has the department made of the impact of inflation and energy price increases across the whole sector, whether on huge production companies, small venues or the dedicated workforce that keeps the show on the road?

Lord Parkinson of Whitley Bay (Con): We talk about inflation and energy bills with all the sectors and industries that the DCMS has the privilege of representing. I spoke about them this morning at the Imperial War Museum when I visited it. Our settlement for the BBC will, as I say, ensure that it continues to receive around £3.7 billion in annual public funding, which will allow it to deliver its mission and public purposes.

Viscount Colville of Culross (CB): My Lords, I declare an interest as a television producer. The White Paper gives the public service broadcasters the right to move their content to less-watched digital channels. Can the Minister confirm that if Channel 4 is privatised, the new owners—and any other public service broadcaster—will have the right to move, say, "Channel 4 News" to a digital channel such as E4, or even a specially set up obscure digital channel?

Lord Parkinson of Whitley Bay (Con): These details and more will be set out in the media Bill, which I look forward to debating with noble Lords. Giving Channel 4 the freedom to diversify its revenue streams as well as to address issues such as the intellectual property of the content it provides are important in making sure that it can continue to compete in the years to come.

Lord McNally (LD): My Lords, very few people agree with the Minister's analysis or the solutions he has put forward for either Channel 4 or the BBC. I put it to him again that it would be far better to withdraw this rather ill thought-out White Paper and allow the new Secretary of State coming into office in September to look at these matters afresh. If he does not think that there will be a new Secretary of State, would he like to take a bet on it?

Lord Parkinson of Whitley Bay (Con): My Lords, it remains the policy of Her Majesty's Government to take forward the work that went into the White Paper.

Baroness Fraser of Craigmaddie (Con): My Lords, the independent television sector in Scotland is worth more than £300 million to our economy. I declare an interest as a board member of Creative Scotland. Why do a Conservative Government propose to undermine the successful and growing business model of entrepreneurial producers to create a bureaucratic, grant-giving, centrally directed levelling-up fund, and how would that fund support the regional production centres in any way more efficiently or successfully than the current ownership model of Channel 4?

Lord Parkinson of Whitley Bay (Con): My noble friend points to the success of independent production companies that are privately owned. We want to ensure that Channel 4, whose remit was to promote that

[Lord Parkinson of Whitley Bay]
important sector 40 years ago, is able to continue to commission from those companies at a time when costs are going up because of the greater budgets and commissioning spending of the American streaming giants.

TRIPS Agreement: Vaccines

Question

3.10 pm

Asked by ***Lord Browne of Ladyton***

To ask Her Majesty's Government how, and to what extent, the temporary waiver of provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), agreed at the World Trade Organization's Ministerial Conference on 17 June, will expand access to current and new vaccines, given that it does not include a waiver of trade secrets.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the consensus-based agreement reached at the WTO's 12th ministerial conference streamlines compulsory licensing processes for developing countries to manufacture and export Covid-19 vaccines while preserving the incentives to innovation that the international IP system provides. We welcome that the agreement does not undermine the existing IP framework, which has been key to the effective response to the pandemic.

Lord Browne of Ladyton (Lab): My Lords, regrettably, the Minister's Answer—I do not blame him for this as he was probably following his brief—did not address the issue that, without the inclusion of a waiver of trade secrets, essential access to critical manufacturing know-how and clinical data, and therefore to the ability to manufacture new vaccines, is denied. Why is this our Government's policy, and why did our negotiators, who spent 18 months resisting this waiver completely, try to weaken the text further by requesting the deletion of the reference to the possibility of expanding the agreement in TRIPS on Covid-19 to include therapeutics and diagnostics in six months' time? Who on earth instructed them to do that?

Lord Callanan (Con): I disagree. This is a very good agreement, and the Government have seen no evidence that IP rights, including the protection of undisclosed information or trade secrets, are any barrier to accessing treatments for Covid-19. The problem now is that we are seeing supply effectively outstrip demand, with the current level of vaccine production. There is evidence—reports of a South African Covid-19 vaccine plant being at risk of closure because it has no orders, and the Serum Institute of India halving production of AstraZeneca's vaccine due to no new orders.

Baroness Sugg (Con): My Lords, I hear what my noble friend the Minister says around supply now but, if all the vaccines that the G7 committed to had been donated in 2021, around 600,000 lives would have been saved. I would like to ask about the finances. The UK has delivered some of the vaccines that it committed to, but I understand from the *British Medical Journal* that the Government have charged donated vaccines to the aid budget at much more than they paid for them, which has meant that there have been further cuts to life-saving UK aid programmes. Why have the Government counted each vaccine as £3.26 of aid spending, despite paying just £2.30 for doses in the first place?

Lord Callanan (Con): I thank my noble friend for the question. All vaccine dose donations will be reported as official development assistance and be included in the 0.5% total. Expenditure for 2021 has been published in the UK *Statistics on International Development*, and by the OECD Development Assistance Committee. In 2021, we donated 30.8 million doses of AstraZeneca, which we reported at cost in line with the DAC guidance.

Lord Hannay of Chiswick (CB): My Lords, what are the Government doing to prepare for when the next global pandemic comes along, to make sure that there is better and more equitable distribution of vaccines to developing countries? If this is such a wonderful agreement, why were we the last people to accept it?

Lord Callanan (Con): The noble Lord makes a very good point, of course. The best answer to future vaccine development is achieved by preserving the intellectual property system. It is a good, consensus-based agreement that all member states can go along with, and a good agreement for vaccine manufacturers and developing countries.

Lord Boateng (Lab): My Lords, under the existing intellectual property system, as of June this year 72.9% of people in high-income countries have been vaccinated with at least one dose of Covid-19 vaccine whereas only 17.94% in low-income countries have been vaccinated. The UN special rapporteur on discrimination and the Office of the UN High Commissioner on Human Rights have attributed this directly to the existing TRIPS intellectual property system. What is the moral justification for that?

Lord Callanan (Con): My Lords, I think the noble Lord is wrong: the problem is not with vaccine production, as there is now an excess number of vaccines being produced; the problem is with the healthcare systems of individual countries that are unable to store, distribute and inject those vaccines, which is why we are working with developing countries to help them with that. We know that this is the case because of the problems we had rolling out the vaccine in this country, which of course has a very advanced healthcare system. I repeat the point: the problem is not with vaccine production, as there are already excess vaccines being produced; the problem is with the healthcare systems in those countries which enable them to be distributed and put into peoples' arms.

Lord Purvis of Tweed (LD): So why was it that the Government cut by nearly 60% their support for countries to have the health systems to distribute the vaccines when they became available? Why was it that when countries needed the vaccines, at the early stage of

this, the Government vehemently opposed this move at the WTO? Returning to the question of the noble Baroness, Lady Sugg, can the Minister be very clear as to whether vaccine support is within or over and above the 0.5% cap? In March, in relation to a donation to Bangladesh, the Government said:

"The cost of this donation has been funded through UK Overseas Development Assistance and will come over and above the ODA spending target of 0.5% of GNI if needed."

That is not what the Minister just told the House, so which is it?

Lord Callanan (Con): The position is as I repeated to my noble friend Lady Sugg: all vaccine dose donations will be reported as overseas development assistance and be included within the 0.5%. I think the noble Lord is being very unfair about the UK's support. We are in fact a leader of international support in response to the pandemic; we have spent more than £2.1 billion since 2020 to address its impacts and that includes up to £829 million to support the global development, manufacture and delivery of vaccines, treatments and tests in lower-income countries.

Lord McNicol of West Kilbride (Lab): My Lord, the deal agreed at the WTO conference obviously fell short of what was initially proposed. Even after 18 months, discussions on extending the waiver to treatments and tests have been postponed again by another six months. Surely sharing clinical data and research on vaccine production is in our own self-interest, but a poor substitute would be having a relationship with or speaking to the pharmaceutical industry. Have Her Majesty's Government had any representations with British pharmaceutical corporations to try to bypass the obstacles that exist?

Lord Callanan (Con): The UK Government have regular meetings with pharmaceutical companies. Of course we want to see the maximum amount of support offered to lower-income countries. I just outlined the support we are providing, but we agreed at the meeting to a consensus-based decision that does not waive IP rights but streamlines the processes for developing countries using compulsory licensing to produce and export Covid-19 vaccines.

Baroness McIntosh of Hudnall (Lab): My Lords, I have been listening very carefully to what the noble Lord has said so far; I did not hear him answer the question that the noble Baroness, Lady Sugg, asked him, which was about the difference between the price that was paid and the price that was charged for the vaccines. Will he have another go at explaining that difference?

Lord Callanan (Con): I did answer the question but let me repeat the answer. In 2021, we donated 30.8 million doses of AstraZeneca—

Noble Lords: Oh!

Lord Callanan (Con): If noble Lords would listen—which we reported at cost, in line with the DAC guidance.

Baroness Chakrabarti (Lab): My Lords, this question of intellectual property is going to be really important in future pandemics. It is not absolute. We gave up liberties. People stayed at home and did not go to work. All sorts of sacrifices were made. Why cannot big pharma make its little bit of sacrifice as well?

Lord Callanan (Con): It is making sacrifices. I agree with the noble Baroness about the sacrifices that have been made, but if we want big pharma and the private sector to invest, then we need to preserve the intellectual property regime, because next time it will require billions of pounds of investment, production and research. That is best achieved by preserving the intellectual property regime, but we need to make sure that developing countries have access to these vaccines, which we have done. Many of these countries do not have the facilities, the knowledge, the expertise or the know-how to produce these vaccines.

Baroness Bryan of Partick (Lab): My Lords, developed countries have been accused of aligning themselves with the narrative of the pharmaceutical industry. Does the Minister accept that the development of these vaccines was not dependent on the innovation of the private sector, but rather came out of public investment and research? Can he explain why these companies were allowed to influence these vital discussions?

Lord Callanan (Con): The noble Baroness is partly right; of course, there was substantial public research, but we needed the facilities in the private sector to help with the development, production and distribution of those vaccines. It was a partnership. The House is eager to criticise big pharma, but AstraZeneca produced all these vaccines at cost and donated many of them to the third world; it has done a fantastic job, for which we should be grateful.

Coronavirus: New Cases

Private Notice Question

3.20 pm

Asked by ***Baroness Merron***

To ask Her Majesty's Government what assessment they have made of the recent rise in Covid cases across the UK to 2.7 million infections over the last week.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): We continue to see Covid-19 case rates and hospitalisations rise in all age groups, with the largest increases in hospitalisations and ICU admissions in those aged 75 and older. A large proportion of those hospitalised are admitted for reasons other than Covid. However, Covid is identified due to the increase in case rates in the community and the high rates of testing in hospital, including among those with no respiratory symptoms. Current data does not point to cases becoming more severe.

Baroness Merron (Lab): My Lords, with a stark rise in infections, many people—particularly the clinically vulnerable, carers and older people—are feeling anxious, yet the Government have been noticeably silent, perhaps

[Baroness Merron]
being somewhat distracted. We might be through the worst of Covid but evidently it has not gone away; individuals, organisation and businesses still want guidance. I have two questions for the Minister. Are the Government planning any campaigns, perhaps involving scientists and others, to highlight current risks and to encourage the take up of booster jabs? Are there plans to reintroduce mandatory mask wearing in hospitals, which the chair of the JCVI considers sensible?

Lord Kamall (Con): I have to strongly disagree with the noble Baroness when she says that the Government are doing nothing. We are reliant on the UKHSA, which monitors rates and gives us advice, along with the JCVI. In my briefing from the UKHSA, it said it is continuing to monitor cases. As many noble Lords will remember, when we announced the living with Covid strategy we said that we are always ready to stand up measures should case rates rise so much that our health system was under pressure. We managed to break the link between infections and hospitalisations and hospitalisations and death; if that gets out of control then of course we will stand up the measures that we had previously.

Lord Paddick (LD): My Lords, why do the Government not reintroduce free Covid tests for everyone in England and financial support for those who do the right thing and self-isolate, especially in the face of the cost of living crisis?

Lord Kamall (Con): The noble Lord will be aware of the different balances and trade-offs that the Government have to consider. At one stage, I think we spent £2 billion in a short period on testing, and a number of people in the health system said that surely that money would be better spent elsewhere, given the backlog due to lockdown. It is always a difficult trade-off on where you spend the money. At the moment, there are people who are still eligible for free tests: certain social and healthcare workers, and also people visiting and some carers. All this will continue to be monitored. Should the number of cases spiral out of control, clearly we would look to reintroduce free testing at some stage, should that be needed.

Lord Cormack (Con): My Lords, Covid is clearly here to stay. As we will be into autumn within two months or thereabouts, what plans do Her Majesty's Government have to give a dose of the vaccine to everyone in autumn along with the flu vaccine?

Lord Kamall (Con): My noble friend raises a very important question. We are waiting for advice from the JCVI, coming later this week, on the autumn programme. There have been various reports, but we are waiting for confirmation of whether it will be the existing cohort of 75 and over, 70 and over, or whether it will be given to wider groups. That is being considered and will be announced later this week.

Lord Bilimoria (CB): My Lords, the Minister mentioned £2 billion being spent in a month on Covid tests, which includes PCR tests as well. What proportion of that £2 billion was spent on lateral flow tests? If necessary, looking down the road to this winter, are the Government prepared with vaccines, free lateral flow tests for businesses and citizens, and the antiviral programme? Are we ready just in case?

Lord Kamall (Con): We continue to monitor the situation. The Secretary of State and I have regular meetings with the UKHSA, which tells us about the various issues of concern. Noble Lords will know about the outbreak of monkeypox in certain communities and the discovery of the polio vaccine in sewage, though not leading to cases. Clearly, we constantly talk about Covid cases. We are monitoring numbers, and the UKHSA looks at the ONS numbers as well. We are planning for the autumn, but we also have plans should the number of infections start leading to hospitalisations and possibly deaths.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, my noble friend Lady Merron is absolutely right: this appears to be creeping up on the Government unawares. The level is going up and is particularly high in Scotland. The last time around, there was a lot of confusion, because different reactions were evident in Scotland, Wales, Northern Ireland and England. In order to deal with this quickly and in a co-ordinated way, can I ask the Minister to get together the Chief Medical Officers of all four countries as quickly as possible to come up with a plan?

Lord Kamall (Con): The noble Lord will be aware that health policy is devolved. There are times when the devolved Administrations want to go their own way and not follow England—

Lord Foulkes of Cumnock (Lab Co-op): That does not matter.

Lord Kamall (Con): I am sure the noble Lord will have been in meetings with the devolved Administrations; sometimes they want to go their own way. For example, when we reduced some of the measures in England, the devolved Administrations were sceptical of what we had done. When the data showed that the measures left in place in Scotland were no more effective than us removing some of those restrictions, it demonstrated exactly why, although we talk to the devolved Administrations all the time, we also respect the devolved settlements. We have to agree to disagree at times.

Baroness Altmann (Con): My Lords, does my noble friend agree that we have lived with flu all our lives? I completely agree with his assertion that if this illness is not proving more deadly than illnesses we have lived with for a long time, what would be the purpose of upsetting the economic recovery and causing so much extra cost to the public purse—unless, as he rightly says, serious hospitalisation cases and deaths were to increase suddenly?

Lord Kamall (Con): My noble friend makes a very important point. You always have to look at these things in the round and you have to look at the trade-offs. Many noble Lords will recognise that, when we went into lockdown, there were build-ups in many parts of the NHS backlog and an increase in people

suffering from mental health issues—the numbers were even larger than they were before—so clearly, we have to look at this as a trade-off. We have a living with Covid strategy. We constantly get updated by the UKHSA, which is looking at all this data. We are ready to stand up should we need to.

Lord Stirrup (CB): My Lords, the recent welcome inroads into NHS waiting lists are now being reversed. What plans do the Government have to ensure that, as Covid pressures mount, over the winter in particular, crucial NHS services and diagnoses are sustained—particularly, for example, early diagnoses of cancers?

Lord Kamall (Con): The noble and gallant Lord makes a very important point: we have to continue with the living with Covid strategy, and keep an eye on the Covid cases, but also be aware that we need to clear the backlog, and that people have missed appointments. One of the things we are doing is looking more at diagnostics. Many noble Lords will be aware that about 80% of the waiting list is people waiting for diagnosis. Of those waiting for surgery, about 80% of them do not need to stay overnight in hospital. We want to make sure that we get the right balance between monitoring what is going on with Covid and at the same time clearing the backlog.

Lord Hunt of Kings Heath (Lab): My Lords, the noble Lord just talked about clearing the backlog. He said earlier that the incidence rise is now leading to increased hospitalisations. What impact is that having on the backlog?

Lord Kamall (Con): I asked that very same question when I had the briefing with UKHSA officials earlier, and they said they are still focusing on the backlog. If it gets to a point where it is affecting the backlog, clearly measures may well have to be introduced.

Lord Scriven (LD): My Lords, I declare my interest as in the register as a non-executive director of Chesterfield Royal Hospital NHS Foundation Trust. Following on from the last two questions, last year, the Government awarded £6 billion extra to the NHS to deal with Covid cost pressures. There was an assumption that there would be no Covid in the NHS by June, and all funding stopped. In the light of rising cases and the issues caused by the pressures, will the Government reinstate NHS Covid money? If not, this will eat into the day-to-day budgets of our NHS.

Lord Kamall (Con): As I said, we are keeping everything under review. We called our strategy *Living with Covid-19* as opposed to "We've Got Over Covid-19" because we knew it could come back at any time. We have seen that, with the omicron variant, some medication is less effective. We continue to monitor that, and we are ready to stand up the measures that may be needed if the number of cases dictates that, on the advice of the JCVI and the UKHSA.

Lord Patel (CB): My Lords, we all agree that the numbers are increasing by the day. Can the Minister say what is driving this rise in numbers? Are particular groups driving the rise, and if so, is the policy based on that information?

Lord Kamall (Con): We are finding that vaccination is clearly the best way to break the link between catching Covid and hospitalisation. Sadly, a large part of our population still has not been vaccinated. Even with the third booster, 80% of that age group have come forward but 20% of the older age group still have not done so. We are trying to target groups that have not yet been vaccinated to make sure that we offer them the best protection possible.

Lord Hamilton of Epsom (Con): My Lords, does my noble friend think that an inquiry will be carried out into the Covid pandemic, and if there is one, does he think that it will prove that every mutation has made this virus more transmissible but less lethal?

Lord Kamall (Con): Undoubtedly there will be an inquiry; in fact, the Government announced that there would be one. There will also be lots of independent inquiries and academics writing about what different countries got right and got wrong. When speaking to my friends who are Health Ministers in other countries, we all say that, looking back, there are things that we could have done differently, in various ways, if we had had that knowledge. But we also have to be very careful about the fallacy of hindsight, and of saying that we would have acted differently had we been in that situation. We can learn from hindsight, and we need to make sure that we do so for future pandemics.

Baroness Ritchie of Downpatrick (Lab): My Lords, will the Minister take up the offer made by the noble Lord, Lord Foulkes, of a meeting of the four chief medical officers of the regions and nations of the UK to explore further possibilities and solutions in relation to Covid? Only last week in Northern Ireland I heard two separate virologists indicating that to reduce the advisory limit for self-isolation to five days was a dangerous precedent because many people in that group would remain positive, thereby spreading Covid in their local area. In view of that and the rising levels of Covid and other respiratory viruses, will the Minister immediately talk to his ministerial colleagues and set up such a meeting?

Lord Kamall (Con): One of the things we do in the Department of Health and Social Care is to have regular meetings with our counterparts in the devolved Administrations—all the Ministers do. The noble Lord, Lord Foulkes, shakes his head, but I can tell him that we regularly have meetings with the devolved Administrations. I commit to go back to the department and see who is next due to have a meeting with their devolved counterparts, and ask whether we can put Covid on the agenda.

Lord Winston (Lab): Does the Minister agree that his dismissal of hindsight is one of the most useless ways of looking at this? Surely with continuing infection like this, hindsight is really important, and we should be looking all the time to see how we can change our practice.

Lord Kamall (Con): I was making the point that there is the benefit of hindsight but also the fallacy of hindsight. The benefit is that we learn from mistakes we made in the past. We learn from previous actions

[Lord Kamall]
what worked and did not work, particularly in a local context. Some of my friends in other countries tell me that what we did in England may not necessarily have worked in their country, and vice versa. There is also the fallacy of hindsight, when people say that in the same situation, 18 months or two years ago, they would have done something completely different with the information we had then. That is what is known in social sciences as the fallacy of hindsight.

Lord Morse (CB): My Lords, I just want to be clear about something. One mistake we made before was not paying attention earlier to predictive modelling from the NHS. Are we sitting on any information that we are getting from the NHS now about what exponential rate may occur in this virus? Please can the Minister reassure me on that.

Lord Kamall (Con): We rely on data from the UK Health Security Agency. It monitors this, and looks at ONS data, data on hospitalisations and the capacity of the NHS to absorb the increase in patient numbers if there is one. That is where we take our advice from and that is what would trigger future action, should it be needed.

Baroness Fox of Buckley (Non-Afl): My Lords, I confirm that there is anxiety about the rise in Covid cases, but less about the virus itself than a worry that politicians might reintroduce some of the over-the-top restrictions that led to such collateral damage during the past two years. Hindsight or not, I make the point that people are nervous. Very specifically, will the Minister comment on the fact that, for example, some care homes are using the rise in Covid cases to lock down homes and carry on restricting visits with relatives—which we now know is damaging the mental and physical health of so many elderly care home residents, who suffered so inhumanely, not from Covid but from our response to it? Will he encourage those care homes to open up and be a bit more confident?

Lord Kamall (Con): I start by paying tribute to the noble Baroness for her championing of civil liberties issues and making sure there was a debate on them. I will, with pleasure, take back her point on care homes to my ministerial colleagues who are in charge of social care.

Supply and Appropriation (Main Estimates) Bill
First Reading

3.36 pm

A Bill to authorise the use of resources for the year ending with 31 March 2023; to authorise both the issue of sums out of the Consolidated Fund and the application of income for that year; and to appropriate the supply authorised for that year by this Act and by the Supply and Appropriation (Anticipation and Adjustments) Act 2022.

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Business of the House
Motion on Standing Orders

3.37 pm

Moved by ***Lord Ashton of Hyde***

That, in the event of the Energy (Oil and Gas) Profits Levy Bill having been brought from the House of Commons, Standing Order 44 (*No two stages of a Bill to be taken on one day*) be dispensed with on Wednesday 13 July to allow the Bill to be taken through its remaining stages that day.

Motion agreed.

Business of the House
Motion on Standing Orders

3.38 pm

Moved by ***Lord Ashton of Hyde***

That, in the event of the Supply and Appropriation (Main Estimates) Bill having been brought from the House of Commons, Standing Order 44 (*No two stages of a Bill to be taken on one day*) be dispensed with on Wednesday 13 July to allow the Bill to be taken through its remaining stages that day.

Motion agreed.

UK Infrastructure Bank Bill [HL]
Third Reading

3.38 pm

Moved by ***Baroness Penn***

That the Bill be now read a third time.

Relevant document: 2nd Report from the Delegated Powers Committee

Baroness Penn (Con): My Lords, before we progress with Third Reading, I shall make a very brief statement on legislative consent in relation to the Bill. My officials have worked closely with their counterparts in the devolved Administrations throughout the set-up of the bank and the passage of this Bill. All three Administrations have welcomed the establishment of a national infrastructure bank. The bank has also been developing its own relationship with the devolved Administrations and their institutions—for example, the Scottish National Investment Bank. I am pleased that the bank has now completed a deal in all four nations of the UK. We continue to discuss the requirements for legislative consent with the devolved Administrations, and I am grateful for their continued engagement on this. I beg to move that the Bill be read a third time.

Motion agreed.

3.39 pm

Motion

Moved by ***Baroness Penn***

That the Bill do now pass.

Lord Tunnicliffe (Lab): My Lords, much has happened since last week's Report stage, when your Lordships passed two sensible amendments. These changes would considerably strengthen the Bill's climate and levelling-up credentials, ensuring greater external support for the bank and its work.

The Prime Minister has rightly said that the business of government must go on over the coming weeks and months. In that spirit, I hope that the Treasury will reconsider its opposition to these amendments. This will ensure that the next Prime Minister gets a stronger Bill on the statute books. If Ministers, whether the current crop or their successors, do not like the current wording, they are welcome to change it. However, simply overturning the amendments would show poor judgment. The economic picture has become gloomier, while dealing with the climate and biodiversity crisis is ever more pressing. Through this revised Bill, the bank can play an important role in both battles, supporting the creation of good jobs and doing more to protect nature. When one of the many leadership hopefuls assumes the office of Prime Minister, these issues must be at the front of their mind.

Until then, I thank the noble Baroness, Lady Penn, and the noble Viscount, Lord Younger of Leckie, for taking this Bill through its Lords stages. They have been ably supported by a range of Treasury officials, to whom I am also grateful. I am even more grateful to my Labour Party policy adviser, Dan Stevens, for his invaluable advice and help.

In the meantime, I wish the bank well as it continues to find its feet and comes to its initial investment.

Baroness Kramer (LD): My Lords, obviously my colleagues and I support the creation of the UK Infrastructure Bank. We regret that it does not have the genuine operational independence that was a clear statutory characteristic of the Green Investment Bank, which was sold off by this Government as soon as the coalition ended, but we are where we are.

The work of this House has improved the Bill significantly. The Government amended it to provide absolute clarity on the UKIB's role in supporting investment in energy efficiency; we thank the Minister for that. Noble Lords from all sides of the House also supported further changes to establish that the bank's objectives extend to nature-based solutions in a circular economy. I hope that the Government will not attempt to reverse these meaningful improvements.

However, the Bill has followed what has become a consistent government thrust: diminishing Parliament and enhancing the power of the Executive; I will not repeat all our previous arguments about Henry VIII powers and the power of direction. The Government have promised to amend the framework document by the end of the year to assure us that not only the directions, including their content, but any objections made by the bank to such directions, including letters of reservation, will be made public. This transparency is vital; I thank the Minister personally for making sure that we got a meaningful response to this issue with a commitment not just to removing the gagging clauses originally in the framework document but to ensuring full transparency through the publication of the relevant documents.

I thank the Minister and her team for their openness and willingness to meet. I thank Peers around this House who worked together to get improvement—they are too many to name—but I believe that the Government's nightmare is an amendment in the name of the noble Baroness, Lady Noakes, supported by the noble Lords, Lord Tunnicliffe and Lord Vaux, the noble Baroness, Lady Bennett, and me.

Last of all, I thank my own ranks. I thank Sarah Pughe and Mo Souidi in the Whips' Office, who provided us with organisation and backing. I thank my noble friends Lord Sharkey and Lord Teverson, who brought their particular and extensive expertise to bear on this Bill; they have earned and enjoy the respect of this House.

Baroness Penn (Con): My Lords, I thank all noble Lords for their constructive approach to each stage of this Bill. In particular, I thank the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Kramer.

The level of scrutiny and debate on the Bill demonstrates the importance of the bank's mission and has served to demonstrate once again the expertise of this House on topics from corporate governance through to the definition of infrastructure and our target for tackling climate change. Although this is a short Bill—something that may be welcomed—it is an important one given the bank's potential to deliver a step change in tackling climate change and supporting levelling up through supporting the development of high-quality infrastructure across the whole of the UK.

I am therefore pleased to see the Bill progress towards becoming law, supporting the bank to become a fully-fledged, operationally independent institution able to deliver on its mandate as agreed by this House. I thank noble Lords on all Benches for working constructively on this both during debates and in the many separate discussions that I have had on this Bill.

Finally, I recognise the work of the parliamentary counsel in drafting this Bill and in supporting its passage so far. I also thank the House staff, the excellent Bill team, and my noble friend Lord Younger for his support. I am not alone in this House in looking forward to seeing the impact of the bank's investments in improving the vital infrastructure of this country. I beg to move.

Bill passed and sent to the Commons.

Australia Free Trade Agreement

Motion to Take Note

3.45 pm

Moved by ***Baroness Hayter of Kentish Town***

That this House takes note of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, laid before the House on 15 June.

Relevant document: 4th Report from the International Agreements Committee (special attention drawn to the agreement)

Baroness Hayter of Kentish Town (Lab): My Lords, I thank and pay tribute to the very recent Trade Minister, the noble Lord, Lord Grimstone, who worked very closely and openly with the committee, not just to facilitate our access to documents and briefings and to answer our many questions, but to negotiate within Whitehall that very welcome exchange of letters on how future trade deals will be handled. Of course, his resignation, rather different from the other 60, except for that of the noble Lord, Lord Greenhalgh, took place on Friday, and was not to get rid of Prime Minister Johnson but was a result of Mr Johnson's leaving. In the Lords, we always do something a little different.

Having gone through four Ministers when I was dealing with Brexit on the Front Bench, and having now lost a Trade Minister in my new role, I am beginning to take this slightly personally. However, I welcome the noble Viscount, Lord Younger, to the wicket. I hope that he found time during the Wimbledon finals—sorry, Australia—to peruse the 2,000-page document on the Australia deal, and that "team Grimstone" will be there to help him answer our many questions.

This debate is important for three reasons. First, and most obviously, it is the first time that this House has debated a new, post-Brexit trade deal which is not just a rollover from our EU days but is a from-scratch, non-European trade agreement. Secondly, it gives the House a chance to consider the deal within the Government's wider diplomatic, defence, foreign affairs, environmental and domestic objectives—at least, it would be good to debate it within that context if only the Government had set out a trade policy which went wider and beyond the nebulous "global Britain", which is simply about more trade. Thirdly, again from it being a novel agreement, and the first since 1973 for which our Government have had responsibility and come to our committee, it gives the House the opportunity to consider whether our ability and our powers to scrutinise negotiating objectives and the resultant deal are sufficient for the task given to us.

Beginning with the first of those points, the actual deal: how do we assess it? The International Agreements Committee welcomes the agreement, especially the provisions facilitating trade in services, including financial and legal services; mobility; digital; consumer protection; and its support for SMEs. In particular, improved mobility for UK professionals seeking to work in Australia, a new framework on mutual recognition of professional qualifications, and the ban on data localisation, are all likely to be beneficial. We note, as the Government acknowledge, that the expectations of increased trade are not enormous—0.08% of GDP by 2035—and only very slight in goods, given that existing Australian tariffs are already very low.

However, the deal has other advantages, not least in helping pave the way for the UK's potential entrance into the CPTPP. It was right for the Government to prioritise Australia as a segue into that. However, we queried whether the desire for speed reduced the chance of obtaining more from the negotiations, and we highlighted the fears of many in our farming communities, particularly in Wales, Scotland and Northern Ireland, that they may have been sold short, with safeguards for their produce insufficient for the new competition they could face, particularly given the differences in Australian farming practices.

It is true that Australia's focus on Asia might mean that our farmers will be insulated from competition from this deal, but there is a fear that the unconditional approach to removing agricultural tariffs could set a precedent. If a similar approach with the US, Brazil or Argentina had a cumulative effect, it could be damaging to our farmers and our wider agri-food sector. Although the TAC and the FSA/FSS—food standards and all of that—did not raise any significant worries about food standards and safety, the impact of increased competition on vulnerable farming communities remains of concern.

More time in negotiating might also have enabled our negotiators to obtain more on climate than is in the deal with what is now, of course, the former Australian Government. Given that the new premier and his Government are far more sympathetic to tackling climate change, we have urged Ministers to seek more ambitious moves in this direction through the joint committee set up under the deal. More generally, the desire for a quick result, and with a trusted ally, might have led to Australia's very clear trade objectives and focus giving them a better deal than perhaps we could have obtained.

I turn to my second point. Given that this is the first deal negotiated from scratch, it provides an insight into the Government's vision for post-Brexit trade. However, the committee finds it regrettable that the agreement cannot be placed in the context of a published trade policy and thus be understood in relation to other policy priorities, such as on climate, or in line with our diplomatic or defence alignments, or indeed with the Government's own desire to safeguard their right to regulate for public policy reasons, including the promotion of public health and morals.

Since all trade deals involve trade-offs and compromises, Parliament needs to be able to judge the outcome of any FTA against the Government's overall objectives, but these need to be set out in an agreed policy with Parliament and made publicly available. We asked Ministers a year ago to set out their ambitions for trade in this new era. Without such a framework, Parliament cannot judge the success or otherwise of a trade agreement. The Government demurred, leaving us scratching our heads as to the extent to which any outcome meets the Government's wider objectives for their trading partnerships.

This may not matter so much with Australia—it is a friendly nation and a close ally, with which we already have extensive and pretty much free trade—but not all future deals will look like this. Following the invasion of Ukraine, with its impact on global security, food security, supply chains and vulnerabilities, just-in-time processes, our environmental commitments, and the need for strong, resilient relations with friendly states, such an overarching framework is even more urgent. Furthermore, as Russia, perhaps alongside China, has devalued any commitment to a rules-based global order, on trade or anything else, the UK needs to ground its trading and international relations firmly in a trusted, ordered and rules-based environment. That is what we need the Government to spell out.

Our committee is not alone in seeking a proper trade framework. The International Chamber of Commerce says that the UK has an opportunity to design a trade policy that creates an economy that is prosperous, fair and green. It should not be difficult for Ministers to lay out their trade ambitions, acknowledging their wider global objectives. Much is scattered around among various official documents listing the Government's commitment to universal human rights, the rule of law, fairness and equality as guiding

"all aspects of our international policy, including our approach to trade"

—so they say it sometimes, but not in that framework. Indeed, the DIT's strategic approach for a deal with Mexico highlights its commitment

"to uphold … high environmental, labour, public health, food safety and animal welfare standards"

and the interests of "consumers, producers, and businesses".

Given the annunciations emanating from Anne-Marie Trevelyan, why the resistance to publishing the objectives and red lines as a trade policy? Such a benchmark would help us understand how the emerging agreements with individual American states, such as the one with Indiana, and those with India and the Gulf fit into the picture and embed respect for human rights and the environment within them. Without a trade policy against which we can rank any deal, what exactly are we are meant to conclude?

Thirdly and lastly, in this new trading environment is our committee, on behalf of the House, able to scrutinise trade deals effectively? The answer is yes and no. In the case of Australia, the Government gave us three months with those 2,000-odd pages—delivered to me on Boxing Day—to study, take evidence and report, but the Act requires only 21 sitting days. That is impossible for any trade deal. We would like the Minister to give us an assurance that months, rather than days, will be available to us to do the job we have been given.

In addition, we are uncomfortable as to whether the devolved Governments have sufficient input into trade agreements that impinge on their competences. We also lack environmental impact assessments. Indeed, we do not have sufficiently granular impact assessments even to judge the Government's projected outcomes, let alone to test these against other data or to hear from independent analysts of the likely impacts.

Above all, of course, the Lords can only opine on a deal. Even the Commons can only delay ratification. This is far less traction than the European Parliament, the US Congress or other legislatures have. Yet if parliamentarians are excluded from greater oversight of agreements with major impact on people's lives, we risk worsening public concerns about trade impacting negatively on some sections of society. If we believe in free and increased trade, as we do, any lack of trust in it cannot be a good thing.

While we welcome the Grimstone rules and the Grimstone commitment to a debate on negotiating objectives, which we saw in action on CPTPP and expect to have with our report on India, that offer came too late for this set of negotiations. We hope to have greater input in future. We are delighted that this first opportunity to report to the House is on a deal with a friendly, reliable ally and that the agreement, with some hiccups, is one we can endorse. I thank our committee and secretariat for the amazing work they have done on this, and the witnesses for their input and insight. I beg to move.

3.59 pm

The Duke of Montrose (Con): My Lords, I offer congratulations to the noble Baroness, Lady Hayter, on securing this debate. I am sure that anybody who has read the report will have something to say about it. I declare my interest as a member of the NFU in Scotland, a former president of the National Sheep Association and a long-term sheep farmer.

The UK-Australia Free Trade Agreement has, inevitably, been a baptism by fire for the Trade and Agriculture Commission. The fact that the International Agreements Committee's report, including at paragraph 70, states that its findings in a limited number of areas were mainly positive makes one wonder whether it has an adequate remit to do the job that we expect of it. The briefings I have had from several agricultural bodies said quite the opposite. In its call for evidence from the agricultural community, the TAC's main question was whether the agreement would affect the maintenance of the UK's regulatory standards in animal or plant health, welfare or environmental protection. From that, it appears that we have is a regulation and agriculture commission and not a Trade and Agriculture Commission. Would my noble friend the Minister not agree that the remit should ensure that greater emphasis is placed on trade for any future reports?

The only reference to agricultural trade that found its way into the report we are debating today is the government estimate that the agreement would lead to a 0.07% drop in gross value added for agriculture, forestry and fishing. Then it mentions that the fall expected in the price of beef and sheep products is up to six times that value. As far as I can see, most sections of the agricultural industry have made their excoriating views known whenever they had a chance. The NFU's brief sums it up by saying that it is a one-sided deal, with Australians achieving all that they ask for and British farmers sacrificed for political gain.

There are great misgivings at the promise of achieving a zero-tariff regime for this and subsequent trade deals, though presently it will be cushioned by a 16-year lead-in period. Even in our agreement with the EU, where we have a much more level playing field, if we exceed our tariff rate quota for beef, I believe we would be subject to a 20% tariff. Can my noble friend the Minister say whether the most favoured nation rules of the WTO will mean that any agreement hereafter with other countries will be required to follow this pattern, or will zero tariffs be the rule?

The report states that the Trade and Agriculture Commission's findings were mainly positive. This might be true for the criteria at the level of carcass meat imports we can expect from Australia, but it may not take long before we see producers beginning to press for more of the animal welfare and climate change standards that apply in that part of the world to apply to our production here. I will give two examples. First, our animal health standards are enforced by law. In

[The Duke of Montrose]
Australia, at the federal level, they have only non-binding guidelines. In the deal, we have undertaken not to go back on ours, so their animals in fields do not have to be checked every day, whereas we have the cost of doing so. Secondly, in the agricultural community we have been subject to constant reductions in animal transport times and distances, as many noble Lords will know, so that some areas cannot sell their stock unless they break the journey for livestock with an enforced rest period. The RSPCA found that in Australia sheep and cattle are transported for up to 48 hours in hot weather, sometimes without food or water, to mention only two of the anomalies. What hope can my noble friend the Minister offer that the Australians will be anxious to move towards our restrictive practices when they are quite happy with what they have now and the agreement states clearly that they should be under no obligation to do so?

The same thing applies to our regulations and undertakings on environmental issues. When I attended the COP 26 in Glasgow this summer, we were treated to a stream of UK Ministers and under-Ministers telling us that the country was going to be in the forefront in achieving the Paris Agreement, and telling everyone else that they should do so. Yet when we come to conditions for an agreement on investment and services, all that flies out the window and we have an agreement at the level we see in this treaty.

4.05 pm

Lord Oates (LD): My Lords, I declare my interest as a member of the UK hydrogen commission. It is a pleasure to speak in this debate and, as a member of the International Agreements Committee, I pay particular tribute to our chair, the noble Baroness, Lady Hayter, and to our committee clerk Jennifer Martin-Kohlmorgen and her team for producing such an informative report.

I regret that the noble Lord, Lord Grimstone, has stood down from his ministerial post, although, like the noble Baroness, Lady Hayter, I am surprised that it was because Boris Johnson was leaving rather than because he was staying—a decision entirely beyond my comprehension, I have to admit. Nevertheless, the noble Lord was a capable Minister who engaged constructively with our committee, and we will miss him in our deliberations.

I intend to focus most of my remarks on the environment chapter of the Australia FTA but, before I do so, I want to touch briefly on the wider context of the deal and the circumstances in which it was concluded. We are debating this free trade agreement against the backdrop of a catastrophic decline in the UK's trade performance. Just last month, we learned that the current account deficit stood at a staggering 8.3% of GDP in the first quarter of 2022—the worst figures ever recorded. This has further weakened sterling and added to upward pressures on inflation.

As Howard Dean, the former candidate for the Democratic presidential nomination, once remarked:

"Unfortunately, 'I told you so,' is an incredibly unsuccessful campaign slogan".

Of course, he is correct, yet the Brexiteers in this House and the other place cannot be allowed simply to slip away from the devastating consequences they have inflicted on our country and its economy; nor is it any good for them to try to blame Covid for our woes, because our trade performance is shocking not only in absolute terms, it is even more so in comparative terms. The Government's own assessment predicts that the UK-Australia FTA will have a positive impact on GDP, as we heard from the noble Baroness, Lady Hayter, of 0.08%. This is a welcome, albeit modest, contribution to our national wealth but it hardly lives up to the deluded imperial nostalgia of the Brexiteers, who seem to think that the old empire was just waiting to fill the trade gap left by Brexit.

The biggest impact of the FTA, as we heard from the noble Duke, the Duke of Montrose, will be found in agriculture, where tariffs will, in effect, be removed altogether, albeit with some emergency brake safeguards. The clear beneficiary of this part of the deal is Australia because it is a major agricultural producer gaining access to a much bigger market, and because UK farmers already had tariff-free access to the Australian market. Of course, all trade deals are trade-offs and, I hope, mutually beneficial ones. But with such a major concession on offer to Australia, it is regrettable that the UK conceded a potentially strong negotiating position by making its desperation for a deal so glaringly evident.

One area where we could and should have insisted on more progress is in relation to the environment chapter. There were certainly positive aspects to this chapter—for example, as the report notes, the RSPCA's evidence to our committee stated that the language on the conservation of marine ecosystems was particularly good—but, none the less, stakeholders viewed the chapter overall as, at best, a missed opportunity.

Certainly, the contrast between the respective chapters in the New Zealand and Australia FTAs, which is highlighted in our report, is stark, particularly in respect of fossil fuel subsidies, carbon pricing and trade in environmental goods. Notably, the Australia chapter does not include specific reference to the temperature goals of the Paris Agreement, which, it is reported, were taken out on the insistence of the then Australian Government.

Although the UK's impact assessment finds that UK-based production emissions should remain largely unchanged, our Government do not seem to have taken enough account of the dangers of carbon leakage and the reliance of the Australian power sector on dirty coal. As the noble Baroness, Lady Hayter, has said, we urged the Government in our report to take advantage of the election of the new Australian Government to look at this chapter again.

The evidence we received from a range of stakeholders indicated concerns about the precedents that this FTA could set in future trade agreements with trade partners with low environmental standards, such as the United States and Brazil. The lack of an overall trade policy means that the Government do not seem to be gaming the impacts that concessions to achieve quick-fix FTAs such as this one will have on our future negotiating position. It is hard to imagine the US, for example, agreeing to a future trade deal that had more onerous environmental demands that those agreed with Australia.

In addition, the Government did not take advantage of the opportunity to conclude agreements on green technology and on green energy co-operation. One area we might have looked at is green hydrogen. This is an area where mutually beneficial agreements might have been arrived at, given that the UK is the home to cutting-edge technology—we have in Sheffield ITM Power, which is one of the world's leading manufacturers of electrolysers used in hydrogen production—and Australia has huge interests in hydrogen production through solar and wind. But these sorts of opportunities seem to have fallen victim to the desire for a quick deal, rather than a comprehensive deal.

Given that the UK's net zero commitment is a legally binding obligation on our Government, it follows that it must be their central policy objective over the years to 2050. But somebody needs to inform the trade department of this fact, so that environmental objectives are not seen as a "nice to have" but are regarded as central to our trade policy.

As a liberal free trader, I conclude by welcoming this trade agreement, despite its flaws. However, I hope that as this is our first full trade deal post Brexit, the Government will take the time to absorb the negotiating lessons they have learned, and in particular that they will recognise the need in future not to appear such an eager, if not desperate, suitor. I hope that in his reply, the Minister will reflect on which lessons the trade department intends to take on board as a result of these negotiations—the first, as the noble Baroness, Lady Hayter, said, conducted by a British Government since 1973.

I hope the Government will also recognise that improving our trade position will require much more than a flurry of quick-fix trade deals. It requires an overarching policy—as the noble Baroness, Lady Hayter, stressed—that has a strong focus not just on concluding trade agreements but on trade promotion and building the enduring relationships with business and with countries around the world that help sustain and nurture trade and investment. At the moment, too many nations regard us as an unreliable partner, unwilling to enter into real partnerships or engage on equal terms.

Our country and economy are in deep, long-term trouble: productivity is stagnant, GDP growth is anaemic and in the G20, only Russia's economy is predicted to fare worse than ours. Our trade position has deeply deteriorated. None of this will be fixed by the fantasy economics that most of the Tory leadership candidates seem determined to peddle. Unless we are able to restore our trade position and provide a concerted solution to the structural problem of low productivity, we will find ourselves an ever-poorer and more unhappy country.

4.15 pm

Baroness Liddell of Coatdyke (Lab): My Lords, I draw attention to my entry in the register. I am involved with a number of Australia-facing organisations, not least as a non-executive director of the Australian Chamber Orchestra. Having said that, I do not look at the situation of our trade deal with Australia through rose-tinted spectacles—I will come to that later. I pay tribute to our chair and our previous chair, the noble Lord, Lord Goldsmith, and to the team of civil servants and advisers who have helped with the complexity of this—we are doing these trade deals for the first time in a very long time.

A week is a long time in politics. The shenanigans of the past week affect all of us, and it is not for me on this side of the House to cast aspersions elsewhere, because everyone who is involved in the political process has suffered as a consequence of what has happened over the past few weeks. This spotlight on British politics affects all of us: there are questions about professionalism, integrity and competence. Every one of us now has to show that we live by the Nolan principles and that our partners can deal with us, knowing that we are not just competent but ethical, which is why we have to adopt a serious and informed view of trade deals such as this.

I want to get rid of the hyperbole that has surrounded the publication of this deal. It is historic—okay, it is the first one, so that is fair enough. But, frankly, if a Conservative Government in the United Kingdom cannot not do a deal with a Conservative Government in Australia, no doubt with some Australians who have a right to British citizenship—more of that later—they should give up the ghost.

Hyperbole comes up when we discover how much has been left out of the agreement. Previous speakers' points on the climate emergency—notably those of the noble Lord, Lord Oates—and the problems with animal welfare brought up by the noble Duke, the Duke of Montrose, are really serious. I agree with much of what the noble Duke said; standards are lower.

I will tell a funny story that my colleagues will know. I made the point that we have limits on how long a beast can travel for. As the noble Duke, the Duke of Montrose, pointed out, a beast can travel for 48 hours in Australia in heat above 40 degrees, which makes today's weather here seem cool. The response was: Australian cows are tougher than British cows. I thought that that was a joke, and it was perhaps a mistake to laugh at it. It is also extremely interesting that one of the big holes in this deal is climate change. The deal was done with a climate-sceptic Government, but that Government no longer exist: they were voted out to a very large extent because of the position they took on climate change.

Returning to hyperbole, it is important to note that Australia is 10,000 miles away and has a population of about 25 million, so the impact it can have on our economy is limited. My noble friend—and he is a friend—Lord Goodlad has a postcard that shows the United Kingdom as part of one county in New South Wales. It is a huge country with economies of scale, particularly in relation to agriculture, that we cannot even conceive of. I agree with the point made by both the noble Lord, Lord Oates, and our chair that GDP is estimated to go up by 0.08% by 2035. That is £2.3 billion, which the MoD and the Scottish Government could probably spend in a morning. These are not the kinds of sums that we are looking to see coming back to our economy.

Throughout all our hearings, the NFU has been particularly critical of this deal, bearing in mind the economies of scale that Australia can have. The Government claim that UK consumers prefer British

[Baroness Liddell of Coatdyke]
products. Well, if you go into a shop and only have a pound to spend because of the cost of living crisis, you are not going to spend it on British products sold at £2; you are going to have to buy what you can afford. This is one of the consequences of the cost of living crisis: people are not able to choose what they want; they must buy what they can afford. The growing cost of living crisis will affect that. The real fear among farming communities is that the Australian deal could undercut the UK industry, especially if Australia is frozen out of Asian markets. That could happen; there is an intense dispute between Australia and China, and a real risk that Asian markets could be opened up. Why did the Government not insist that increased access to the UK market should mean adherence to the core standards that the noble Duke, Lord Montrose, talked about on the environment and animal welfare?

Back to hyperbole again: I am sceptical about the CPTPP—the trans-Pacific partnership. This deal has been done with countries that have agreed to a set of principles not all of which are aligned to what we in Britain would seek to have. Also, it is at the other end of the world, and we are joining it because we left our neighbours. Our neighbours were in a deal to which we contributed, and now we are saying, "We want to sign up to the CPTPP". I will have to get a whole lot of new evidence that the CPTPP will work for us, and that we will be accepted into it. The deal on acceptance may be completely different from anything we can sign up to.

During the negotiating period, the UK signed up to AUKUS, the nuclear submarine deal. Where will that fit into this deal? The rumours are that the US will get the lion's share of contracts.

One of the most exciting things that has happened in the past six weeks is that the new Government in Australia are not climate-sceptic. Has contact been made with the new Australian Government to reopen the discussions on climate change, maybe even getting them to commit to limiting the global average temperature increase to 1.5 degrees centigrade? Here, as in Australia, no Government can bind their successor. That is something we should be moving on now, and not at some point far into the future. The Rudd Government signed the Kyoto Protocol within days of being elected in the mid-2000s; why could the Albanese Government not have been asked to reopen the climate change sections that are so absent from the existing deal?

Coal is a driving force in Australia. In the UK, we are establishing a real lead in carbon capture, storage and use. Years ago, development programmes took place in the Latrobe Valley in Victoria. Why is that not included in the deal? Some years ago, a carbon capture and storage international programme was started in Australia, long before the climate-sceptic Morrison Government came on the scene. There are opportunities there for British business, and I should say that I am president of the Carbon Capture and Storage Association here in the UK. We are in a position where we can move into the leadership on carbon capture and storage, and there are many jobs tied up with it.

Noble Lords will be delighted to know that there are some parts of the agreement that I am actually very happy with. I am very happy with the professional services deal, and hope that many new opportunities will open up to British business. We benefit particularly here in London from many Australian professionals, many not needing visas as they have dual nationality, which is very popular in Australia—except in Parliament where only Australian citizens may sit. Frankly, the Home Office has a very busy time before elections while everybody who is a candidate revokes their British citizenship, and a very busy time after elections when those who have not won go and take up their British citizenship again.

That is how close the relationship is and I hope it is something we can build on; it is one area where hyperbole is uncalled for. With Australia we are among friends, as the noble Baroness, Lady Hayter, pointed out. But the flowery language used to justify a trade deal that could have been so much better is uncalled for. Now with a new Government in Australia, it is time to get that deal augmented without resort to hyperbole. It is a deal that we can work on, but the Government need a commitment to look hard at what Britain really needs, not headlines about doing the first trade deal.

4.27 pm

Lord Kerr of Kinlochard (CB): It is a pleasure to follow the noble Baroness, Lady Liddell. She is always trenchant and always expert and was extremely popular in Australia when she was high commissioner there; she is popular at this end too. I follow her part of the way. I certainly follow her in her tribute to the noble Baroness, Lady Hayter, for conducting our debates with such skill and style and, as usual, pinching all the points I was going to make today—although I am sorry to tell the House that I will make them all the same.

I pay tribute to the noble Lord, Lord Grimstone of Boscobel, whose dialogue with us, although it was not always very deep, was carried out with impeccable courtesy at all stages. I also had the feeling that he might know what he was talking about and that he might have liked to tell us a bit more than he was allowed. I hope that he will be back in order that I can test my theory.

If this report is a good one, and I think it is, that owes a great deal to the help that we in the committee had from our clerk, Jennifer Martin-Kohlmorgen, and our policy analyst, Andrea Ninomiya. My thanks to them.

I am less critical of this agreement than most of those who have spoken so far. The key point to make for perspective is that it is no big deal. The Government themselves maintain that its economic effects, although probably positive—trade liberalisation usually is—will be extremely marginal. In my view, it is not a bad deal; liberalising is generally a good thing to do, and there are genuine gains in this agreement for UK exporters of services.

On goods, of course, there is absolutely no doubt that the deal massively favours the Australians, principally because their own tariffs were already very low. It was hailed in Australia as splendidly asymmetrical, and their negotiators were congratulated on achieving the impossible. They believe that the greater market access

that they have secured here for their agriculture producers will result in economic gains to them—so they share some of the views that the noble Duke, the Duke of Montrose, put forward. They would argue that the hill farmers in Scotland, Wales and Northern Ireland are right to be concerned about this deal. I think that the hill farmers are right to be surprised about it, because there was no attempt to prepare the ground—it came as a shock to them—but I do not believe that they will be hard hit in the end because, for Australia, the Asian market will always be the principal one for farm products. It is a pretty inexorable rule in trade in goods that trade halves as distance doubles. Overall, this deal is no big deal but no bad deal.

I would hope that the Minister in replying to this debate would be briefed to reply to some of the questions that we raised in our report. The two that I would particularly like to hear an answer to are the questions that we asked in paragraph 34 on data adequacy and in paragraph 42 on investor-state dispute settlement, where the policy of the Government simply is not clear to me. But my concern about the agreement was more about what it did not say than what it did say, and more about the unsatisfactory features of the process that produced it.

I shall make three points, one specific, one general and one purely about process. First, on the environment chapter, of course the noble Baronesses, Lady Hayter and Lady Liddell, and the noble Lord, Lord Oates, are right that the environment chapter is extremely disappointing. I agree with him that the contrast with the New Zealand deal is quite striking. The New Zealanders signed up to work with us on carbon pricing and reduction of fossil fuel emissions, but there is nothing comparable in the deal with Australia. Yet, as has been discussed, in other parts of the agreement we conceded quite a lot to the Australians; they are not necessarily very damaging, but those concessions were seen as considerable in Australia. I do not know what price we got for them, but it certainly does not look as though we got a price in the environment chapter.

I do not understand why we pressed ahead to do the deal with the Morrison Government, who had demonstrated at COP 26 that they did not attach a very high priority at all to reducing carbon emissions; they attached a higher priority to maintaining a massive coal export industry. As the noble Baroness, Lady Liddell, said, the polls showed that the Morrison Government were in trouble and an election was coming up, and the wildfires had caused the Australian public to be more concerned about global warming and emissions reduction. Maybe we did try to extract a price—but why did we give up? Why did we not wait to see whether the polls were correct and the Labor Party were going to come in with a very different approach to environmental policy? I do not know the answer to that; it looks like a mistake, but I hope that the Minister can elucidate.

Of course, it is not possible now to make our concessions in this agreement contingent on Australian action on the environment—the deal is the deal, it is written down and there is nothing we can do about it. One of the oddities of our scrutiny system is that we are allowed to debate it only when we can do nothing about it; still, that is where we are. I echo the noble Baronesses, Lady Hayter and Lady Liddell, and the noble Lord, Lord Oates, in saying that I hope we are, nevertheless, in discussions with the Albanese Government about whether, in addition to this agreement, there can be some new UK-Australian agreement to work together on climate change.

My general point springs directly from that specific one. I do not know—I do not think any of us knows—what view the Government take on linking trade deals to wider non-trade policy objectives. We do not know because the Government have not published a trade strategy or any hierarchy of priorities. We can deduce one or two things. We can deduce from what has been said in other contexts that the Government's number one priority in trade deals is securing greater access for service exports. I do not disagree with that. We can also deduce from what has been said in other contexts that the Government would not do a trade deal with a country demonstrating egregious contempt for human rights—okay. That is about as far as we can go, I think.

I was puzzled to hear the outgoing Prime Minister saying in April that he wanted a full free trade agreement with India done and dusted by October—with remarkable speed. In other words, there was no question of any linkage with Prime Minister Modi's policy on Ukraine. The Indian Government refused to criticise the invasion which happened in February or to join in any sanctions, yet our Prime Minister in Delhi in April was saying, "Let's go steaming ahead and do as wide a free trade deal as we can by October." I genuinely think that the Government need to tell us to what extent trade policy is to be joined up with foreign policy, environment policy, energy policy, human rights policy or development policy. I think, and I think the general view in this House is, that they need to be mutually supportive. I am a free trader, but I do not think that trade liberalisation can be ring-fenced overriding all else. Napoleon was wrong: we are not just a nation of shopkeepers, but we need to demonstrate that with a strategy that links our trade objectives to wider objectives and sets out a hierarchy of priorities.

My last point is that chapter 8 of this report points out that something is still not quite right in our trade negotiators' relationship with the devolved Administrations. It is well illustrated by the alarm in Edinburgh, Cardiff and Belfast about the tariff reductions on farm products, which so alarmed the noble Duke, the Duke of Montrose. The Welsh Government told us that

> "as the setting of tariffs is a reserved matter, limited information is shared with Devolved Governments and we were unable to have meaningful discussions with UK Government on this issue … This lack of discussion makes it difficult for us to ascertain whether our interests in this area are being protected as negotiations progress."

That is a very fair point and I think the UK Government owe the Welsh—the Scots say much the same—an answer. The friction with the devolved Governments was clearly not a priority for the outgoing Prime Minister, but I hope it will get more attention from his successor and that the Government will drop the absurd objection, encapsulated in paragraph 147 of our report, where they say that

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"sharing information on tariff liberalisation … could jeopardise overall negotiations."
That is the reverse of the truth; it is not just wrong, it is absurd. It is extremely useful for a negotiator to be able to point out that a proposed concession could cause serious problems back home; it is extremely useful if one wants to reject it and even more useful if one aims to extract a higher price for it. Having an informed instructing constituency back home strengthens one's negotiating position; it does not weaken it. It also avoids surprises of the kind that clearly struck the hill farming community when the deal with Australia took place.

I believe that the devolved Administrations should have been represented in the negotiating teams that negotiated with Australia, at least on farm products. They should be represented in the teams that negotiate—if such negotiations happen—on agriculture with Canada, Mexico, Uruguay, Brazil and, of course, the United States. These countries—which are much closer—will offer much greater competition to our farmers if tariffs come down. It would also make sense for wider reasons: to heal this running sore in Whitehall's relationship with Belfast, Cardiff and, particularly, Edinburgh. I am sure that the noble Viscount, Lord Younger, will take this point on board more than most, and I very much hope that he will take it back to Whitehall.

4.42 pm

Lord Robathan (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Kerr, with whom I used to sit on this committee. We sparred a little; he particularly did not like my suggestion that smoking in the committee should be banned, even when it was on Zoom. But never mind—I think other members of the committee will understand that.

I, like him, am broadly philosophically a free trader—not totally, but broadly philosophically one. I thought I would be the first person speaking in this debate to welcome the free trade agreement but the noble Lord, Lord Oates, welcomed it, albeit with quite a few reservations. I do welcome it, wholeheartedly. The report, which I have read is mostly—this is not meant to be condescending—extremely sensible and raised some very reasonable points.

I was on the committee at the beginning of the investigation. It was extremely well chaired by the noble and learned Lord, Lord Goldsmith, and I regret that he has felt the need to stand down from the House of Lords because of rather controversial issues about declarations. I thought he was a really good chairman and extraordinarily balanced. I am sure the noble Baroness, Lady Hayter of Kentish Town, is similarly balanced and a good chairman, but I have no experience of that.

I shall just explain why I left the committee, which is slightly illustrated by this debate. I left because I was too often the sole voice on the committee who wanted the trade agreements to work. I am afraid that too many on the committee wanted to see post-Brexit trade deals fail because they wanted Brexit to fail. I found this extremely sad because I am interested in the good of this country, not in party-political—or whatever—machinations.

This UK-Australia trade deal is far from perfect—we have heard about a lot of the defects in it—but please show me a free trade agreement that is perfect. When we were in the European Union, the EU agreements were extraordinarily torturous and slow, often reaching no conclusion at all, not least because they were trying to satisfy 26 or 27 members of the EU. They were looking after French farmers, for instance, which is more important in the EU than the benefits of a free trade agreement to consumers and society as a whole.

I am a farmer, as declared in the register of interests, and I know things can be very hard. However, interestingly—I would like my noble friend to confirm this when he sums up—I understand that the current quotas of beef and lamb imported into the UK from the antipodes are not nearly filled, so this free trade agreement will not make things worse. I have to say that some of the arguments being advanced have echoes of the corn law debates.

The common agricultural policy—of which we all have experience in one way or another—is very expensive, extremely disruptive to agricultural communities and, frankly, madness. Surely it is better to be out of that. I would love to hear somebody among those who will speak later defend the common agricultural policy. It has hugely harmed the agricultural sector in so many ways—I agree that perhaps it needed sprucing up, but, nevertheless, it really has.

Climate change has been much mentioned. I have been banging on about climate change and environmental issues since I got into the House of Commons, 30 years ago. When I first mentioned climate change, it was thought to be a rather eccentric obsession; it is not anymore. However, I have to say that the report is somewhat nitpicking on the issue of Australian coal. I agree with the sentiment, but those with nostalgia for our imperial past may not have realised that Australia is a sovereign country now, not one of our colonies, so it is up to Australia to decide what to do. Yes, we can lobby for it, but hold on, how many of us are not wearing something—in my case, it is my socks and shirt—that were not made in China?

Lord Purvis of Tweed (LD): Me.

Lord Kerr of Kinlochard (CB): Me.

Lord Robathan (Con): Are the noble Lords sure? They should check where their shirts were made—or perhaps they are Jermyn Street only.

China is belching forth fumes from coal-fired power stations, yet we have the belt and road initiative pouring goods into our country from China. We do not very often hear people saying, "Well, we can't possibly let those in because the Chinese are using so much coal".

I am going to tell one illustrative story about the committee, which perhaps explains why I left. Tony Abbott seems to have fallen by the wayside, but he was touted as an adviser. At one meeting, this was mentioned, and he was roundly slagged off for not knowing anything and, even worse, for being conservative. I think it was the next week that George Brandis, the high commissioner, came to speak to us. I had done a bit of research and knew that George Brandis had been in his Cabinet, so I asked—innocently, as always—

whether he thought that Tony Abbott's advice could add anything to our free trade agreement. He said, "Tony Abbott? Fantastic guy; absolutely brilliant. He knows so much about trade". If it is possible on Zoom to see crests falling, I can promise your Lordships that there were a lot of crestfallen faces around.

In summary, I found being on the committee a less than edifying experience. I am sorry about that, because I thought it would be really interesting. However, I think the report is fairly balanced and makes some very good points. It is a pity that there was not greater enthusiasm in the report, or on the committee, for a free trade agreement, however imperfect, because, like the noble Lord, Lord Kerr, I think that free trade benefits everybody. The agreement was reached quickly—perhaps too quickly, indeed—but it was for the benefit of this country and its people, and for the benefit of Australia as well.

4.49 pm

Lord Morris of Aberavon (Lab): My Lords, I will restrain myself from commenting on the published taxation proposals of candidates for the Conservative leadership, save to say that Charles Dickens might have wickedly asserted that there was the smell of an Eatanswill election. I am pleased to tell the House that I am not aware of any personal taxation temptations in this agreement. However, this is an important agreement with Australia—the first trade deal, from scratch, post Brexit.

First, have we prioritised speed of the negotiation at the expense of the UK's leverage to negotiate a better outcome for the environment? Could we have had some influence on Australia's use of coal? Have the agreement and the report by the committee on which I served been overtaken by a change of Government in Australia? Will the Government use the joint committee to explore possible changes in the environmental and climate change provisions in the agreement? It is an important issue and the machinery is there, so do they intend to use it?

Secondly, although hitherto the amount of beef inputs to the UK have been small, there is no guarantee that there will not be an upsurge in the future. Are the provisions, criticised by the farming organisations and referred to in a trenchant speech by the noble Duke, the Duke of Montrose, sufficiently robust to deal with what may happen over the next 10 to 15 years? As in the report, I declare my non-financial interests in the occupation and livelihood of many members of my family.

Some Australian commentators have called the agreement a win-win result for Australian agriculture, with some envisaging the prospect of a tenfold increase in beef exports. Proximity and practice have meant that, hitherto, Far Eastern markets have been more attractive to Australia. However, I note a recent 38% decline in beef exports to China for political reasons. Have the Government taken this possibility properly on board? I would not wish, as a former MP and a representative of consumers for 41 years, to be unduly protective, but it is obvious to some that if this agreement is used as a template for an agreement with New Zealand, British agriculture could be adversely affected. It is beyond argument that there is nothing in this agreement for British agriculture, and I am sure that the noble Duke will agree with me on that.

My third point is more specific, on whether the agreement will be used generally for our entry into the CPTPP—the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Will it be the template for general negotiations? Frankly, I am much more concerned about the dangers of a substantial increase in New Zealand lamb inputs, however desirable this might be, to cushion gaps when our lamb is not available. As always, the danger lies in untimely, unregulated excessive imports. In the post-Brexit era, there is a case for a proper agricultural policy on imports which would both ensure the prosperity of British agriculture and take advantage of cheaper imports for the British housewife. I assert that livestock rearing is more important in the devolved nations than in many other parts. I compare the size of the average farming unit in the antipodes with those in this country; the advantage of size and climate should make us wary of uninhibited imports.

I again mention my dissatisfaction expressed in earlier debates with the degree and manner of the Government's involvement with the devolved Governments—the noble Lord, Lord Kerr, has referred to this already—and repeat my rejection of the Government's defence for not forwarding the views of those Governments because of the danger of jeopardising the Government's negotiation with other parties. The committee has therefore been driven to seek the views of the devolved nations directly.

It is not on to operate in this way, when agriculture has been devolved and when any negotiations in this field can have a tremendous effect on the culture of the nations that I am interested in. The Government must start afresh by taking the views of the devolved nations into account. If they maintain the defence that that would jeopardise their negotiating position, could we not be told in confidence, and then the committee could make its proposals known so that the House could take a view? There is no basis whatever for this defensive attitude.

My last point is to welcome the Government's commitment to produce monitoring reports of the agreement every two years, as well as an evaluation report after five years. I hope the House will consider my reservations about some aspects of this agreement.

4.55 pm

Lord Bilimoria (CB): My Lords, I paid full credit to the Department for International Trade for having rolled over more than 66 EU bilateral free trade agreements in time for the transitional period. As president of the CBI at the time, I was proud to play a role in making that, including the Canada deal, happen. The UK-Australia free trade agreement is the first the UK has negotiated from scratch since leaving the EU and was signed on 16 December here in the UK and, because of the time difference, on 17 December in Australia.

It will always remain to be seen how trade flows will be affected once implementation of an agreement takes place. I am sure the Government will agree that

[Lord Bilimoria]

is it is one thing signing a free trade agreement, it is another ensuring that businesses in both countries make full use of them and are aware of all the provisions and improvements in the FTA. What plans do the Government have to communicate those benefits to businesses here in the UK, in particular? Organisations such as the CBI will have a major role to play in that.

I congratulate the noble Baroness, Lady Hayter, and the International Agreements Committee on its report, *Scrutiny of International Agreements: UK-Australia Free Trade Agreement*. It clearly states:

"Imports from Australia will lead to greater consumer choice, which is welcome. Consumers could also benefit from lower prices for imported goods."

The Secretary of State, Anne-Marie Trevelyan, has described the agreement as

"historic … setting new global standards in digital and services and creating new work and travel opportunities for Brits and Aussies".

Of course, it will help create new opportunities for businesses in both the UK and Australia.

For example, it gives guaranteed access to bid for an additional £10 billion-worth of Australian public sector contracts and allows young people—and "young" has been extended from 18 to 35—to work for three years unrestricted in each other's countries. The New Zealand free trade agreement now also has this provision, which I am delighted to hear. For the first time, UK service suppliers, including architects, researchers, accountants, lawyers and scientists, will have access to visas to work in Australia without being subject to Australia's changing skilled occupation list. This is more than Australia has ever offered to any other country in a free trade agreement. The big thing about this is that it removes all tariffs, making it cheaper to sell our products, including Scotch whisky, to Australia, and for Australian wines to come over here. So that is a big aspect, and I do not think people appreciate that the UK has traditionally been the second-largest services exporter in the world, so it is very important for us.

This is, in my view, the most comprehensive free trade agreement in the world. It covers many different areas, which I shall go into, including 32 chapters, from trade in goods to trade remedies, rules of origin, trade facilitation, customs procedures, financial services, investment, the environment, trade and gender equality, dispute settlements and an impact assessment—and it has the first-ever dedicated innovation chapter in any free trade agreement in the world, which is fantastic news.

The Government's impact assessment estimates that this agreement could increase trade between the UK and Australia by more than 50%, representing

"around £10.4 billion in the long run".

That is fantastic. Of course, this increase

"is driven by reductions in regulatory restrictions to goods and services trade, tariff reductions, income and supply chain effects as the UK economy grows."

Other speakers have mentioned that the impact on our GDP is relatively modest, at 0.08%.

On the restrictions and concerns around agriculture, there is a 15-year phasing-in period for beef and sheep. Of course, as Anne-Marie Trevelyan said, this is

"only a small fraction of our overall beef imports. Just 0.1% of all Australian beef exports went to the UK last year. Also, it is relatively unlikely that large volumes of beef and sheep will be diverted to the UK from lucrative markets in Asia, which are much closer to Australia".—[*Official Report*, Commons, 5/1/22; col. 66.]

It is important that we debate this agreement because it is a forerunner to future agreements. A New Zealand one has just been agreed, an India free trade agreement is being negotiated and other agreements are now being uprated. We are also starting to upgrade some of the 66 bilateral agreements that were rolled over from the EU, such as the one with Mexico, to make them bespoke to us. The CPTPP was also mentioned; I will come to it later.

When it comes to digital and data provisions, as the Lords International Agreements Committee asked, how will the Government

"ensure that UK citizens' personal data exchanged under the agreement will be protected and offer commitments that digital trade provisions in future trade agreements will not put at risk the UK's data adequacy decision with the EU"?

Can the Minister address that? The committee's report also referred to the Trade and Agriculture Commission's

"finding that the FTA is unlikely to lead to substantive increases of imports into the UK of goods produced to lower standards, including animal welfare standards."

This will be a concern for many people. The committee recommended:

"The Government should continue to monitor the levels of"

items; for example,

"pesticide residue on imported goods from Australia".

Do the Government agree?

There is a chapter on small and medium-sized enterprises. The agreement will be advantageous here, but how can we encourage SMEs to export more? At the moment, only 10% of our companies export; of those, only 14% are super-exporters that export more than 10 different products to 10 different countries. Compare that with a country such as Germany, where it is 40%. The export strategy is absolutely vital, and we need to do much more to promote exports.

Going back to my role with the CBI, I personally played a major role in helping this particular free trade agreement at various stages, including helping it get over the line. We worked with not only the DIT on our side but Dan Tehan, the Australian Trade Minister who was the vice-president of the CPTPP accession committee at that time, and, of course, His Excellency George Brandis, the then Australian high commissioner. We have similarly been working with the New Zealand Trade Minister and the New Zealand high commissioner, Bede Corry. This way of working—getting business organisations such as the CBI to help the Government get these deals over the line and bringing stakeholders face to face with both sides—has worked extremely well; I would recommend it for all future negotiations, including the continuing India negotiation.

The noble Baroness, Lady Liddell, expressed some scepticism about the CPTPP. I think that it will be a fantastic thing for Britain. It covers 13% of the world economy; if you include the UK, it is 16%. It gives the UK access to the fast-growing Indo-Pacific region. We will be with allies of ours. We will have huge benefits,

including modern digital rules and the elimination of tariffs. Of course, as the impact assessment says, the Australian FTA is a big

"stepping stone to our accession to CPTPP";

I imagine that the Government would agree with that.

It will allow us to eliminate tariffs on UK exports more quickly—for example, whisky can come down from 165% duty to 0% in Malaysia, and car duty can be reduced to 0% in Canada by 2022—if we complete these negotiations. These are huge benefits to us. We also have the rules of origin, allowing content from all CPTPP countries to be cumulated, so that if goods have at least 70% CPTPP content, they qualify for preferential tariffs. It is great that 70% can come from any combination of CPTPP countries.

What stage are we at now with the CPTPP agreement? Will we gain accession by the end of the year, which was the target? We already have, if we include New Zealand, bilateral agreements with nine of the 11 countries—leaving only Malaysia and Brunei—equating to £110 billion worth of trade with the UK. That is higher than China, which has just under £100 billion. This is one of the largest free trade agreements in the world and key to the success of global Britain. Its members are the fastest-growing economies in the world, with expanding middle classes, an appetite for British goods, products and services, and a respect for brand Britain. For the UK to remain competitive, it must position itself as a trading partner of choice in that region.

On the environmental provisions, the FTA refers to the Paris Agreement but has been criticised for the lack of explicit reference to limiting the global average temperature increase to 1.5 degrees.

Can the Minister provide some clarity on the interaction between the Northern Ireland protocol and the FTA? It appears that exports from Northern Ireland to Australia will benefit from the FTA but that there are complications with goods entering Northern Ireland, including from the UK. This is further complicated by the protocol. Please, will the Government sort out the Northern Ireland protocol? Let us deal with the practicalities. I have visited CBI members on the ground in Northern Ireland. They just want to get on with it and get this protocol resolved using a practical mindset, because once we resolve the protocol, we can work on the biggest trade agreement that we have, which is with our neighbour on our doorstep. Some 45% of our trade is with the European Union, and the trade and co-operation agreement needs to be upgraded in a huge way, which we cannot do unless we sort out the protocol. Similarly, the Horizon project, which was so valuable for research between European universities and British universities, is under threat of being lost unless we sort out the protocol. There is an urgency over there.

The United Kingdom published our first integrated review on 16 March 2021. It talked about a tilt to the Indo-Pacific. Policy Exchange, of which I am proud to be a trustee, was ahead of the game. It produced a report, *A Very British Tilt: Towards a New UK Strategy in the Indo-Pacific Region*, in November 2020. It is so sad that the foreword of that report was written by the late Shinzo Abe.

Professional services and the recognition of qualifications in the FTA are hugely important, providing a pathway towards a mutual recognition of professional qualifications, which, again, would be very useful for our services exports. On legal services, it provides an agreement allowing UK and Australian lawyers to advise clients. If only we could have this in the India free trade agreement as well. Temporary entry for UK businesspersons is very useful for us, as is youth mobility, which I referred to. The agreement also includes provision on market excess for investors. Digital trade is covered, which is fantastic, as well as digital facilitation, data governance and data protection, technologies in data innovation, and consumer protection. It also has a very strong intellectual property chapter—again, I advise that we have the same in the India deal—and covers procurement, and the areas of beef and sheepmeat that I touched on earlier.

That said, the Government's impact assessment shows a negative effect of the FTA on agriculture, forestry and fishing, and the semi-processed food sector. Do the Government agree? This is why the FTA is generally regarded with concern by the farming sector. The NFU warned that the agreement could have a significant impact on UK farming, with livestock and sugar particularly affected because of the lower cost of production in Australia compared with the United Kingdom.

Security and trade go hand in hand. Australia is a member of the Quad, along with Japan, the United States and India. I have suggested that the UK should join the Quad, making it Quad Plus, thereby encircling the world. We have AUKUS as well.

The speed of this deal was fantastic—one year, or one and a half years by the time it was signed. India signed deals with the UAE and Australia in under 90 days, but they were much lighter in content. It is very important that we do this thoroughly, and we have done that here.

Finally, trade deals such as this are all very well, but we must continue to be a magnet for inward investment as a country. We cannot do that if we have the highest tax burden in 70 years. That also comes into play. All in all, I am all for the deal and I congratulate the Government on securing it.

5.10 pm

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to follow the noble Lord, Lord Bilimoria. I wonder whether his asking for lower taxes was his pitch to be the next leader of the Conservative Party.

I will start with the noble Lord's comments about the Northern Ireland protocol. Clearly, it needs to be revised, but I add some words of caution: it is a fundamental part of the UK-EU withdrawal agreement. We need to treat that very sensitively indeed.

I congratulate the noble Baroness, Lady Hayter, and her committee on not just preparing the report but bringing the debate to the House this afternoon. I add my thanks to and pay tribute to my noble friend Lord Grimstone, who was extremely assiduous, charming and generous with his time at every stage of every debate he participated in. I pay a personal tribute to him and wish him well. I am sure we have not seen the last of his interventions as a Minister.

[Baroness McIntosh of Pickering]

My approach to this free trade agreement is cautious. I highlight the fact that criticisms have been made, notably in the report before us but also by the EFRA Committee next door and others, and the fact that the Trade and Agriculture Commission can examine agreements only once they have been signed, which has been criticised in previous debates. I think we in Parliament would all sign up to the fact that the commission should be able to intensively scrutinise and make recommendations on each agreement before it is signed. I hope that is something the Government might keep under review.

In that regard, these agreements are seen to fall short in content and scrutiny. I add to that my criticism that there appears to be a lack of strategy in negotiating trade agreements, which is illustrated by this agreement in particular. I am grateful that the committee has annexed to the report in its appendix 3 an extract from the UK Government's strategy for the UK-Australia free trade agreement. The Government published their public negotiating objectives for a free trade agreement with Australia but there does not seem to be an overarching strategy.

I single out the two paragraphs that relate to sanitary and phytosanitary standards. Here, the Government commit to:

"Uphold the UK's high levels of public, animal, and plant health, including food safety"

and:

"Enhance access for UK agri-food … to the Australian market by seeking commitments to improve the timeliness and transparency of approval processes for UK goods."

My first question to the Minister is: how can we hold the Government's feet to the fire on sanitary and phytosanitary standards? It strikes me, and I am not the first to mention this in the debate, that this agreement is yet another asymmetrical deal that benefits the other side, the Australians, much more preferentially than the UK. I am sure the noble Lord, Lord Purvis, will agree because he made the same point when debating other agreements. I also point out that it adds value of only 0.02% to the UK economy, so I really have to hesitate before we congratulate ourselves too warmly in this regard.

The Government were elected, what seems like a long time ago in 2019, on a manifesto that committed to maintaining high standards of production and, in particular, of animal welfare, environmental protection and food hygiene and safety. Not long after that election, the NFU ran a very successful campaign and persuaded 1 million people in this country to sign a petition calling for these standards to be maintained. Yet, as the Great Yorkshire Show starts tomorrow and runs for the rest of this week, the farmers will explain to all, including one of the leading negotiators in Defra, Janet Hughes, who is looking at future farming policy in this country, how vulnerable farmers feel at this time. I entirely endorse the comments of my noble friend the Duke of Montrose in this regard.

It is the hill farmers and the uplands of the north of England that are suffering, as well as other parts of the UK. We have seen rising energy costs, higher fuel prices and an acute shortage of labour, which means that many fruits and vegetables, including salads, will simply not be picked this year. We are about 40% down on the labour we would usually have through seasonal workers. That is partly because the Ukrainians cannot come and help, but we simply have not attracted enough seasonal farm workers this year. I hope that will be put right in the SAWS agreement on seasonal agricultural workers in 2023.

If we do not resolve these issues, particularly as regards suckler cows and spring lambs in the hill farms and uplands of the north of England, and other parts of England and the United Kingdom, we will have the most severe social crisis for generations in our countryside. That is the backdrop against which the Great Yorkshire Show will meet this year. I hope these pleas will not fall on deaf ears in the Government.

I conclude by asking my noble friend the Minister what he feels that the agreement that is the subject of the report this afternoon will offer us, over and above what we would have had in the rollover agreements. What will particularly benefit UK farmers and other industries in this country?

5.17 pm

Lord Liddle (Lab): My Lords, first, I pay tribute to the noble Lord, Lord Grimstone, who was a very good Minister. He always attempted to answer our questions and treat Members of Parliament with seriousness. He approached his job as a Minister with a level of seriousness that some members of the Cabinet would have done well to follow. Secondly, I pay tribute to my noble friend Lady Hayter for producing this very good, balanced report. It is a bit kinder to the agreement than instinctively I am, but it is an important job of scrutiny well done. The only tragedy about parliamentary scrutiny is that we do not have in the British Parliament what exists in the European Parliament: a trade committee that follows and comments on the negotiations by the Commission at every stage. It is not much use having scrutiny only when the whole thing is over, so I hope we will press that point about future scrutiny and continue to press it.

My general view of this is that, as we are outside the EU, we have the ability to conclude our own trade agreements. This is what we should do, as it is in the national interest, but in this agreement—this is the central point I want to make—we are heading for a post-Brexit political economy that I am not particularly enthused about. That is a political economy based not on a European model of high standards underpinning our society, but a model based on Britain becoming Singapore-on-Thames and being part of a deregulated Pacific community, which could have consequences for the British people.

That is my worry about this agreement, but let us first examine its practical content. I am an instinctive free trader, like most of us in the Chamber, I suspect. I have always thought that consumers do well out of cheap goods, and therefore free trade and competition is a good thing. However, when I worked in the Cabinet of my noble friend Lord Mandelson when he was Trade Commissioner, I learned a few things about how others approached trade negotiations. Certainly, in Brussels, I remember asking senior officials questions about this, and they said, "Roger, what you've got to do is work out your offensive interests in any trade

negotiation. Then you have to work out what you will defend to the last that the other side will want". I think Britain has interpreted its offensive interests, in a simple way, as being strongly in services liberalisation. I think that is correct; that is where our great competitive strengths are. The question is whether, in order to pursue modest gains in services liberalisation, we are prepared to make large sacrifices—the common external tariff that we used to have with the EU, which to a large extent we have taken on ourselves—and whether we are prepared cut our tariffs. Of course, that policy pursued to its logical conclusion will be pretty ruinous for British agriculture and for large sections of our manufacturing that will have very little protection. Thinking about Britain, as opposed to London and Singapore-on-Thames, we have to ask whether this pursuit of services liberalisation, above everything else, will fit with the levelling-up objectives of our much-lamented Prime Minister.

I tried to find out what academics think about this agreement. There is a UK Trade Policy Observatory at the University of Sussex, and its conclusion based on its modelling is that the deal will boost Australian exports to us six times more than any benefit the other way, to the UK. That is a considered, academic view, and I will give you the numbers. It estimates that

"the UK may see an increase in exports of 0.35%, while Australia's exports are simulated to increase by 2.2% once the free trade agreement is in force."

That is why the forecast gain to our GDP of 0.07% is so small. The practical benefits are not that huge, and we ought to bear that in mind.

We have given a lot away, it seems, for not that much in return on services. But it is a modest step and therefore one should not be too critical, I suppose. There are some aspects of it that I really like: it is great that the working visas are to be expanded for people aged under 35, whereas previously they were only for those under 30, and from two to three years. That gives young people a tremendous opportunity to work in another country. I only wish that the TCA with the European Union had a similar agreement. If it had, a lot of the problems that we presently witness in the creative sector, with young people who are touring around Europe and all that, would just disappear. This model of the liberalisation of visas for young people, enabling them to work to pay for their stay in another country, is one that we should try to extend more generally.

Coming on to my reservations, I think the Government see—I should like to know whether the noble Viscount, Lord Younger, agrees with this—the main benefit of this agreement as unlocking the door to our membership of the CPTPP, the Pacific Rim trade agreement. This is the wrong post-Brexit political economy for Britain. It is true that it plays to our economic strengths, which are in services, and that Asia is an area with tremendous potential for growth. But within this economic area, there is very little concern for standards and the predominant view favours deregulation. This is particularly true of environmental standards and, on that point, the deal with Australia is absolutely shocking.

At present we are looking, along with the European Union—this is one area where there is alignment—at whether we should impose a carbon border adjustment mechanism on countries that do not stick to their climate change commitments. This deal with Australia has absolutely nothing to say about that question, yet this is a pretty fundamental point for the future. Our ability to use our economic strength, in Europe and Britain, to force other countries to take their obligations seriously will be important in tackling the climate crisis in future, and I worry that this trans-Pacific thing is an obstacle to that.

I also worry, as a Labour man, about labour standards, about whether trade unions are recognised and about whether there are minimum wages. What standards are there, and are people working in safe and reasonable conditions? If we keep alignment on these questions with Europe, as we were promised by this Government in all the Brexit negotiations, there will be at least some minimum standards. But are those minimum standards to be included in this Pacific agreement? I do not know, and I have doubts.

This seems to fit in with the tilt to the Pacific included in the recent defence review. With the war in Ukraine, however, do we really think that our central security interests are in the Pacific? Is that what people such as my friend the noble Lord, Lord Robathan, over there really think? Surely, our central security interests remain in Europe.

Lord Robathan (Con): Actually, I agree with the noble Lord, and thank him for asking, but I do not think it is an either/or; I do not think it is binary. The issue with the Pacific is huge, as is the issue with Europe.

Lord Liddle (Lab): I agree with that as well, but there is also a contradiction about this focus on the Pacific: the reason it is an economically dynamic area is because of the dynamism of China—it is China that drives the Pacific area. If with one hand we are saying we want economically to be a beneficiary of this but with the other hand saying we think there is a major security threat here, I do not know quite where we are going to end up. I just raise that as a question, but it seems to me to be an important one.

I have doubts—I am not saying I rule it out—about whether this Pacific tilt is wise. I worry that any trade agreement we make that does not meet European standards raises issues about trade with the single market in Europe, which is still by far the most central part of our economic interests.

5.31 pm

Lord Udny-Lister (Con): My Lords, I stand, I think, as one of the few to welcome what is a landmark deal. It is an ambitious one and quite an exciting one, because it is the first of the new form of deals that are being struck. It is also a rekindling of our historic and important relationship with Australia through free trade. It is part of our post-Brexit journey. It is also a moment when we can go back to what we used to have with that country and to those relationships which were so brutally terminated when we joined the EU. We have a real chance to develop this further, and I will talk about the CPTPP in a minute. It is all about global Britain and the opportunities that exist.

[Lord Udny-Lister]

In speaking, I draw attention to my interests, which are declared in the register, including my work for HSBC bank. I also thank the noble Baroness, Lady Hayter, for getting this debate. There is another thank you I want to make, and that is to the noble Lord, Lord Grimstone. It is very sad that he has given up as the Trade Minister. I am one of the few, probably, in this Chamber who have seen him at work, actually negotiating. He was an impressive operator. It will be very difficult to follow him, and he is going to leave a real gap.

The report before us rightly points to the identification of several risks. However, I want to observe that, in our long and very proud history as an island trading nation, I cannot point to a single moment in time where we entered in good faith into trading arrangements without there being some element of risk. Our task is to scrutinise FTAs that come before Parliament. It should not focus solely, as some Brexit-loathing commentators would have it, on risk alone, for our task is to weigh up risks against the opportunities that will come, and to seek to hold the Government to account on how they unlock these opportunities to the benefit of every part of the United Kingdom.

A lot has been said on the topic of agriculture. Indeed, the National Farmers' Union, among others, has tried to peddle a myth that this agreement fails to deliver for British farmers and that our standards will somehow be eroded. I put it to your Lordships' House that such assertions are wrong, as the Government have been successful in achieving significant safeguards for British farmers, namely through the tariff rate quota, the product-specific safeguard and the bilateral safeguard measures.

When it comes to food standards, it is worth noting that the FTA does not create any new permissions for imports from Australia, and that our stringent world-class import requirements and independent food regulations all remain. Perhaps it is for some an inconvenient truth, or it simply goes against the Brexit-bashing narrative to which some have become accustomed, to accept—as we should all proudly accept—that the UK is already globally renowned for our agricultural excellence, animal welfare and food safety standards.

There is nothing in this agreement that farmers should fear. Like those in most other sectors, they would do well to ignore the Brexit doomsayers who will always try to spread fear in the hope of overriding the largest democratic mandate in British history and the sound decision of the British people to seek a new global outlook, free from EU protectionism. I fully concur with the views of the honourable George Brandis, who in an interview with the *Financial Times* called for farmers to be

"more open to the benefits of trade and international competition",

and for the

"culture of fear of global trade"

to come to a swift end.

Baroness McIntosh of Pickering (Con): I am sorry to interrupt, but does my noble friend share my concern that there should be a level playing field, so that any imports into this country from Australia should not be produced with pesticides which are banned in this country or the rest of the EU, and should not be raised to standards which we and British consumers would not accept? If that is the case, I think that he will share my concerns about the agreement as negotiated.

Lord Udny-Lister (Con): I am afraid that I do not agree with this, because I think that the standards that exist in Australia are not that different from the standards here. I would also suggest that, certainly on animal husbandry, there are many other countries in the world with which people would have a lot more difficulty than they do with Australia—I can think of parts of eastern Europe where probably the standards are well below those which we are currently getting from Australia.

The deal is our gateway for joining the CPTPP. With demand for beef and lamb increasing in the Asian markets, there is an unprecedented opportunity for our farmers to capitalise on what is going to become exports of very high-quality British meats—but of course they are going to have to be of a standard and are going to have to be marketed in the right way.

The deal supports British farmers, protects our standards, advances animal welfare through non-regression clauses, and creates new and incomparable opportunities for our food and drink exporters. Our free trade agreement with Australia will not only unlock over £10 billion-worth of additional bilateral trade but, as the global economy increasingly centres on the high-growth, high-tech Indo-Pacific region, as I mentioned just now, we must remember that our accession to this agreement is an integral component of the United Kingdom's journey to joining the CPTPP. The importance of this cannot and must not be downplayed, for our accession to the CPTPP will give the UK access to a free trade area encompassing 11 strategically important states, with a combined GDP of some £8.4 trillion.

It is estimated that there are currently 15,000 UK businesses that are already exporting goods and services to Australia. Through breaking down regulation, protecting innovation, enhancing consumer protection and creating new visa pathways, this agreement has the potential to deliver for each and every one of them.

The Government will be tested on how effective they are in supporting UK businesses to make the most of this landmark agreement. I would welcome comment from my noble friend the Minister on what work is being done by the Department for International Trade to ensure that UK businesses are engaged and ready and waiting to unlock the ultimate potential of an FTA.

I further welcome how this agreement will create new opportunities for the UK's world-class legal profession. It is universally acknowledged that our legal, financial and other professional services are among our greatest exports, and I commend the way in which Her Majesty's Government have sought to protect and enhance the UK's interests here, from providing UK law firms with legally guaranteed access to Australian government contracts for legal services to improving the mobility of lawyers in order to enhance their experience by working abroad. I stand encouraged by the way in which the Government have

listened to the sector and hope that the support shown for our professional services sector in this agreement will set a precedent for future FTAs.

I am further pleased to note Her Majesty's Government's success in achieving their negotiation objective on digital trade across all sectors of the economy. I concur that there is still a lot of work to do in fine-tuning the regulatory framework and putting this into practice on the ground, and thus I would welcome some reassurances from my noble friend that the department are undertaking further work in this area.

The opportunities for this free trade agreement should motivate and excite us, whether you want to see the UK's high-tech industries of AI and space exploration thrive, are a young person seeking exciting opportunities down under or are simply a consumer—like many of your Lordships, dare I predict?—looking forward to tariff-free wine or Vegemite. To conclude, there is something in this agreement for everyone, and I wish the Government godspeed in making sure that it delivers for everyone and as part of the United Kingdom's journey towards the CPTPP.

5.41 pm

Viscount Waverley (CB): My Lords, the noble Lord's observation leads me to two regrettable observations. Trade is one of those nebulous facts of life that requires a greater degree of attention. However, just today, a senior trade writer at the *Financial Times* asked whether any of the candidates for Conservative Party leader will improve British trade policy—we certainly hope so. Additionally, I was dismayed to receive a message from an exasperated exporter today:

"I have a problem getting any information about the procedure and protocol from DIT on matters relating to my business".

These issues require urgent attention.

The current limbo presents an opportunity to underpin Parliament's contribution to governance and generally across the board, not just in relation to FTAs. The committee's comprehensive report has met with varying degrees of support. Wherever one stands on the content of this FTA—our first negotiated from scratch post Brexit—it has significant implications in key policy areas, including food standards, animal welfare standards, environmental standards and procurement.

The FTA also sets an important precedent for how similar such agreements will be negotiated and ratified under the Government's future programme. This is important because, as has been pointed out, it also represents the first-out-of-the-blocks forward thinking for the CPTPP discussions. Although we tend to go around this in circles, as delay in ratification is the norm of the day, many conclude that this ratification process is not adequate. Completing agreements with New Zealand, India and the Gulf Cooperation Council in the coming months is the goal, but there has been little opportunity to debate the Government's original objectives, and we have not received comprehensive negotiation updates.

Parliamentary colleagues in Australia say that their Government will not establish their standing committee on treaties until the end of July, at which point they will embark on a scrutiny process lasting around three months. What is the rationale, therefore, for pushing this through in the UK—in the face of calls to delay across both Houses in Westminster—thus putting pressure on the 21-day CRaG period being used effectively for comprehensive scrutiny in both Houses?

There is still no clarity about whether the Government will grant time for a vote or even a debate on the UK-Australia FTA during CRaG in the other place. What is to be the process by which Parliament can secure a vote on a trade agreement? CRaG suggests that Members in the other place should resolve against ratification to allow further time for scrutiny, but there is no clear precedent for what form this might take. Possibly, we ought to consider delaying ratification and thus be in line with Australia's timetable, giving a period to consider from Australia's perspective some of the differing policy issues that have been touched on this afternoon, and to consider those forthcoming in the UK.

5.45 pm

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Viscount, as I frequently do in these debates. I enjoy his contributions, and the debates, and I will touch on his substantive point on the scrutiny period in a moment. Given his comment, combined with that of the noble Lord, Lord Kerr, on these issues, discussing the quality of the horse's breeding after it has bolted, I am willing—unless the Minister is able to be reassuring—to table a Motion to extend the scrutiny period beyond 20 July. I have done this before and will do so again, because we need to properly discuss these issues in both Houses.

I pay tribute to the committee for its work; I have done so before and I will continue to do so. Its reports are for debate in this House but they also inform it and the public, and they do a great constitutional service. My noble friend Lord Oates and I are literally Liberal free traders, and we therefore welcome the agreement, especially the parts on services, recognition of professional qualifications and the movement of people, which the noble Lord, Lord Liddle, mentioned. In supporting free, fair and open trade, many of our debates are more about non-tariff barriers than tariff barriers. This was particularly the case with Australia, as was mentioned, because its tariffs on UK exports were already low, and the regulatory elements of alignment are therefore very important.

There are questions about services support and facilitation, such as data transfer, where the committee highlighted that there is no data equivalence with Australia. This may cause difficulties for our combined services trade with those with whom we are seeking equivalence agreements. So I hope that the Minister will be able to say whether we expect to take forward in a meaningful way the discussions on data equivalence agreements with Australia to support the reassurance of consumers as well as trade facilitation.

I also enjoyed the debate because there were a couple of areas where there was not total unanimity. The noble Lord, Lord Robathan, was a case in point: I enjoyed his personal resignation statement—obviously, he felt left out—and I agree with him on China. I

[Lord Purvis of Tweed]
flippantly said that I do know where the cloth that I wear is from; I was an ambassador for the Scottish College of Textiles in my former constituency, and these are important issues.

The noble Lord raised a point with the noble Lord, Lord Liddle, on where we are geopolitically with our agreement with Australia, and with New Zealand, which we discussed. One of New Zealand's oldest trade agreements is with China and, at the same time, the UK now has the biggest trade deficit of any country in our nation's history: we have a trade deficit with China of over £40 billion in goods. This means that we need to debate this open-eyed. I smiled when the noble Lord seemed so envious of the French power to do harm to our farmers that he wanted to bring that back so that we could do harm to our own farmers—

Lord Robathan (Con): As a farmer, I definitely do not want to do harm to farmers. But I have seen the harm done by the common agricultural policy, which I am sure the noble Lord thinks is marvellous.

Lord Purvis of Tweed (LD): No, but we did not see output of beef and hill sheepmeat going down 5% and then 3% with any individual agreement, which is what we have seen with the Australia agreement. Perhaps those Brexit-supporting farmers now see the reality that the Government's own impact assessment says that output will go down 5% and then 3% over 15 years in these sectors. Because I formerly represented a hill-farming constituency, I do not think that this is simply a case of doomsayers; these are genuine issues about the sustainability of our farming industry.

I pay tribute not only to the committee but to the noble Lord, Lord Grimstone, who has resigned from the Government; I enjoyed being his Liberal shadow. I look forward to the seventh Trade Minister whom I will shadow in this place when she or he takes office. I reassure the noble Baroness, Lady Hayter, that it is not her—it is me.

I agree with the overarching twin themes of the committee's report: first, that this agreement was negotiated in the absence of a wider trade policy—in certain areas, it sits slightly alongside the Government's export strategy, which I welcomed, but I have not yet seen too much read-across between the two—and, secondly, that the desire to move fast was to secure some boosterism and headlines between our Prime Minster and Australia's, or, as the press reported at the time, between "BoJo and ScoMo". We can reflect that neither is in office just months later, so we can question why there was such a rush.

When the noble Lord, Lord Grimstone, introduced the Queen's Speech debate on trade, he wanted to reassure us that all parts of the UK would benefit from the 0.08% bounty over 15 years of this agreement—or, as the noble Lord, Lord Udny-Lister, said, that there is something in it for everyone. However, when I raised the fact that this had been oversold, I was wafted aside. It appears that it was quite hard for the Government to dismiss the Regulatory Policy Committee, which is tasked with reviewing what the Government say in their impact assessments. It was interesting to note that the Government had to bring forward a second impact assessment after the Regulatory Policy Committee published its initial review. On page 5 of this review, the committee said:

> "As originally submitted, the IA was not fit for purpose as the results in the IA were presented in a way that disproportionately emphasised the beneficial impacts with very limited discussion of the risks, disadvantageous impacts, and potential mitigations. In addition, the IA did not adequately describe a range of significant risks and uncertainties associated with the impacts and did not contextualise the estimates sufficiently. The IA suggested a greater degree of certainty and accuracy to the projections than was supported by the underlying evidence and modelling."

In a way, that neatly sums up how this Government sell their trade policy. Presenting the higher case not "supported by … evidence" means that, when we scrutinise the agreements, they turn out not to be as promised—this seems to be the approach across the Government. I say "the Government", but it seems as if we have more than one at the moment: there is Liz Truss, the free trade fighter, alongside Anne-Marie Trevelyan, who is breaking WTO rules to have protectionist steel tariffs. Some Ministers on the one hand claim that we are seeing developing standards in nature, biodiversity and animal welfare; I am sure that the noble Viscount, Lord Younger, will say in his speech that this is the case. Other Ministers, apparently in the same Government, are saying the opposite: for example, the Foreign Office Minister the noble Lord, Lord Goldsmith, said yesterday:

> "Rishi Sunak has evidently agreed to make Mark Spencer the … DEFRA Sec of State. Mark was the biggest blocker of measures to protect nature, biodiversity, animal welfare. He will be our very own little Bolsonaro. Grim … for nature. But great news for political opponents".

It would be helpful if the noble Viscount could outline which measures have been blocked by the Treasury because, if a serving Minister says it, we should know about it.

As the noble Lord, Lord Liddle, and others have indicated, this is in the context of now seeing that the evidence has been very clear that our trade with the European Union has declined. This means that the concern raised by some of the witnesses to the committee—that some of the benefits of the Australia agreement might simply be those of displacement, rather than new and additional trade—is very relevant. That even means that the issue that consumers might seek cheaper prices will not necessarily be realised. It also means that the issues raised by some, including the noble Baroness, Lady McIntosh of Pickering, will be relevant for our consideration: that we will not have a level playing field and we would prevent some of our agricultural industry from using certain materials and practices that would be permitted from shipped-in products from Australia—a point raised by the noble Duke, the Duke of Montrose. This is not protectionism; it is realism.

One area which is striking—and especially astonishing given what Liz Truss and every Minister in the department had previously said—is that the UK failed to secure any protection for those goods that have geographical indicators, as the committee indicated. Why? We have heard time after time, during debates on the then Trade Bill and elsewhere, that GIs would be protected, but they are not. This is from Liz Truss, who made her name championing cheese in that famous speech, but

has now raised the white cheesecloth on supporting products with geographical indications. We have now fully entered the Wonderland of Alice, because we will be able to protect those products which have geographical indications only should Australia sign an agreement with the European Union, because the European Union would provide the protection—I think the term is "give back control".

This is a "landmark", according to the Government's statement and the noble Lord, Lord Udny-Lister, but my understanding is that landmarks are so called because they are followed. However, from reading the committee's report, I think it struggled to get clarity from the Government as to whether this will set some form of precedent for other areas. The Government will no doubt say—I have heard them say it previously—that each agreement is negotiated on its merits, et cetera. However, at the same time, we hear the Government saying that this is a gold-standard, "landmark" agreement. This, therefore, raises questions about the impact on diagonal cumulation for developing countries and uncertainty as to that policy; uncertainty to the policy on ISDS, because it was to be reviewed in Canada; and about the situation with Japan. The noble Lord, Lord Grimstone, was a supporter of ISDS; will any new Minister have the same approach?

On the question of standards, which I have raised previously, for genetically modified products or the use of pesticides, is it okay to bring in produce that has been reared using banned products? Will they be approved for our consumers simply because those banned products are at a low level? The Government should be clear about their intentions.

The final point which has been raised—a very relevant one—regards the remaining lack of clarity as to when there will be sufficiently strong guidance for those operating within Northern Ireland.

We support this agreement, but we are not blind to the realities that it will have a negative impact for certain sectors. We certainly think that involving Parliament with less of the boosterism and headline grabbing, and more of the serious work of proper consideration of what trade policy would look like in future, would result in stronger agreements which are less rushed and more sustainable. Ultimately, they will help the British economy, so that it would not be 0.08% but considerably more.

5.59 pm

Lord McNicol of West Kilbride (Lab): My Lords, like nearly all other speakers, I congratulate my noble friend Lady Hayter of Kentish Town and pay tribute to her and her committee on the detailed and balanced report that has been debated this afternoon. I share the overall analysis from the noble Baroness, Lady McIntosh of Pickering, that it is cautious in nature. I think that is fair.

After leaving the European Union it is of course vital that Britain seeks free trade agreements across the world, but there are standards that these agreements must be held to. The deals that we negotiate must benefit UK interests, UK workers and UK businesses. As we have heard, the UK had not negotiated a full free trade agreement from scratch since 1973. I think the noble Lord, Lord Purvis, was very young then.

Lord Purvis of Tweed (LD): I was not born.

Lord McNicol of West Kilbride (Lab): I was four. Negotiating from scratch in itself should not have been an issue, but analysing in detail the Australian agreement raises very real concerns about what has been negotiated and what has not. Parliament has been virtually neutered in the whole process. The Australian agreement was signed in December 2021 and the New Zealand agreement in March 2022. We are now in July with just over one week before Parliament rises. Yes, it has been examined by the International Agreements Committee and the International Trade Committee in the other place but it will then be laid before Parliament similar to any other statutory instrument.

I wonder, as many other noble Lords have this afternoon, whether better parliamentary scrutiny would have led to a better, fairer, greener and more equitable agreement. There is a paradox at the heart of the Australian deal—the Government's own impact assessment estimates that our farming, forestry and fishing sectors will take a £94 million hit and our semi-processed food industry a £225 million hit. Yet, again by the Government's own predictions, overall trade will increase by less than 0.1% of GDP by 2035, while there is fear of real damage to some of the UK's most important sectors.

As many other noble Lords have this afternoon, I worry that the prize of the deal, the prize of the headline, the prize of being first was more important to the Government than the detail of the agreement itself. As my colleague Nick Thomas-Symonds MP said in the Commons:

"Other countries, in future negotiations, will look at what was conceded to the Australian negotiators and take it as a starting point."—[*Official Report*, Commons, 5/1/22; col. 67.]

UK exports to Australia as a result of this deal are supposed to rise by 53%, but I see no great basis for that optimism. Few trade deals have ever had that kind of impact, and certainly not those between two countries where there is already a good trading relationship with historically low tariffs. The 53% is also somewhat higher than the original estimate. Can the Minister explain this leap in optimism between the original estimate and the secondary estimates?

As we have heard from the noble Duke, the Duke of Montrose, the noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Liddle, the labour, environment and animal welfare chapters are pretty weak and do not necessarily focus on UK interests. Would the Minister care to elaborate on any specific improvements negotiated which will bring a positive benefit to our labour, environmental or animal welfare standards?

Minette Batters, the NFU president, said:

"The government needs to level with farmers about the commercial reality of this and ditch the soundbites that lost any meaning a long time ago."

She continued:

"It needs to set out a detailed agri-food export strategy, with complementary policies that will enable UK farmers to compete and adjust."

Those were some of her more measured words, but she is right.

[Lord McNicol of West Kilbride]

As always, agreements include carve-outs. How confident is the Minister about the predicted rise in exports given the protections to Australia's services market? This is in stark contrast to the lack of protection given to the UK food sector in the tariff schedules. Were any of our devolved nations involved in adding to our 12 pages of carve-outs? As I understand it, the Australian states were consulted and state protections included. Were any of the concerns of the UK's devolved authorities recognised and incorporated into our carve-outs?

I fear that the Australian agricultural corporations will not be held to the same high standards as our farmers. Animal welfare standards have been mentioned a number of times, but what the Government have agreed is a non-regression clause. To be clear, that does not mean that the standards will be the same in both countries. What will actually happen is that meat produced to lower animal welfare standards will get tariff-free access to the UK market. So much for the promise that the Government had no intentions of striking a deal that did not benefit British farmers. Australia's former negotiator said:

"I don't think we have ever done as well as this."

How much engagement did the National Farmers' Union have after the agreement in principle was published? Was the NFU given the opportunity to raise concerns or make counterproposals? More importantly, was it able to assess the true impact of the FTA before it was finally signed?

The UK granted Australia generous agricultural market access. Why was this not leveraged to press Australia for more ambitious commitments on climate change? As we have heard, there is no reference to the temperature goals which were fundamental to the Paris Agreement, nor to reducing Australia's reliance on coal, which was addressed in the free trade agreement with New Zealand. As my noble friends Lady Liddell and Lady Hayter have said, we now have a Labor Government in Australia so there is an opportunity to revisit it.

With the energy security Bill making its way through Parliament, this feels like a missed opportunity for the Government to show leadership on the world stage on an issue which is increasingly global, instead of taking an insular approach. Tariff-free access to our UK markets is a prize that Ministers should not give away easily. However, looking at the concessions made by this Government, are we not right to worry? This was a deal the UK Government "were advised" they had to do for the bigger prize of CPTPP accession. I would like to hear the Minister's views on that.

I return to my opening point, and I cannot put it any better than the noble Lord, Lord Kerr of Kinlochard, with regard to this Australian deal. We are allowed only to debate it; we can do nothing about it.

6.09 pm

Viscount Younger of Leckie (Con): My Lords, I start by acknowledging the opening remarks from the noble Baroness, Lady Hayter, who paid tribute to my noble friend Lord Grimstone of Boscobel, as did other noble Lords, including the noble Lord, Lord Liddle, who made some generous comments about him. I, too, regret that he has decided to step down. He worked very closely with many noble Lords in this House to advance and explain the Government's free trade agenda, and this was acknowledged in the IAC report that we are debating today. He gathered a number of considerable achievements under his belt while working as the Minister for Investment. Notably, he shepherded the Trade Act on to the statute book, and noble Lords, me included, who took part in the debates on that legislation know that was no mean feat. Beyond his work in Parliament, my noble friend will leave a lasting legacy through his efforts to transform the Government's approach to investment. The success of the inaugural Global Investment Summit, not to mention the significant sum of overseas investment secured under his tenure, offer no better evidence of his effectiveness in the role.

I suppose that today I come in from extra long leg to bat. I shall be batting but I shall, I hope, be doing some bowling—and, yes, I spent some of the weekend reading through this excellent report. I join other noble Lords in thanking the noble Baroness, Lady Hayter, chair of the IAC, for securing this debate and providing the opportunity to discuss this important subject. I also wish to thank her for the report.

Let me start by saying that I am pleased that the committee has welcomed this FTA today. It is good to have some reasonably positive feedback, including from the noble Lords, Lord Kerr and Lord Oates, and perhaps more effusively from my noble friend Lord Robathan, the noble Lord, Lord Bilimoria, and my noble friend Lord Udny-Lister. I am particularly pleased that the committee has formed the view that the Department for International Trade has conducted scrutiny beyond the statutory commitments set out in the Constitutional Reform and Governance Act. I place on record the positive and constructive engagement that the IAC has had with DIT, culminating in the exchange of letters in May, which pulls all the Government's transparency and scrutiny commitments into one document.

I shall just address some points made about the devolved Administrations, as raised by the noble Lords, Lord Kerr and Lord McNicol, and the noble and learned Lord, Lord Morris. DIT officials continue to work closely with their colleagues in the devolved Administrations to ensure that their views are considered in the formulation of the UK's trade policy—I make that opening statement. Our chief negotiators provide regular updates on the progress of negotiations. For example, during the Australian negotiations, our chief negotiator, or their deputy, briefed devolved Administration officials multiple times on all aspects of the programme. That is in addition to sharing draft texts for consultation with the devolved Administrations, regular policy forums at official level and discussions at ministerial level. I am sure I could give some more reassurance on that point.

Lord Morris of Aberavon (Lab): Does the Minister agree with the statement made a few weeks ago by the noble Lord, Lord Grimstone, that the devolved Administrations are dissatisfied with the manner in which negotiations have been conducted and their involvement?

Viscount Younger of Leckie (Con): I shall look into it but I do not think that I agree with that point. As I said, I think the devolved Administrations have been kept on board with the negotiations that have been going on—I really do. I certainly would like to reassure noble Lords further on that point.

Lord Kerr of Kinlochard (CB): I am sure that the devolved Administrations were informed in the sense that they were told that there had been a round and various things had been discussed, but it is clear that the result came as a surprise—that there should be such an asymmetrical deal on farm products. I do not myself believe that it is a disaster, but it certainly came as a surprise. Would the Minister agree that it would be better if the documents that the Government published at the start of a negotiation—the negotiating objectives documents—were a little more specific? They are cast in such broad-brush terms that it is very difficult to deduce from them what a likely outcome might be, so the risk of a surprise is quite high.

Viscount Younger of Leckie (Con): I would like to park that—I am not going to be drawn into it—but I would like to move on to discuss scrutiny, which is probably along the lines of the noble Lord's question. This is an important matter, raised by the noble Viscount, Lord Waverley, and the noble Lords, Lord Purvis and Lord McNicol. Again, I hope I can give some reassurance on this.

The Government have made extensive commitments to support robust scrutiny of the new free trade agreements. As the International Agreements Committee acknowledged in its report, we have upheld those commitments. In particular, the Government committed that we would ensure that there would be at least three months for Parliament to scrutinise the agreement and for Select Committees to produce reports before the formal scrutiny period under CRaG. In fact, there was six months of scrutiny time prior to commencing CRaG, and I was very pleased to receive the IAC's report on 23 June. In addition, we published the advice of the Trade and Agriculture Commission on 13 April, two months before commencing CRaG, and our own Section 42 report on the impact of the agreement on relevant domestic regulatory standards on 6 June. Of course, I am delighted that we are here today taking the opportunity to debate the agreement as part of that scrutiny process. In total, by the end of the CRaG period, the agreement will have been under the scrutiny of Parliament for over seven months and benefited from the formal views of three Select Committees.

Viscount Waverley (CB): Might the Minister consider the possibility that there could be two new policy decision-making approaches in play here, coincidentally at broadly the same time, with a new Conservative policy circumstance and a new Government in Australia? Is there any possibility that the period being discussed might take into account any policy changes, which should be included in the final draft?

Viscount Younger of Leckie (Con): The noble Viscount makes a good point, and I shall certainly take that back. I shall make one or two points about the new Australian Government in my remarks.

I should also like to address the point raised by the noble Lord, Lord Purvis, about extending CRaG in this respect—again, I would like to row back on what he was saying. He asked whether we would extend; this of course is a decision not for me but for the Secretary of State for International Trade. However, we are confident that the arrangements that we have put in place for scrutiny are robust. The agreement has been under scrutiny for over six months now and benefited from three very valuable reports from parliamentary Select Committees, including the International Agreements Committee in this House.

Lord Purvis of Tweed (LD): The Minister will know that the Liaison Committee in the House of Commons has written formally to request an extension of the scrutiny period. Have the Government responded to that, and what is their position with regard to the concern in the Commons that the Secretary of State has not met the committee to respond to the very questions that we have raised in this debate today?

Viscount Younger of Leckie (Con): I am not able to say whether we have responded, but I shall certainly get back to the noble Lord to find out exactly where we are on that process.

The IAC's report acknowledged that the Government have upheld their commitments with regards to scrutiny of this agreement. However, I acknowledge the points that the committee made on scrutiny—first, that there is dialogue with committees prior to mandates being set for future agreements and, secondly, that we notify the IAC of all significant amendments to FTAs made after ratification. We are carefully considering the IAC's report and will, of course, respond in due course. That, I hope, leads me to answer a question raised by the noble Lord, Lord Oates, on lessons learned. He made a very valuable point there.

I move on to the agreement itself. In response to the remarks made by my noble friend Lord Udny-Lister, he is right that this is not only the first FTA negotiated from scratch by the UK Government since leaving the European Union but the first trade deal to be signed by the UK as an independent free-trading nation in nearly half a century. Since the Secretary of State for the Department for International Trade put her signature to the deal in December, she has gone on to sign an FTA with New Zealand and a digital economy agreement with Singapore. This means that we have now secured trade deals with 71 countries, on top of the trade deal with the EU. Together, these countries accounted for £808 billion of UK bilateral trade in 2021. This is an immense success story.

This FTA was negotiated quickly and efficiently, despite the turmoil brought about by Covid. It shows the world what global Britain can do as a truly independent nation. I say to the noble Lord, Lord Oates, that we would not have been able to negotiate this agreement as a member of the European Union. Having left the EU, we are pursuing arguably the most ambitious programme of free trade agreements that this country has ever seen. As we speak, the Department for International Trade is conducting FTA negotiations with India and Canada. Negotiations have also been launched with Mexico and with the Gulf Cooperation

[Viscount Younger of Leckie]
Council, a customs bloc of six countries made up of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Negotiations will soon be under way with Israel too and the department has a packed programme of FTA negotiations coming down the track.

What we have achieved through this agreement, the UK-Australia FTA, is just the beginning. The noble Lord, Lord Bilimoria, described the deal more eloquently than I am able to just now, but this is a world-class deal between two like-minded nations, friends and allies, that will bind us together for years to come. Australia is already an important trading partner for the UK—last year, our trading relationship was worth £14.4 billion—but the ties between our two countries go far deeper than that. It is a relationship forged through a shared history and a common language, a relationship that has an unyielding belief in democracy, liberty and the rule of law.

I shall attempt to answer a point raised by my noble friend Lady McIntosh and the noble Lord, Lord Kerr. I will not be able to answer it in full and I may need to write a letter, but whether we have a trade strategy is a very fair question. We do indeed have a trade strategy and we have communicated it publicly through several publications, such as the integrated review, the plan for growth and strategic cases for each trade partner we are about to enter negotiations with. I probably need to write a letter, but the headlines concern what type of trading nation we want to be, what our aims for UK trade policy are, how we will try to achieve these aims, the connections to the export strategy and the strategic case for FTAs. We believe it is all there but I think I need to put that in writing for the House.

I shall move on to the benefits—which were questioned, by the way, by my noble friend Lady McIntosh. We believe that the FTA we have agreed will ensure that future generations continue to benefit from this relationship in more ways than one. We will be able to work together like never before to tackle existential challenges, such as climate change, health pandemics and threats to global security. This deal will deliver benefits to people, businesses and communities in every corner of the UK, playing a key part in levelling up our country.

Lord Robathan (Con): I sense a peroration coming, but does my noble friend have the figures for the amount of beef and lamb given as a quota through the European Union, and how much has actually been imported into the UK from the Antipodes?

Viscount Younger of Leckie (Con): I do indeed and if my noble friend will allow me, I shall come to that. To continue my so-called peroration, the deal will increase trade with Australia by 53% and boost the economy by £2.3 billion. I take note of the rather negative view of the noble Baroness, Lady Liddell, and I will explain what the extra benefits of this deal are. It will enable the 15,900 businesses that already export goods to Australia to sell their products in ever greater quantities, while opening the door for thousands of other businesses to start their exporting journey. This means exciting new opportunities for Scotland's world-renowned whisky distillers, Wales's fintech companies and Northern Ireland's leading medical and pharmaceutical firms, as well as the north-east's car manufacturers and aerospace companies in the West Midlands.

My noble friend Lord Udny-Lister asked about the reach of this agreement—another good question. I shall just mention SMEs, because this deal will benefit businesses of all shapes and sizes, not least the UK's SMEs—the backbone of Britain—which comprise more than 99% of all private sector businesses, employing 16.3 million people and generating £2.3 trillion of income.

I come to investment. The deal will unlock further investment potential between our two countries too, with UK investors able to benefit from broader and deeper market access than Australia has ever guaranteed in a previous trade agreement. This will allow us to build on the £37 billion already invested in Australia's economy in 2020. Of course, there will also be benefits for UK consumers, who will be able to enjoy more of their favourite Australian products, such as Jacob's Creek and Hardy's wines or Tim Tam biscuits.

The subject of services was raised, not least by the noble Lord, Lord Liddle. I was pleased to read the comments of the IAC in its report, welcoming the provisions that have been secured. The services sector, as we know, is of huge importance to the UK, and we believe we have negotiated a deal that plays to these strengths. I say to the noble Lord, Lord Liddle, that Australia has gone further than ever before in granting access to its market in several areas, with unprecedented levels of regulatory transparency. UK services from architecture and law to financial services and shipping will be able to compete in Australia on a guaranteed equal footing. This could increase exports of UK services to Australia, which were worth £5.3 billion in 2021.

The "Professional Services and Recognition of Professional Qualifications" chapter will support work towards mutual recognition of professional qualifications. This could lead to professionals such as lawyers, engineers and accountants no longer having to requalify to practice in one another's countries. On mobility, the noble Lord, Lord Liddle, is right; this is a good part of the agreement, whereby there is a way in which our people can have good movement between one another's countries. For the first time, UK service suppliers, including architects, scientists, researchers, lawyers and accountants, will have access to visas to work in Australia without being subject to its changing skilled occupation list.

I also acknowledge the point made by the noble Lord, Lord Bilimoria, about innovation. This agreement contains the world's first dedicated innovation chapter, underlining the important role that innovation will play in the future. We want to take full advantage of this, particularly in terms of technological developments.

On agriculture, which I definitely want to come on to, the committee noted the concerns of the farming community, specifically that the agreement may lead to potential surges in agricultural imports to the UK. I want to provide some reassurance. We have secured a range of measures to safeguard our farmers, including tariff rate quotas for a number of sensitive agricultural products; product-specific safeguards for beef and sheepmeat, which were raised today in the debate; and a general bilateral safeguard mechanism providing a temporary safety net for all products. As the noble Baroness, Lady Hayter, said, we should remember that

Australia's focus is on exporting to lucrative markets in the Asia-Pacific region, and it is relatively unlikely that beef and sheep would be diverted to the UK from Asian markets in very large volumes, although I note the slightly pessimistic view of the noble Baroness, Lady Liddell.

Finally, answering the points made by my noble friend Lord Robathan, our estimates suggest a reduction in gross output of around 3% for beef and 5% for sheepmeat as a result of liberalisation, relative to the baseline. These estimated impacts would be felt gradually over the staging period. It is likely that the increase in imports will primarily displace beef imports from the EU and sheepmeat imports from New Zealand. Further testing suggests that, given the strong consumer preference for UK meat, gross output could fall by as little as 1% in beef and 2% in sheep.

The environment was raised by the noble Lords, Lord Oates and Lord Kerr, and the noble Baroness, Lady Liddell. I note the disappointment expressed but, to come back to noble Lords on this, we have secured the most substantive climate provisions that Australia has ever committed to in an FTA. The deal also recognises our right to regulate to reach net zero and affirms our mutual international environment and climate commitments, including the Paris agreement. There is a lot more I could say about that, but I want to move on and finish—

Lord Purvis of Tweed (LD): Before the Minister sits down, he has not responded to my question about geographical indicators. There is no protection for Scotch beef or lamb, Welsh lamb, Stilton cheese, Cornish pasties, clotted cream—there is a very long list. There is a side letter to the agreement from Dan Tehan, the Minister, which states categorically that there is no legal protection for any of these protected products. Why?

Viscount Younger of Leckie (Con): Okay, so that is a series of questions. I am going to agree to write to the noble Lord on that point because time is running out and I want to cover a number of other issues.

When it comes to animal welfare standards, I particularly want to address remarks made by the noble Duke, the Duke of Montrose, and the noble Baroness, Lady Liddell, because I want to quote from the agreement:

> "Each Party shall endeavour to ensure that its laws, regulations and policies provide for and encourage high levels of animal welfare protection and shall endeavour to continue to improve their respective levels of animal welfare protection, including through their laws".

Therefore, I hope that we have given reassurances on animal protection, in not just this debate but others.

On ISDS, in response to the point made by the noble Lord, Lord Kerr, I note the committee's recommendation that we clarify our position on ISDS and I am happy to confirm that in light of our investment relationship, the UK and Australia decided it was not necessary to include ISDS in this new agreement. What we did do is negotiate a dedicated state-to-state dispute settlement chapter; this is the central pillar of our agreement that will provide an effective method for enforcing commitments made in the deal.

Very quickly on CPTPP, there is a lot I could say about that, but I do believe that this is a historic deal, a very important deal, and will lead into this, as the noble Lord, Lord Bilimoria, has also said. I think I should conclude on that; I feel that there is a letter that the House is due from quite a few questions that have not been answered. I think I should finish, if I may do this, so—

Lord Oates (LD): On the specific point of the letters, could the Minister give an assurance to the House that all these letters will be received by Members of this House before the end of the scrutiny period?

Viscount Younger of Leckie (Con): I will guarantee to write a letter—I will write one letter—on the basis of this debate but I cannot guarantee when it will come, if that is the question that the noble Lord is asking; as soon as possible, I will write a letter.

Just to conclude, this is a bold and ambitious FTA that will carry both the UK and Australia forward into a bright new future, and we all look forward to it being brought into force.

6.32 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for batting at such late notice, and I thank all speakers—especially the noble Baroness, Lady Liddell, and the noble Lords, Lord Oates, Lord Kerr, Lord Morris and Lord Udny-Lister, who serve on the committee, and indeed the former member, the noble Lord, Lord Robathan. The noble Lord, Lord Purvis, and I are in competition for how many ministerial scalps we have taken but he has not had a member of the committee resigning before the chair took her place for the first time. The noble Lord's place was, of course, taken by the noble Lord, Lord Astor of Hever, but very sadly he is going to be leaving this House. I take this opportunity to thank both noble Lords for the time they spent on the committee.

I will not try to cover the whole debate; the Minister has tried his best. I think it is true to say that there was broad support for this deal, although the noble Lord, Lord Kerr, said, it is "no big deal". "It could have been so much better", said my noble friend Lady Liddell and "cautious" said the noble Baroness, Lady McIntosh, of her approach. The noble Lord, Lord Liddle, was perhaps less kind as he said it is "not that huge" and it gave away a lot for services, I think he said, with not a lot in return. The noble Lord, Lord Purvis, said he supported it but was not blind to its inadequacies, and that sums up what our committee was saying: there are some inadequacies. My noble friend Lord McNicol said the fear was that the price of speed meant that it was at the cost of quality—they may not have been quite his words, but I think that was the spirit of it.

Clearly, agriculture is the big divide. The consumers, as some have said, will benefit—I thought the Minister was scraping the barrel to talk about biscuits as the great "up" that was going to come. But there are undoubtedly worries on the agriculture side about standards and about the impact, as I think the noble Baroness, Lady McIntosh, said, on our communities. Agriculture is not just like any other good; it is about communities, it is about support for a way of life, and it seems to me, and maybe the noble Lord, Lord Kerr,

[Baroness Hayter of Kentish Town]
said this, that had the DAs been involved all the way through, greater sensitivity to that might have achieved something that would have led to fewer worries. I think the noble Duke, the Duke of Montrose, basically was asking a very broad question about whether the remit of the TAC was too narrow, and the noble Baroness, Lady McIntosh, asked whether earlier scrutiny would have helped.

The environment was mentioned by a number of speakers: the noble Lords, Lord Oates, Lord Liddle and Lord McNicol, and the noble Baroness, Lady Liddell, along with a number of others, on a range of issues on which more should have been got. My noble friend Lord Morris says that he hopes the new Government will use the context of the joint committee to move further on some of those shortfalls on the environment. As the noble Viscount, Lord Waverley, reminded us, there is not just a new Government over there but we are about to have one over here—let us hope that the combination of those two move forward.

Finally, on the broader issue of scrutiny—to which we are going to have to return as a House, I think—the noble Lord, Lord Kerr, said that we can debate only when we can do nothing about it, and the noble Viscount, Lord Waverley, asked whether even the way we are doing it is sufficient. I think there is something really important about this; it is how trade fits into our security, our defence, our foreign affairs and our development, as well as our domestic agenda. But just looking at trade itself, what is it that this Government want? We just saw a wonderful example of it. We were asked about standards by my noble friend Lord McNicol, and others, but I thought one of the most interesting exchanges was between my noble friend Lord Liddle and, I think, the noble Lord, Lord Udny-Lister, about CPTPP. If this is the push for this particular agreement. and we hear there may be real questions about that Pacific tilt—some very supportive and some asking whether we have really thought about this—surely that is a debate that should take place in this Chamber, but it is also a debate that should take place and be on the record from the point of view of government. It is so important, not just how for trade fits into other things but on whether we have the right focus for trade.

Therefore, although this debate was about the particular deal with Australia and, as I said at the beginning, perhaps it is good that it was with a friendly ally with whom we do much work already, it has raised some very broad issues, both for the Government and for this House. For the moment, I thank everyone who has contributed, and I beg to move.

Motion agreed.

M56 Motorway (Junctions 6 to 7) (Variable Speed Limits) Regulations 2022

Motion to Regret

6.39 pm

Moved by ***Baroness Randerson***

That this House regrets that the M56 Motorway (Junctions 6 to 7) (Variable Speed Limits) Regulations 2022 do not sufficiently take into account recent evidence about the risks of smart motorways and the use of the hard shoulder as a running lane, nor the concerns raised by the House of Commons Transport Committee, which recommended the pause of the rollout of future All Lane Running smart motorway schemes until a full five years' worth of safety data is available. (SI 2022/607).

Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Baroness Randerson (LD): My Lords, I am pleased to see that the Minister is still with us to answer this debate. There were times last week when I began to wonder whether she would be. In these surreal days, it is reassuring that she will be able to bring her experience of this issue to bear on the debate, because we have discussed the safety of smart motorways before. An essential part of my weekly reading is the email report from the Secondary Legislation Scrutiny Committee, whose work I cannot praise too highly. Its weekly reports are focused, specific and pull no punches. The Minister will know that Department for Transport legislation features rather too often in those reports.

First, on the detail of these regulations, they permit variable speed limits between junctions 6 and 8 of the M56 as part of an "all lane running scheme", known as a smart motorway, near Manchester Airport. It will be operational from 12 September, with the hard shoulder converted to a running lane with emergency refuge areas. The decision to press ahead with this came as a surprise because the Secretary of State back in January had made a very firm statement that he would pause the rollout of future smart motorway schemes until a full five years of safety data was available. That very welcome commitment was made following the Transport Select Committee's report on smart motorways last November, in which it concluded that

"the scale of safety measures needed to effectively and reliably mitigate the risks associated with the permanent removal of the hard shoulder on all-lane running motorways has been underestimated by successive Administrations, the Department for Transport and National Highways".

The committee goes on to recommend that the department and National Highways should

"retrofit emergency refuge areas to existing all-lane running motorways to make them a maximum of 1,500 metres apart, decreasing to every 1,000 metres where physically possible".

The strange thing about this SI is that the Explanatory Memorandum makes no mention of the Transport Select Committee's critical report or of the Government's commitments to deal with safety issues. This is legislation in a vacuum, and the Secondary Legislation Scrutiny Committee refers to it as "inexplicable". It is at best shoddy and at worst an attempt to lull us into thinking that this is an insignificant routine measure that we do not need to worry about looking at in detail.

The Government's commitment to pause the development of new smart motorways came with the caveat that those over 50% complete would proceed. But that caveat came with a promise that there would be retrofitting of existing schemes to reduce the distance between emergency areas. Apparently, this scheme is one of six where development work will proceed, as the Minister's reply to the committee chair eventually

spelled out, including schemes on the M1, M4, M6 and M27. So, the letter of the Secretary of State's promise is being adhered to, even if the spirit is broken.

What of the promise that the frequency of emergency areas will be increased? That is at the core of safety concerns. The original concept of smart motorways envisaged emergency areas at around every kilometre, and the Transport Select Committee recommendation accepted by the Secretary of State was for between 1 kilometre and 1.5 kilometres. But the Minister has confirmed that this new stretch of motorway on the M56 will go ahead with four emergency areas, every 2.5 kilometres on average. At least this is the figure in the original Department for Transport response, but the Minister later wrote to the chair saying that they are on average 1.07 miles apart, or 1,721 metres. The Department for Transport seems to be taking on board the advice of Jacob Rees-Mogg and has moved back to imperial measurements, which might confuse us, but looking at it in metres, there is still a very significant difference between the original DfT response and the second one. So, my first question to the Minister is to ask her to clarify exactly what the distance is between the two emergency areas on either side of the M56 between junctions 6 and 8 because of that vast difference between her two answers.

6.45 pm

I am surprised that the Government are not taking the opportunity to build these two new sections of smart motorway up to the full safety standards from the start. Given that they have decided to go ahead and finish the job they have started—I understand that decision—why not improve them as they do it? Surely it will be cheaper and less disruptive to traffic to do the job properly and maximise safety from the start. What feasibility assessment and cost assessments have been made of the additional costs of improving this stretch after it has opened? Will the Minister give us a commitment that the distance between emergency areas on this stretch will actually be improved, as promised by the Secretary of State? I note that the Minister's letter talked in general about large sums of money and neatly avoided specific commitments to this scheme. What about the five other schemes on the list that are being completed? Can she give us similar commitments on them?

The Minister's letter also claimed that smart motorways are safer than ordinary ones, but again there is a whiff of casuistry here. The Government's own stocktake of safety, ordered in October 2019, showed that the risks of vehicles stopping in a live lane and changing lanes dangerously increase on smart motorways, while other risks, such as driving too fast, decrease. None of that detail is spelled out in the letter, and it becomes even clearer that frequent emergency areas are the key to safety when you take that into account.

I put down this regret Motion for two reasons. I had greatly welcomed the Secretary of State's commitment at the start of the year, and I really regret the Government's failure to implement the clear spirit of the commitments he made by ensuring that this stretch of the M56 is not brought into use without a safe number of emergency areas. I also put down this regret Motion to express concern at the continuing poor quality of some Department for Transport legislation, or at least the EMs associated with them. I look forward to hearing the Minister's additional explanations of why this SI is flawed in the ways that I have pointed out.

Lord Berkeley (Lab): My Lords, I support most of what the noble Baroness said in introducing this short debate. We are starting to hear that the Government are changing metres into feet or miles, but that is completely irrelevant. I suspect that, as the noble Baroness said, this regulation and the policy behind it—if you can call it that—will cover the whole of the country before long. I believe that there are already 236 miles of smart motorway, and that 200 more miles are planned.

I will say a few words about safety, because that is what it is all about. The distance between the places where you can get off the motorway must relate to what happens to your vehicle and the fact that you need to stop. The noble Baroness mentioned a variety of distances between 2,500 metres and 1,000 metres, but there will be situations where even 1,000 metres is not long enough; it depends on the gradient, the speeds and everything else. It is relevant that the AA has banned its recovery crews from dealing with cars that have broken down on smart motorways because it is too dangerous. There has to be a solution. I do not know what the right distance is; it is sad that the Government have not got some proper data on all this—probably over five years, as the noble Baroness and the Transport Committee suggested—so that we have some information to talk about and to see how safety is affected.

Two things are pretty obvious. The first is around the enforcement of speed on these motorways. There may or may not be variable speeds, but it needs to be much more effective and consistent. The electronic vehicle detection machine is supposed to be the Government's flagship—in other words, if a vehicle breaks down not in a layby but in the left-hand lane, variable message signs immediately come up, saying "Slow down: lane is blocked." But the figure I have seen shows that this works in only 62% of the examples where a vehicle has stopped, presumably in the nearside lane. That is much too low, because it means that, for the other 38%, there is a good chance that the vehicle behind will run into the one that has stopped. I cannot see why that cannot work properly. The Government should avoid bringing any more of these into effect until they can get this vehicle detection system working.

I look forward to the Minister's response. As the noble Baroness said, I am pleased she is here, because she has a lot of experience on roads and transport. This is a terrible mess. Frankly, when the Government ignore the House of Commons Transport Committee's sensible report, and receive the comments that the noble Baroness mentioned in the Secondary Legislation Scrutiny Committee's report, it is as if they just want to ignore the whole lot and battle on regardless. I hope I am wrong.

Baroness Foster of Oxton (Con): My Lords, the noble Baroness raises some serious and good points. However, I gently remind noble Lords of how these smart motorways came to pass. I recall that, in my

[Baroness Foster of Oxton]
time in the European Parliament as the transport spokesman—obviously covering road, rail, aviation and maritime—the huge push for smart motorways came from the regulations and directives in the European Parliament some years ago. This was not just about the UK. We found that many member states were having problems with capacity due to the growth in traffic, and it was about trying to look at a way that we did not have to build motorways in different parts of the country but just expand the ones that we had.

I fully acknowledge that there have clearly been some awful accidents due to the fact that there was no hard shoulder. When motorways were built in the first place, it was known that there could be a risk of accident—obviously, there is always the risk of accident—and it was paramount that there needed to be a safe space to go. I also understand that in some cases where there have been accidents, it has been very much a technological failure because the notification above the lane that it was closed, or the X, was not showing. People have then got confused, and of course some of the results of that have been appalling. There are also appalling accidents even for the miles of motorways where we have hard shoulders, which is why we have tried to make sure that people are alert if they pull in and why we now tell people to get out of their cars, notwithstanding the size of the lorries that sometimes have to pull in.

Can my noble friend say whether the Government are looking at how, for example, the technology can work, notwithstanding that we have spent millions expanding these motorways? I use the M6 with great frequency when I drive down here, and the M56 too, which the noble Baroness mentioned, and we have miles of full lanes where we are doing 60 miles an hour. We have had years of this expansion—obviously not of infrastructure—for all the right reasons on the motorways, to get the capacity, and we have been under terrible restrictions with roadworks; it is now even more infuriating that we have four lanes but are still all crawling along half of the time.

Notwithstanding the issue of technology, which clearly needs to be seen to be working and to work properly so that people and organisations have confidence, I look forward to the response from my noble friend. We need to move this on. As the noble Baroness opposite said, there is clearly a need for more laybys to access. This will take some time, because more roadworks will have to be started, but it is imperative that those can be put in place as quickly as possible.

Lord Tunnicliffe (Lab): My Lords, the Government's failed rollout of smart motorways costs lives, which is exactly why Members of this House have long warned of serious flaws. It is a tragedy that lives were lost before action was taken, and it is thanks only to the dedication of bereaved families that the rollout was paused at all. It is therefore beyond belief that the Government are still pressing ahead with new introductions.

Even in their current form, smart motorways, coupled with inadequate safety systems, are not fit for purpose, and clearly no adequate explanation has yet been offered for their further introduction. Unfortunately, the reality of this new scheme is even worse. The emergency areas in this new scheme have average spacings of 2.5 kilometres, which is much greater than the recommended separation of 1.5 kilometres. Before pressing ahead, the Minister needs to offer proper reassurances on the monitoring of CCTV, further reviews of the evidence and improved distances between refuge areas, at the very least.

Besides the well-noted safety concerns, there are also serious issues with the scrutiny afforded to these changes, not least the fact that the Explanatory Memorandum does not address any of these obvious issues. I hope that the Minister can provide such assurances today and address the points made in the noble Baroness's Motion.

7 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I am grateful to all noble Lords who have spoken in today's debate. I am also fairly grateful to still be here; I have enjoyed being the Roads Minister for the past three years, and I know a fair amount about smart motorways, so I shall try to answer as many questions as have been raised, but of course I will happily write with more detail because I suspect that I will not be able to get through everything.

This is an opportunity to remind noble Lords of the commitments we have made in our response to the Transport Select Committee report. Noble Lords will recall that the second anniversary progress report was published earlier this year, in March 2022, and set out the progress we are making on the action plan we set out in 2020 on smart motorways. That was when issues about their safety first came to the fore and were picked up by the media. The Secretary of State and I did an awful lot of work on that to ensure that smart motorways are not only as safe as they possibly can be but feel as safe as they possibly can.

They are the type of road that gets the greatest amount of scrutiny in our country. I also note that this country has very safe roads relative to pretty much any other country in the world. Interestingly enough, smart motorways are the safest roads we have in the country with regard to the killed and seriously injured figures.

We are talking about roads that are already very safe—compare them to the average rural road and you will see that they are far safer, as we must always recognise. However, the Government remain determined to continue to make people safe, and feel safe, on these roads. That is why we agreed to the Transport Committee's report and all the recommendations therein. This included an agreement to pause the rollout of all future all-lane running motorway schemes until five years' worth of safety and economic data are available for those schemes that opened before 2020. In our response, we also clarified that we would continue with those roads that were more than 50% complete.

Why, many years ago now, did we start the smart motorways scheme programme? We need greater capacity on our roads, as was noted by my noble friend Lady Foster, and smart motorways offer a way to get that. We get improved reliability, reduced journey times and smoother traffic flows, which is key for safety. Much of this does not appear in the safety stats for these

roads, but we also shift traffic from less-safe roads, because capacity on the road increases, so some people using less-safe roads will necessarily move to these roads. They require much less land take, so they have a lower environmental impact, including on biodiversity. They cost 50% to 60% of the amount that would be spent on a traditional widening scheme—significantly less of a call on the taxpayer—and they can be done more quickly.

The M56 is no different. It was included in the June 2013 spending review, which seems like a very long time ago, and it was confirmed in the first road investment strategy in 2015. The main construction works on the scheme began in November 2020 and, as noble Lords have pointed out, it is due to open later this year. It is well over 80% complete.

The M56 scheme is four miles long and has four emergency areas. Here we get to the problem that we had in the Explanatory Memorandum, and I can only apologise that the wording in the Explanatory Memorandum is incorrect. The spacing of 2.5 km, or 1.6 miles, refers to the maximum spacing between places to stop in an emergency. That was the design standard when this scheme was designed. In reality, there is an emergency area every 1.7 km, or 1.07 miles, on average, on this stretch. It was built and designed to the design standard in place at the time, which I think all noble Lords would expect, and actually has emergency area spacing of far less. We may well go on to include further emergency areas on the M56, but this will be considered as part of the emergency area retrofit programme, which will be available later this year.

As with all smart motorway schemes opening now, this scheme will open with stopped vehicle detection. This is radar-based technology, further elements of which I shall come to later. Essentially, it looks at the road and sees where vehicles have stopped and then provides an alert to the regional operating centre, and various things then happen as a result of that.

Let us think about the smart motorway safety data. It is important to bear in mind that the latest data we have available is for 2020, so the data available is from before any of the interventions that the Government set out in the smart motorway action plan, back in 2020, were put in place or had any impact. This data is from before the Government intervened, as we have now committed.

A conventional motorway has 1.45 killed and seriously injured per 100 million vehicle miles. I encourage noble Lords to keep that in their heads. An all-lane running motorway has 1.38, so 0.07 fewer. It is safer when it comes to killed and seriously injured. That is before the widescale rollout of stopped vehicle technology, before the commitment to retrofit emergency areas, before the signage improvements we have committed to and put in place, before the recent communications campaign which told everybody to go left, before the upgrade to the HADECS cameras for Red X enforcement, and before all of the 18 measures which the Government said they would do in 2020. I am fairly convinced that those 18 measures will improve safety further.

On the basis of the 2020 data, an all-lane running motorway is already safer than a conventional motorway when it comes to killed and seriously injured. For all these people who say, "Put back the hard shoulder; let's go back to conventional", I do not know on what evidence that would be remotely the right thing to do. If the evidence changes, of course we should look at it again, but I cannot see at this moment—and after how much scrutiny?—that the evidence exists to even contemplate ripping out these motorways, removing capacity, putting some of those people on less-safe roads and, for the people who stay on the motorway, making them slightly less safe. I cannot see it myself.

Lord Tunnicliffe (Lab): Can the Minister explain why all this evidence was not contained in the Explanatory Memorandum, which she personally approved?

Baroness Vere of Norbiton: I will happily explain that. All the evidence I just outlined was in the progress report—as I said, there was an enormous amount of scrutiny. If I had my time again, would I have put all that evidence in the Explanatory Memorandum? No, because Explanatory Memorandums cannot possibly include every bit of evidence on which the Government have made a policy decision. This M56 variable speed limit SI is very standard—I cannot even begin to tell your Lordships how many we have done. However, I wish I had included a paragraph with links to all the different reports we have already done into smart motorways. There is a balance between providing sufficient information and links and ending up with an Explanatory Memorandum that becomes unwieldy. We could provide those links though.

Lord Tunnicliffe (Lab): My recollection, though I may have got it wrong, is that the standard for Explanatory Memorandums requires them to be easily understood by a person with no previous knowledge. The arguments that she has revealed to us, which may or may not be persuasive, are not available to people with no previous knowledge.

Baroness Vere of Norbiton: That is exactly why, as I set out, we will update the Explanatory Memorandum. Am I going to regurgitate everything in the progress report, the response to the Transport Select Committee, the progress report from last year, and the original 2020 action plan and stocktake? No, because it would become a document of several hundred pages. We must be selective, but I think we can include links to other reports to explain it to people.

However, let us be absolutely clear that all this SI does is allow a variable mandatory speed limit to be put in place. Will that have any impact on road safety for that stretch? No, it will not. In allowing a mandatory speed limit to come in, it will probably make it safer. If the Government are then required to do an entire Explanatory Memorandum about the much broader policy, we will end up with some very lengthy Explanatory Memorandums.

Lord Tunnicliffe (Lab): The Minister has illustrated that it can be done in a reasonably concise way. She just went through all the arguments—I cannot say that I am convinced because I cannot see them all together on a piece of paper—but the length of her speech is not that long compared with the paucity of information in the Explanatory Memorandum.

Baroness Vere of Norbiton (Con): I could speak about smart motorways for ever—and I have not finished yet. I will happily set out in a letter to the House exactly where all these links are—I am sure the noble Lord knows where they all are—and summarise all the data that is out there at the moment, and make sure that a copy is placed in the Library. I am sure that it will be incredibly helpful.

I want to move on from the focus on safety data. The Transport Select Committee agreed with the Government that reinstating the hard shoulder and going back to a conventional motorway was not in the best interests of either our economy or the safety of the people using our motorways, and we were pleased that it reached that conclusion.

On the schemes that we are not pausing, the noble Baroness, Lady Randerson, noted that six schemes will continue because they are more than 50% complete. We feel that the disruption and challenges to road safety that leaving traffic management in place for any significant period of time would cause—because roadworks can be quite unsafe—make it not a viable option. Of course, with roadworks in place, many drivers would also use less-safe roads than the motorway. We therefore took the decision to continue with those schemes that are more than 50% complete. However, we did say that stopped vehicle detection will be in place for all the smart motorways that we are opening, and that is indeed the case. I did not mention cost in that, but the cost of reverting a motorway back to where it was before is fairly significant.

I want to cover a couple of points on which noble Lords have asked for clarity. I think that I have set out the Explanatory Memorandum issue. Again, I apologise that the original memorandum was incorrect. We put in various safeguards to ensure that people not connected to the Explanatory Memorandum read it. Clearly, even in those circumstances, it did not pass the sniff test, so we are going to get better—we really are.

The topic of more frequent emergency areas is an interesting one. As noble Lords will know, the spacing between emergency areas has come down. In 2011, it was 1.5 miles; in 2017, it was a mile; in 2020, with the new one, it was 0.75 miles, and obviously there are maximums in there as well. Does that necessarily mean that roads built to a more recent design specification are more dangerous than those built to the previous specification? The jury is still out; it is really interesting. One thing we said in the stocktake that we would do is put 10 more emergency areas on the M25. That was done, and they have been in place for well over a year now. The data from them on how many live lane stops there were and the impact on safety is being collated at the moment, but I expect it to be inconclusive. Go figure—but one has to look at the evidence.

The noble Baroness is signalling that I should get on with it. I agree—let us get on with it.

The noble Lord, Lord Tunnicliffe, made a couple of points. The AA responds on smart motorways—of course it does. No recovery operator is allowed on a smart motorway while it is live but they can go to the emergency areas. Traffic officers are responsible for lanes when they are still live; ditto on a conventional motorway. The AA will come to your rescue if you end up in an emergency area or indeed on a hard shoulder.

7.15 pm

On the points made by the noble Lord, Lord Berkeley, I am absolutely focused on the technology. As I said, the safety data that we have to date is not based on having the technology there; therefore, the technology will go in only one direction in improving things. We want stopped vehicle detection to work as well as it possibly can. Will it ever identify 100% of all stopped vehicles? No, because it is radar, and therefore will not do that, but those are not its design characteristics. We are very keen to make sure that all our technology works as well as possible. We have commissioned the ORR to review all the technology on smart motorways, and we are working well with it on setting all that up. It is important that we have its expert insight to ensure that the technology is as good as it possibly can be; we are grateful to it for its help.

I am sure that I have forgotten various things, but I sense that the House wants me to wind up, so I shall.

Baroness Randerson (LD): I thank those noble Lords who took part this evening; in particular, I thank the Minister for her response.

Of course I recognise that safety on smart motorways is a complex issue. It relates to emergency areas, response times and response detection. But I must comment that, at times, the Minister's response was at odds with the Government's own stocktake and the evidence on safety that the Transport Select Committee received. Whether she agrees with that or not, she must recognise that there is widespread public concern about safety. It may be perceived rather than real, but that is probably because most of us find driving on smart motorways an extremely stressful experience. This is an indication of the perception of the safety of those roads. When the Minister comes to review the tone of her response on certain issues this evening, she may recognise that she is not doing her argument any favours with the general public. There needs to be a realistic assessment of this situation by the Government, but I recognise that this is a very specific issue. I therefore beg leave to withdraw the Motion.

Motion withdrawn.

Child Vulnerability (Public Services Committee Report)

Motion to Take Note

7.19 pm

Moved by ***Baroness Armstrong of Hill Top***

That this House takes note of the Report from the Public Services Committee *Children in crisis: the role of public services in overcoming child vulnerability* (1st Report, Session 2021-22, HL Paper 95).

Baroness Armstrong of Hill Top (Lab): My Lords, it is a great pleasure to introduce this report to the House before the Recess. The report makes it clear that the UK faces a crisis in child vulnerability. In England alone, over a million children are growing up with reduced life chances, and children paid a very heavy price during the pandemic. The national lockdowns, while necessary, had a severe impact on their education and their mental health. However, things were bad

long before the outbreak of Covid-19. The last decade has seen our most disadvantaged children and young people being let down. We have seen cuts to early years and early intervention support, despite the raft of research which shows how important it is to a child's long-term educational success and life chances, with rising child poverty, criminal exploitation and gang violence, while the gap in attainment at school between the richest and poorest children has continued to grow. Our children deserve better.

Spending on early help for families, such as Sure Start and children's centres, family support and youth services, was cut by 48% between 2010-11 and 2019-20. Our report found that this had a devastating impact on communities across the country. In 2019, before the pandemic, the Office of the Children's Commissioner for England estimated that 1.6 million children were living in homes with serious parental mental illness, addiction, domestic violence or other concerns, but found that support for these children was either patchy or non-existent. It also found that 829,000 of these children were completely invisible to services. This got worse over lockdown. This decimation of family support services has not only damaged the life chances of disadvantaged children but makes very little economic sense. If children and families are unable to access the support that they need when they need it, small problems can escalate into full-blown crises such as joining a gang, being expelled from school or ending up in care. As a result, councils have been forced to spend almost £2 billion a year more since 2010 on crisis management services such as youth justice services, safeguarding and looking after children in the social care system. Ironically, the decision by successive Governments to slash family support services has therefore resulted in an unprecedented increase in the role of the state in family life. In 2015, 69,000 children in England were in care, but by March 2020 the figure was 80,080.

Josh MacAlister, who gave evidence to our inquiry, warned in his recent *Independent Review of Children's Social Care* that a failure to radically reset services for vulnerable children and families would lead to record numbers of children going into care. Research commissioned by the County Councils Network found that the number of looked-after children in England is likely to reach almost 100,000 before 2025 unless action is taken.

This growing crisis demands bold action. Therefore, I confess to being rather disappointed to receive such an uninspiring government response to our report. In fairness, the response did point to the Department for Education's family hub programme, and additional funding for the early years and Supporting Families programme. We agree that these are steps in the right direction. Our report found that family hubs are an effective model for providing early help and supporting parents to meet their children's needs. In the small number of areas where they have already been established, we saw how family hubs played an important role in improving early intervention support, in facilitating integration and data sharing among public services, and enabling voluntary sector partnerships.

Also, while most Sure Start centres offered services for children up to the age of only five, family hubs help parents with children up to the age of 19. That is undoubtedly the right approach. However, the money announced for the early years and family hubs to date nowhere near compensates for the £1.7 billion cut from Sure Start and other support since 2010. There are currently only 150 family hubs in England, and this falls far short of the vision put forward by Andrea Leadsom, the author of the Government's early years review, that all families should be able to access a local hub in their community from pregnancy.

Our children and our country simply cannot afford for the Government to continue to underinvest in family support. This failed approach has undermined families' resilience and made them more reliant on late, very costly intervention by the state, which is bad for children and, ultimately, bad for the taxpayer. That is why we need a radical new approach to early intervention. We need it for vulnerable families, not only to boost outcomes for children but to support families to be independent and to reduce costs in the criminal justice and social care system. We also need support for the estimated one in six children with unaddressed mental health needs, to ease pressure on the NHS.

During our inquiry, we were presented with a wealth of evidence from the Early Intervention Foundation and other organisations, as well as academics and researchers, about the impressive real-world impact that existing early intervention programmes already have on the lives of children. The Incredible Years programme has an impressive track record in improving cognitive outcomes for children. The Preparing for Life programme was found to narrow the disadvantage gap in school readiness. The recent evaluation of the Family Nurse Partnership programme demonstrates a significant impact on children's health and education outcomes.

If the Government are serious about levelling up, this is where they should start. A national rollout of some of these programmes, delivered through a comprehensive family hub network, would unlock the full economic potential of our country. For too long, vulnerable children in our most disadvantaged areas have not been given that fair start, and research carried out by Pro Bono Economics on behalf of the committee found that cuts to early intervention have fallen most heavily on our poorest areas. Spending on early intervention in areas of England with the highest levels of child poverty was cut by £766 million between 2010 and 2019. It does not need to be like that. The London School of Economics estimated that the economic cost in a single year of failing to invest in the early years is over £16 billion. We must get our priorities right.

However, funding alone will not solve the child vulnerability crisis. Every relevant part of local and national government, the public and the voluntary sector must be mobilised if we are to tackle this once-in-a-generation challenge. That is why our report called for a national strategy on vulnerable children, with family hubs at its heart. The Government did not agree. They said that things are best done locally and of course I agree. None the less, we heard from several young people where there had not been the collective co-ordinated action from across public services that tackled the family problems, and it left them very vulnerable.

[Baroness Armstrong of Hill Top]

We fear that, without a national vision to bring together the NHS, police, social care, schools and the voluntary sector, or milestones and targets to hold Ministers and local services to account, little progress will be made to improve things for some of the most vulnerable children. I hope that the incoming Prime Minister, whoever that might be, and their Cabinet will take a different approach and make a strategy on child vulnerability a priority.

Any national strategy must also address data sharing. I think other colleagues from the committee will address this a little more than I have time for, but the Government ignored the evidence in their response on the grounds that data sharing is "already supported"—referring to requirements for safeguarding. The problem is that too many children do not quite reach the threshold for safeguarding, but services need to work with them so that they are not all missing out and falling through the gaps. The Information Commissioner acknowledged that there is a problem with existing data-sharing guidance on children, with too much emphasis placed on the risks to a child of sharing information with third parties, which disincentivises well-meaning front-line workers from sharing data that could improve a child's outcomes. A clear strategy from the centre to ensure that the NHS, social care, schools, the police and other local services do not view each other as third parties is critical.

It is time that I finished. I thank everyone on the committee, which I have been incredibly lucky to chair. It has some great people. We lost some members, and I am delighted that a couple will contribute to the debate none the less. I must say that at least two of our members are not here and had to remove their names because they have Covid. It is a real problem in this House because we cannot have hybrid sittings anymore. We have not had a meeting of the committee in the last two months where somebody has not been missing with Covid.

I also thank the staff. We had Tristan Stubbs and Mark Hudson working with us, and Claire, our admin assistant. Tristan and Mark moved on as we were finishing this inquiry. We have two new people working with us, Sam Kenny and Tom Burke. They have all been really supportive and helpful in getting us this far. We keep coming back to some of the issues that were raised.

I also pay particular tribute to all the parents, children and young people who bravely shared their experiences with us. Vulnerable families still recovering from the impact of Covid on their education, mental health and personal finances now find themselves in the midst of the worst cost of living crisis in decades. All the pressures children face at home, as described in our report, such as witnessing parental domestic violence, addiction or mental ill-health, are likely to intensify in the coming months. If we do not act, the consequences for these children's education, future employment prospects and life chances will be catastrophic. We cannot allow difficult times to distract us from this task at hand. If now is not the time to address the crisis facing vulnerable children, then when is it? I beg to move.

7.34 pm

Baroness Pitkeathley (Lab): My Lords, it is a privilege to be a member of the Public Services Committee, so ably chaired by my noble friend Lady Armstrong, and to speak in this debate, along with other colleagues and, indeed, former colleagues from the committee. Our inquiry was both illuminating and distressing, all the more so because many of us have worked in child protection for many years and found the same old problems of lack of recognition, lack of co-ordination, lack of a comprehensive strategy and lack of collaboration between agencies with which we have unfortunately been familiar for too many years. It was, to say the least, dispiriting.

To all these old problems was added the pandemic, with 1 million children growing up with reduced life chances, as my noble friend said, public services offering too little, too late, and local services undermined not only through lack of funding but through a lack of the information that would enable them to protect children, such as how many young people took up caring roles as support services were withdrawn as the pandemic progressed. We have no accurate figures about that.

In my brief remarks, I will concentrate on two areas where we found failings but which could, if addressed, provide some early wins and huge steps forward to protecting vulnerable children. The first is a lack of proper engagement with users—children and families—when services are designed. The evidence we received from users of services was the most powerful of all. Six focus groups and seven evidence sessions with parents and children really brought home to the committee the problems faced by families and shaped our recommendations. In short, services must be responsive to individual needs and must be co-produced.

I quote Emma in our report:

> "I feel [that public services] just ignore children's voices. When my mum was going through issues with her mental health, they asked her if she needed any services and she said we were fine. I felt like I needed help, but nobody listened to me. No one wanted to hear my voice."

Emma had been a young carer for her mother for a very long time.

In our first inquiry, we argued that involving disadvantaged groups in the design of services makes public services more responsive to marginalised communities' needs. But, like Emma, many of the children and families reported to us that statutory agencies too often deliver support without ever listening to the people who use their services. We heard that services for vulnerable children and their families need to be responsive to individual needs to be successful. Therefore, they must be co-produced—that is the word we heard very often.

We saw some interesting co-production and the Cabinet Office certainly issues quite strong guidance about how good it is to engage in co-production, but I am afraid that the experience of one of our witnesses was that the use of co-production in children's social care is limited. She said that children in the care system regularly requested "kinship care"—when a child lives with a relative or family friend rather than with a foster family or in a care home—but they were often ignored. She called for children suffering from the consequences of family breakdown to have a greater say in their future. She said:

"The best way of doing that … is through coproduction and having young people, kinship carers and families working with the local authority to coproduce a kinship, family and friends care policy. Unfortunately, this does not happen."

We heard too many depressing examples of where co-production does not happen, but we heard about some local authorities, such as Cheshire East Council, that envisioned an organisation to codesign the service with young people, their families and the community. They designed the programme and, lo and behold, they had some very good outcomes. They halved the rereferral rate into social care services from 23% to 12%, reduced the average social worker's caseload by 30%, reduced reliance on agency staff, who, as we know, cost too much, and achieved 95% engagement from families.

I have often said in your Lordships' House that if people work with the users they get some very pleasant surprises. When you really engage with users, they often ask for far less than you think they will want if you really address their needs, rather than have their needs addressed by somebody who does not really understand their situation.

That brings me to the second issue on which I want to concentrate: the inadequate engagement and collaboration with local voluntary and charitable agencies. Engaging users is nearly always best done through a local voluntary organisation; this was pointed out to us in our evidence sessions. I will never forget Maria from Birmingham, who said to us:

"The police dismissed what happened to us … They said, 'It is just [your husband's] behaviour', and I was told to manage my fear and my children through counselling … but I needed [more] support with my daughter … she was easily triggered by the violence she had witnessed and would hurt herself. I couldn't cope."

Maria was fortunate to be referred to a small charity in Birmingham, WE:ARE, which forms long-term and meaningful relationships. She received group therapy from it, enabling her better to support her children. Now she says that her strength has been passed on to her children and that they are doing much better in school as a result.

Our report says:

"A common theme that emerged from our focus groups and evidence sessions with parents and children was that voluntary sector organisations were often better placed than statutory services to identify and respond to needs, and to co-design services more effectively. We heard that the voluntary sector was able to engage vulnerable families whom statutory services could not reach."

I always remember that when I was working with young carers, a lot of them and their families were terrified of being referred to social services for fear that they would take the child into care instead of trying to resolve the situation in which the family found itself. It is hardly surprising that marginalised families are reluctant to request state support, because they fear that that involvement in family life will mean that kind of intervention, which is not what they want.

For example:

"Leah told us that her mother 'did not want any help' from statutory agencies with her addiction: 'it was mainly because she was scared of social services taking me and my sister away.' Fortunately, the family was supported by … an addiction charity."

Leah said that the charity deals

"with those things more often, they have a better understanding … They know how to help and they have been doing it for a long time. They have seen loads of families come in with all sorts of problems. I feel like they could help on so many levels".

We had some good examples such as those I have quoted, but there were too many where the ability of the voluntary sector to create and deliver innovative services was ignored because of a lack of trust and it being called in too late, once decisions had been made, not being treated as a proper partner and, of course, being deprived of funding.

Funding underlies so many of the problems we have identified, so it is very important that public services do not ignore but make the very best possible use of two of the most important resources available to them: the users themselves and the voluntary sector. If these are both treated as equal partners—co-producers—public services would do a better job of supporting vulnerable children than was evidenced to the committee in this inquiry.

7.43 pm

Lord Davies of Gower (Con): My Lords, it is a great pleasure to follow the noble Baroness, Lady Pitkeathley. It was a genuine pleasure to serve on this committee during this inquiry, and I pay tribute to my very knowledgeable colleagues on the committee—in particular, our chair, the noble Baroness, Lady Armstrong of Hill Top, who carefully steered us through this—and to the clerks at that time, who, among other things, gave great guidance and worked extremely hard to ensure that we obtained the best evidence. An awful lot of it was available for this inquiry.

The report is wide-ranging and, as can be seen, covers some important aspects—far too many to mention. Two particular aspects of the inquiry triggered an interest with me: the use of data, and the enormous benefit of family hubs.

One of the more fundamental aspects of the inquiry, as detailed in the report's introduction, demonstrated the lack of co-ordination by central government—no news there, you might say—and national regulators, which, we were told,

"undermined the ability of local services working with families to collaborate effectively, intervene early and share information to keep vulnerable children safe and improve their lives."

Of course, this was not helped by the barriers to sharing data on vulnerable children. For example, we heard from various sources that

"if they wanted to access help they would have to go through avenues where their parents would be involved, which could discourage them to share information with services".

We heard from the Cabinet Office, which said that public servants faced a complex dilemma about their duty of privacy and how they contrast that with doing the right thing. Witnesses also suggested that the necessity

"for parental consent before data could be shared, and uncertainty among frontline professionals about thresholds for sharing data on at-risk children, inhibited the sharing of vital information."

The Family Hubs Network supported witnesses' experiences. It

"described how children and families were often 'bounced from one service to another and have to repeat their story again and again'."

[Lord Davies of Gower]

We heard evidence that

"poor data-sharing between Government departments and local agencies endangered vulnerable children and their families by undermining safeguarding arrangements and preventing referrals for early help."

This is quite extraordinary and, frankly, such data barriers are unacceptable in a modern, compassionate society.

I move on to another highlight of the report, which really caught my attention and which I believe could almost become the panacea for ensuring both the safety of vulnerable children and a guiding hand for parents in need of help. I refer to family hubs, of course. Family hubs aim to strengthen families by providing help with the countless challenges that parents face, especially those that will hamper children's social, emotional and physical development and their educational progress. They

"provide families with a central access point to integrated services."

So what did we learn about family hubs in our inquiry? We heard from

"Jade from Doncaster, aged 23 and a mother of two, with a three-year-old son and a daughter of eight. Doncaster Borough Council told us that at first they were concerned about Jade's ability to care for her children. Jade is now able to meet their needs: '[she] interacts more readily with professionals, other adults and families and, most importantly, her children, as a more confident parent.' Doncaster is one of a small number of local authorities in England with an established Family Hub network."

It is worth repeating what Jade told us:

"I have been attending the Family Hub for some time now. I was having problems when my son's dad was being abusive to me and smoking skunk … in front of the kids. If it wasn't for the Family Hub, I wouldn't have been able to get out of this tough situation. The staff have always been friendly, helpful and reliable. I really enjoyed attending the sessions they directed me to at a local church".

This is important, because Jade told us that she

"learnt stuff that made me a better mum—like how important it is for kids to eat breakfast, healthy snacks and meals. I also learnt how to read and play with my children."

Family hubs can provide a base for communication and support for children in early years as they move through school. Beginning at primary schools, the centres can include early childhood development and parenting activities, home visitation, home-based satellites, and early problem identification and intervention. As family hubs say of themselves, they can also be a place to support parents to facilitate their child's learning. This can be through the provision of learning and mentoring support to help families provide a positive learning environment, and role models and mentors to support young people's progress in school.

However, we learned:

"The Government has spent a relatively small amount on Family Hubs, with a focus on trialling new Hubs."

Yet the professionals in the field who gave evidence to us advocated a greater spend, comparing it with Sure Start, which

"accounted for £1.8 billion of public spending … in 2009/10"

by today's calculations.

Dame Andrea Leadsom MP's *Early Years Healthy Development Review Report* was clear when it said:

"It is our vision that all families can expect to be welcomed to their local Family Hub from the moment their pregnancy is confirmed up until their child turns 19 … Family Hubs will be open-access and any parent or carer can 'drop in' to their local Hub when they need to. For this reason, we envisage Family Hubs as being baby-friendly, welcoming for families and located in accessible places."

I hope that the Government pay serious attention to our committee's report and that they

"commit to introducing a digital Red Book for children and young people aged 0–19",

as advocated by Dame Andrea Leadsom, and, referencing my earlier point regarding data:

"This health record should be made available to all statutory agencies and voluntary organisations working with vulnerable children and young people."

If we fail to join up our thinking in relation to data sharing in this area, we will fail to help the most vulnerable in our society: our children.

7.50 pm

The Lord Bishop of Chichester: My Lords, I am glad to follow the noble Lord, Lord Davies, in this debate. I am immensely grateful to the noble Baroness, Lady Armstrong, and all those who have produced this outstanding report. One of the most impressive things about it is that one hears the voices of those who are so often not heard.

I think that the move from Sure Start to family hubs is a model for how we respond. The challenge of looking at the poorest and most vulnerable in our society today is such an important focus for us. The model of the family hub is absolutely invaluable, because in lengthening the time over which a person might need encouragement and help beyond the formative years of nought to five, we remind ourselves that being human is not a problem that can be solved with a quick fix of investment. It is actually a long-term story of investment and hope, of failure and recovery. That perspective, looking at nought to 19, is a really important one. I was also very encouraged by seeing the recognition of the needs of 18 to 25 year-olds, as people move into young adulthood, which is still a very important area.

When I was first ordained as a bishop and working in the north-east, on Teesside, the Sure Start centre in Grangetown—one of the most deprived parts of Middlesbrough—was an incredible place to go to because it offered hope, in contrast to so much that was derelict in life and the environment around there. What I saw there was that this was about families; this was about giving hope not only to children who were vulnerable but to the parents of those children, who did not really know quite how to deal with this gift that they had. Seeing parents with very tiny children being given the skills to parent their child was incredibly moving, and fruitful, of course, in terms of hope for the future.

Another thing I came across in that instance was somebody who, as a child, had been a victim of all the vices that he might have encountered in that area of Middlesbrough. He had fallen foul of the law and had ended up literally in the gutter, where he was picked up by a Christian woman and put back on his feet over the course of time. He established a small charity called Father to the Fatherless—a quotation from Psalm 68. He talked to young male adults—late

teenagers—about what he had been, how he had failed and how he had found life, hope and potential for the future.

One thing in the interstices of this report, which I would want to point to, is something that the noble Lord, Lord Davies, has already mentioned: the role model. Where are the role models for those who are so often lost and most vulnerable as they grow through childhood into their teenage years and early adulthood?

I remember being very struck when I went to one of our schools—it was not a church school, but one that had very close working relationships with one of our parishes on the edge of Middlesbrough—and saw, in this large primary school, that all the teaching staff were female. The vicar of the parish, who had a marvellous role there, was also female—a very impressive female priest. I thought, "Everybody who is in a position of achievement, power and authority here is female." The one person who was male was the person who was in charge of sport. It is positive in its way, but it did not say anything to the boys in that school about what their aspirations might be. Where do we find the role models? In particular, the challenge to us as nation, as wider society, as a wider issue than something we can legislate for, is to find role models for boys, in particular, to help them grow and become mature and responsible citizens.

I want to touch briefly on something that has already been explored by the noble Baroness, Lady Pitkeathley: the voluntary sector and its relationships with the statutory sector. When I was a curate, first ordained in Plymouth back in the 1980s, the probation service was in the lead in terms of partnership with the voluntary sector. It invested, from its own funding, in the voluntary sector that it worked with and set up voluntary charities. For example, it set up a garage where boys, again, who had a criminal record or were at risk of offending through stealing cars and motorbikes, could be taught mechanics and develop skills that might help them find employment. This extraordinary partnership between the voluntary and statutory sectors was modelled in a variety of other ways as well. Reading the report, one of the questions I had was the extent to which the initiative for forging those links rests with the voluntary or the statutory sector. It is not entirely clear where the responsibility might be, or just how far that relationship might go.

Relationships are at the heart of tackling deprivation and vulnerability for children. Looking at the voluntary sector, one area that is not touched on here is, once again, the question of the extended family. Certainly, on Teesside it was probably the most important relationship, between child and grandparent, as children grew through their teenage years. What we offer encompasses a wider community, and builds on relationships, as I think has already been rehearsed in this debate. This is very important.

On the business of information sharing and schools, it is certainly very important that information is shared, and schools are of enormous importance. I valued the reference to education in the report, but I want to speak up for what I have seen in some of our church schools, when I was in Yorkshire and on Teesside, but even in Sussex. There is pressure on teachers to take on responsibilities for which they have not necessarily been prepared, where information can be a burden and possibly a trauma, in terms of how they are then expected to respond. How do we prepare those who are working in education for this? What investment is made to support them? How do we ensure that this aspect of their work, which is increasing, I think, does not demoralise the profession, as we see a rapid departure from our teaching profession? These are important issues to be addressed in the application and implementation of some of the hopes in this report.

Finally, I touch on something that I mentioned earlier, in terms of the perspective of family hubs and the age range, and that is loneliness. The age range 18 to 25 as an area for support strikes me as being very important. It touches on what it means to be lonely. As many youngsters find themselves in a world where our society is atomised, where do they find reliable safe spaces and relationships? Psalm 68, used by the young man who was working with youngsters on Teesside, also has an interesting statement:

> "God setteth the solitary in families."

I think the loneliness of many of our young people begs us to answer how they find the family in which they will be valued, encouraged and given purpose for their lives.

7.59 pm

Baroness Wyld (Con): My Lords, it has become customary to say it is a pleasure to follow the previous speaker, but it is a real pleasure and honour to follow the right reverend Prelate. There were so many interesting insights but also challenges to the committee, so I thank him for that. I need to draw attention to my interests as set out in the register, in particular my current interest as a non-exec at Ofsted; I recused myself where necessary during the inquiry.

I start by paying tribute to the chairmanship of the noble Baroness, Lady Armstrong. I miss serving on her committee, as it was a natural move for me to go over to the committee on the review of the Children and Families Act 2014, so ably chaired by the noble Baroness, Lady Tyler of Enfield. I want to take a moment to say that the noble Baroness, Lady Armstrong, chaired this inquiry with real verve and sensitivity. She and I disagreed from time to time, but she never got into political point-scoring, although some may say that she has now got plenty of opportunity. I have observed her throughout the pandemic and beyond; she is somebody who has continued to work tirelessly for vulnerable children and women in the most horrendous circumstances. I thank her wholeheartedly.

I hesitated but I feel that I need to say a few words about the wider context for tonight's debate. I am very glad that my noble friend the Minister is the person to respond to it. I am not sure how she feels about it, but she too has dedicated a lot of her life to helping those in need. She certainly needs no lectures from me about how frustrating it is for many of us to debate this in the current circumstances, but we must plough on because we owe it to those people that we have heard about who gave evidence to the committee, sometimes in private and with exceptional bravery. We need to ensure that their voices are heard.

[Baroness Wyld]

As we have heard, one of the most disturbing realisations highlighted by many of the witnesses was the fact that the pandemic silenced many of those most in need of attention. We have heard again about the number of vulnerable children who became invisible to services, which is why there was such a sense of urgency in the committee's recommendations. I pay tribute to the millions of public servants and voluntary workers doing sterling work up and down the country. We were lucky to hear from many of them first hand, but we also heard of structural or systemic issues that mean services too often are piecemeal or almost impossible to navigate.

What really struck me and, I am sure, other members of the committee when we took evidence from people who had needed to access public services in times of crisis was the number of times that the system had broken down due to poor communication or data-sharing issues. I take all the challenges on funding and agreed with some of them but, interestingly for me, a lot of the witnesses did not come forward and say it was about funding. They said that something which seems very simple, such as changing GP practice, can then have a domino effect. We heard of one example that really stuck with me, in the treatment of postnatal depression, where something that should have been handled quite simply—and could have been avoided—then had ramifications not only for the mother but for the whole family, at the heart of which sits the child.

I lost count of the number of times on this inquiry, and during the one we did before on public services in Covid, when we heard from people who had faced awful situations. It was not people who had made mistakes or could have tried harder but because of situations that anyone in this Chamber would, I am sure, have found it incredibly difficult to deal with. They said, "I had to tell my story over and over again", because the system was so disjointed. It was bad enough when you heard adults telling you this but when you hear young people and children say it, that is terrible. Despite the fact that we were hearing that, still the voices are not heard when the services are created, as the noble Baroness, Lady Pitkeathley, and others have said.

I note that the Government "partially accepted" recommendation 10 of the report on co-production and co-design. There were some promising examples on parent and carer panels. Can the Minister set out how we are going to know whether these are effective? What metrics are in place for them and the other examples that the Government gave?

Others have talked about family hubs. I was going to go through them but have listened to every word, so I do not want to replicate. I will just give my observation: the Government are doing a lot of good work here and I thought there was a genuine acceptance that this was a good solution. I liked the fact that Minister Quince came with a great passion and said that he saw them as "Sure Start-plus-plus-plus". All that was there. I accept the need for evidence-based policy-making, obviously, but I had a nagging feeling the whole way through that there was not quite enough urgency around implementation and delivery. The Government recognised that there were problems in rollout but did not say what steps were being taken to cut through the complexity, which is the job of governing. Again, I have cut short the points I was going to make, but I would be grateful if my noble friend could provide an update to the House. The noble Baroness, Lady Armstrong, raised that point as well.

I want to talk briefly about mental health again, because I expressed my concerns during the committee—and years before that, actually, with many others, including the noble Baroness, Lady Tyler, who have been talking about the fact that this has been a neglected area for so many years. Again, the Government have done some good work here and taken a thoughtful approach over the years. I have seen, first hand, some brilliant examples of mental health services delivered in schools by charities and I am a huge champion of early intervention, which was one of the core themes of the committee, but some children need further specialist support. Not everything is solved at that earlier stage, and I do not think we heard from anybody, and I do not know anybody, working with children in a professional capacity who is not hugely worried about the pressure on CAMHS. I probed this at the committee and did not think we got a particularly strong answer from Ministers, but maybe I am being unfair.

I want to talk briefly about the fact that I know some commentators feel we are in danger of medicalising what are normal anxious or low feelings. I agree that there is a balancing act in early years when you talk about emotions, mental health and mental well-being, but I am talking about young people who are self-harming or those who have eating disorders or suicidal thoughts. There are awful situations with thresholds, where their parents are told that they do not meet them. The system seems very painful and difficult to navigate in the worst circumstances. Can my noble friend kindly update the House on what assessment the Government have made, or whether she thinks I am overstating it, of the immediate requirements for CAMHS? What steps are being taken to address this in terms of both the crisis and immediate response, some of which can be blamed on the pandemic, and longer-term workforce planning?

To sum up, as we have heard, all children faced a huge burden during the pandemic. but many or most of them will be able to move on. They will recover without needing the support of public services beyond what anyone might expect. However, as the noble Baroness, Lady Armstrong, said: for those who cannot, for whatever reason, we have one chance to help them urgently, so please do not let us miss it.

8.07 pm

Lord Hogan-Howe (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Wyld, and to speak this evening on the committee's report. I mention my non-executive directorship of the Cabinet Office so as to declare that interest.

I join everyone else, first, in saying how much I enjoyed the company of the people who I shared time with on the committee, as I learnt a great deal, and, secondly, in paying tribute to our leader. The noble Baroness did a great job in showing how to lead a

group of very opinionated and strong characters, while showing all the skills she had as the Chief Whip for the Tony Blair Government. Her deft skills kept us all in control and guided us in the right way, while listening to everything that we had said. I say thank you to the noble Baroness, Lady Armstrong, for that leadership.

I really want to talk about only two areas. The first is the Government's rejection of the committee's recommendation to have a national child vulnerability strategy. The second is the recommendation to have more data sharing for the benefit of the vulnerable child, which, as the noble Lord, Lord Davies, said, remains a concern that we have both probably experienced in another sphere in our professional life. It continues to remain a problem even today.

On the Government saying that they do not want to produce a national strategy, their argument was, first, that they were already taking a strategic approach and, secondly, that a single strategy covering too broad an area of policy risks becoming unmanageable. I thought both arguments were really weak: if the Government have a strategic approach, surely they have recorded it somewhere; if not, I would argue that it will be applied inconsistently. But if it has been written down, surely it could be published. I did not think that was a very strong argument.

Surely the point of strategies is that they are needed in broad areas of complex policy issues, such as vulnerable children. This is crying out for a national approach, with consistency, and to make sure that the right priorities are addressed in the future.

My first positive reason for needing a strategy is that it could provide a definition of vulnerability. None of the Government's witnesses that we heard from could produce such a definition. This means that there are different departments having different definitions and priorities. I understand that a definition can be a hostage to fortune: the difficulty is that if you exclude somebody from a definition, and then someone later says they are vulnerable, there will be a list that constantly gets increased. But the danger of not having a definition is that nobody is clear exactly what they are talking about, and the aggravating factors that make someone vulnerable. Therefore, I think it important that a definition should be provided, even if it means that you have to add things on to that definition over time.

The No. 2 point for me is surely that such a strategy should set out the evidence of what works in reducing vulnerability and improving outcomes for children who are vulnerable. At the moment, this evidence seems to be scattered between at least three departments—health, education and the Home Office—and I am sure it is across many others too. But there is a danger that what is working might be applied inconsistently across different departments for the same child and the same family, and that does not seem a very sensible way forward either.

Thirdly, a strategy would prioritise prevention. Our witnesses did not really explain clearly that prevention was at the forefront of everything that was being done. There were some good examples of preventive work, particularly for the very young, but it did not sound consistent across all the departments, applied in a similar way.

Fourthly, everyone acknowledges that child vulnerability is a fiendishly complex problem. Each child can suffer unique consequences of such vulnerability. Central and local government's ability to respond is complicated by a complex delivery structure. In central government, we have different ministries: I mentioned health, the Home Office and education. Local provision is provided by different services. The compound effect of both working together is that it becomes even more complex. Surely such a strategy could simplify and prioritise resource allocation and delivery for those things that worked.

Finally, one obvious practical benefit of such a strategy could be the speedy rollout of family hubs throughout the country, as we have heard already this evening. Not one of our witnesses was able to say that the Government had a policy to make family hubs available for everyone. What we were told was that more bid money was available for more rollouts, but the question for the Minister I offer is: do the Government want family hubs for everyone? If they do, when do they estimate that this will be achieved? It may well have been Andrea Leadsom's vision, but is it government policy? We did not hear that clearly, and such an important issue should be addressed.

Nearly every witness complained that privacy legislation, data protection and the Information Commissioner inhibited the sharing of data for the benefits of vulnerable children. To be fair, the Information Commissioner did not accept this, although I am afraid that she was the only witness to do so. We are in danger of saying, "Well, she would say that, wouldn't she?" because she had a very clear grasp of the law and understood the definitions. But what was clear is that if the practitioners continue to be concerned about the risk of sharing data, surely the system is not working very well.

The best piece of evidence I can offer is that the MASHs around the country are still in place. We have already talked about family hubs, but MASHs are multi-agency safeguarding hubs; just another acronym. The police use them—they are usually based in police stations—but other people play a part in them. They were created so that different agencies could share information gathered in each of them about the vulnerability of a child. It was the only way to overcome the problem about data sharing: someone from education said, "This child did not turn up at school yesterday", someone from health said, "This child attended casualty last night", and the police said, "That's interesting, because we attended a domestic violence situation last night but we did not see a child or anybody who was injured." But the only way to overcome the data-sharing problem was to sit everyone in the room with their computer and ask them to share it, once they had built up some trust. That cannot be the right way, surely, if we have to go to that extent. It is not only costly, but is not the most effective way of doing it. Those MASHs were created to overcome data-sharing problems, and they still exist. Why have people still got them if it is so easy to share the data, as the Information Commissioner says should be happening?

I really think that a time for action has come in this area. The whole point of data protection and privacy

[LORD HOGAN-HOWE]
legislation is to stop the sharing of data. Is it not time to challenge that presumption, in this narrow area, at least?

Could the Minister please comment on my suggestion, which is that if a public servant is acting in good faith, intending to improve the health or safety of a child, they will have a defence in law to an act which otherwise would have been unlawful? I cannot see why that would challenge the proper sharing of data or make the child less safe, and I hope that it would reassure professionals that they were doing the right thing. They would have a defence—not an absolute defence, but something that they could properly claim if they found themselves challenged by a commissioner for the improper sharing of data. I am afraid that at the moment all the advice and the codes available do not seem to be getting through. Cultures can change not by a thousand pieces of legislation, but sometimes by significant acts. A legal defence may be one way of making a difference.

The noble Baroness, Lady Armstrong, clearly listed the volume or size of this task—it is massive, and at times it seems to be getting bigger. But surely we all agree that one group in particular is vulnerable—young people in care—and, if we can make real progress, it might be applied more widely. The outcomes for them at the moment are pretty awful: they go into the criminal sphere, lack employment and have poor health outcomes due to alcohol and drug problems, and, sadly, they create more broken families along the way. Surely we can get it right for them, but all the evidence at the moment shows that it is not going well. Finally, I reiterate my earlier point: if we had a national strategy, this would be a very clear priority within it.

8.17 pm

Baroness Tyler of Enfield (LD): My Lords, I am grateful for the opportunity to speak briefly in the gap. As others have said, it was a real privilege and pleasure to be a member of the Public Services Committee, under the admirable leadership of the noble Baroness, Lady Armstrong, when this very important inquiry was undertaken. As we have heard, the report contains a number of very important recommendations, and I have been pleased to be able to pursue some of these issues relating to kinship care, mental health and other things in my new role as chair of the Select Committee conducting post-legislative scrutiny of the Children and Families Act 2014.

As we have heard from the noble Lords, Lord Davies and Lord Hogan-Howe, the report contained some important recommendations on information and data sharing, and I wanted to add a small postscript. In the report, we highlighted the important issue of how legislative and practice barriers meant that vulnerable children were already falling through the gaps between local agencies, being invisible to social services, the NHS and the education system. We highlighted agencies feeling unable to share the data that they needed to determine which children needed their help.

I was pleased to be able to take forward some amendments to the recent Health and Care Act that were very much inspired by the work that we have done in this committee, particularly on highlighting the need for a consistent child identifier, or what is sometimes called a unique identifier. I am really pleased that, as a result of those discussions, the Act now commits the Government to laying a report before Parliament within a year, setting out their policy on information sharing, et cetera. I know that a review in a year might perhaps sound like a modest step forward, but it is important. Many parliamentarians and charities have been campaigning on this for many years, and I am very much looking forward to seeing that report next year. Can the Minister say anything about the progress and timing of it?

The report also set out a very powerful case for early intervention and preventive services for children and families in need, particularly to prevent poor education, health or social outcomes and, critically, as we have heard, to try to prevent more children from going into care. Of course, this whole thrust was strongly reinforced in the recent *Independent Review of Children's Social Care*, led by Josh MacAlister. So I strongly support the notion of a national strategy on vulnerability to promote greater collaboration and co-ordination, and indeed multi-year funding allocations for early intervention; I was disappointed by the Government's response in this area.

As others have said, the report contained some important recommendations on family hubs, which I support. I recognise that the Government committed investment to a further 75 in the Budget, and that is welcome, but we need a commitment to a national network of them as soon as possible to make sure that every community has somewhere that families can go to access universal family and parenting support as well as targeted support for families with the greatest need.

For me, a key test for the Government's levelling-up agenda will be whether it improves outcomes for families and children, particularly vulnerable children. I hope that an incoming Prime Minister will give this issue the priority that it deserves.

8.21 pm

Baroness Pinnock (LD): My Lords, this has been an excellent debate, with many issues raised, questions asked and challenges given. I am sure that the Minister will be able to respond with her usual careful consideration.

This important report starts by reminding us that over 1 million children are growing up with reduced life chances. This stark reality has negative implications for us all, not just those children and their families. For the children concerned, it may lead to lower educational attainment, with a knock-on impact on their life chances in employment, for example. When policymakers focus on skill levels that are not meeting our current needs, as they often do, they should be required to consider the evidence in this ground-breaking report. It demonstrates that too many of our nation's children are raised in family circumstances that restrict their development. The sad fact is that intervention by the state is too little and far too late for many of these children. Worse still, the evidence gathered by the report points to the colossal waste of public funding in the failure to intervene early in these children's lives.

I record my thanks to the chair of the committee, on which I was lucky enough to serve, the noble Baroness, Lady Armstrong of Hill Top, for her leadership and her persistence in following the evidence and then finally gathering us all together to agree—which was not always easy—in the production of this report, which I sincerely believe is invaluable.

I will focus my contribution this evening on funding issues. This is where I will disagree with the noble Baroness, Lady Wyld, because I think funding, and the lack of it, is at the heart of this report. Lots of other issues are very important and have been raised, including data sharing.

Baroness Wyld (Con): I do not think I said that funding was not important. I said that some witnesses had pointed to problems that I thought were not necessarily directly related to funding; they were about communication issues and join-up. Indeed, at times I have called for extra funding for early years myself.

Baroness Pinnock (LD): I thank the noble Baroness for putting that on the record and I withdraw any criticism that I have wrongly made.

The numbers of children likely to benefit from external support from local services are staggeringly high. We heard that 1.6 million children—that is an awful lot of children—were helped by local authority children's services in the six years between 2012 and 2018. In addition, the Office of the Children's Commissioner estimated that as many as 750,000 were known to social services but "received no support". Further, as we have heard in other contributions this evening, an additional 800,000 children were deemed "completely 'invisible' to services", although likely to "need help" because of the circumstances in which they were living.

The committee was mindful of the wise words of Martin Lennon of the Office of the Children's Commissioner, who said:

"Not all vulnerable children are poor, and not all poor children are vulnerable."

However, he then went on to make clear that there was a definite "correlation between poverty" and children being, and becoming, "vulnerable". Since the report was completed, families are now having to contend with the cost of living crisis. Those families who are just managing now will have very considerable additional costs for basic essentials. All commentators expect that there will be even more children living in poverty with the consequences enumerated by this report. The challenge for the Government is to determine the most effective and cost-efficient ways of supporting vulnerable children for their, and our, benefit.

The committee heard from many witnesses that the key to cost-effective support is to provide help "as early as possible" in a child's life. Obviously, that means that funding for early intervention is critical. However, early intervention funding is not statutory. Admitting children into the care of the local authority is a statutory reaction in response to a family in crisis. This is done at very considerable cost to the public purse: for example, foster care rates are between £140 and £200 a week, depending on the age of the child. This is for local authority foster care; it is considerably higher for agency foster care.

As the report concludes: early intervention is a key to enabling better lives for vulnerable children. Unfortunately, local authorities saw a £1.7 billion yearly reduction in early intervention programmes since 2010. Those communities in highest need experienced the largest cuts to these services: councils with the highest levels of deprivation saw reductions of over 50% in real-terms spending—therefore, a per-child average of £141 where poverty is highest. From 2010 to 2019, those with the lowest levels of poverty had budget cuts of only £182 million per annum.

Early intervention is based on supporting a family in their own home; later interventions—such as foster or residential care, as I explained—are much more expensive. Yet the report found that, while there was a 48% reduction in early intervention services, there was a 34% increase to "higher-intensity" late interventions, which, as the evidence from Barnardo's showed, despite being vastly more expensive, had worse outcomes for children.

One statistic clearly shows this failure of public policy. The number of children looked after in England has risen from 65,520 in 2011 to over 80,000 now. Andrea Leadsom's review of child health inequalities quoted research by the LSE which showed that £16 billion of public money was spent in a single year on children and young people who have serious problems, all of which could be traced back to their early experiences. Her review said that

"you can certainly argue that you will save a good portion of that by investing earlier."

The Government have made some welcome moves towards the provision of early intervention in the creation of family hubs, but much more needs to be done. As the report recommends at paragraph 60:

"To underpin a strategy on child vulnerability and its ambitions for 'levelling up', the Government should restore ringfenced funding for early intervention to its 2010 levels."

I agree.

Other noble Lords have highlighted the other key recommendations in the report such as listening to the voice of the user—what a powerful experience that was. It was a privilege, actually, to hear the voices of the users. How great their contribution could have been to improving the quality of the services they need and to the Government having an effective strategy. It is appalling that there is no strategy. It is apparent that there is no strategy for helping 1 million of our children and, from all the evidence that we have heard, saving lots of money at the same time. Why do we not get it done? Finally, there is the importance of the professionals working with the users and the voluntary sector to the benefit of children. I just hope that this excellent report has the impact on decision-makers that its quality deserves.

8.32 pm

Baroness Chapman of Darlington (Lab): My Lords, I start, as others have, including the noble Baroness, Lady Pinnock, by paying tribute to the noble Baroness, Lady Armstrong, and her committee for the work that has been done on this report.

I do not think it is ground-breaking, actually. Depressingly, it repeats things that we already knew—things that we have heard before. From reading her

[Baroness Chapman of Darlington]
previous report on public services during Covid and what can be learned, we are just not learning these lessons. There is nobody in this Chamber who has not heard the arguments before about data sharing, information sharing, early intervention and prevention and the need to work across government. We have all heard that a hundred times, yet it seems so fiendishly difficult for the Government to implement. I share the disappointment at the Government's response so far but there is obviously always hope.

The LSE estimates that failing to invest in early years costs £16 billion, as the noble Baroness, Lady Armstrong, said. This is just a social and economic failure, as we all know. It is good that we have this opportunity to have this discussion. As I am getting to know the Minister a bit better over various things that we are having to do, I am pretty confident that she would share many of the things said by noble Lords this evening.

I would also like to welcome the Minister this evening, as she has been remarkably stoic in recent days. She has had the filleting of the Schools Bill to deal with, and the resignation of fellow Ministers. She is still here and still smiling, and we are very pleased to see her. Regardless of the drama happening at the other end of the building, it is good to have this opportunity to discuss this report from the Public Services Committee.

Could the Minister let us know whether she has had a chance to discuss any of these issues yet with the new Health and Education Secretaries? I know that, with three Education Secretaries in the last three days, it is not exactly a normal week, and we are realistic about what focus they would have been able to give, but we cannot carry on like that. These issues are urgent, and we need to attend to them as quickly as we possibly can.

This report reminds us that the number of vulnerable children was increasing even before the pandemic. It calls on the Government to publish a national strategy on child vulnerability, alongside long-term, protected funding for early intervention and prevention. The central point that the committee makes is not a new one: there is too little co-ordination, insufficient sharing of information across government, inadequate planning and a lack of focus. As I have said already, we have all heard this before; it is depressingly familiar. These are not things that the Government have to avoid—there are things that they could be doing now to approach this far more effectively.

In their response to the report, the Government say:

"Providing the right support at the right time for children and families is a priority across Government ... This focus must and will continue."

While these words are welcome, it is striking that the Government are not as forthcoming with the means that the committee suggests would make a difference. As the noble Lord, Lord Hogan-Howe, and the noble Baroness, Lady Tyler, said, there really should be a strategy. It is all too easy for the Government to say that they agree that early intervention is the best way to support vulnerable children, but if that is true, why did successive Tory Governments dismantle the support that was available in the form of Sure Start, early help and youth services?

The starkest paragraph in the report says:

"Spending on early intervention services in the areas of England with the highest levels of child poverty fell by £766 million between 2010 and 2019 … In areas of England with the lowest levels of child poverty, spending on early intervention services reduced by £182 million … Walsall, for example, has some of the highest levels of deprivation anywhere in England. Spending on early intervention services there fell by 81% … Surrey has much lower levels of deprivation, but overall spend on early intervention children's services fell by 10%."

As the noble Baroness, Lady Wyld, says—although I know that she did caveat this—funding is not the only thing that matters. Absolutely, but it does matter; it really makes a difference.

It might interest the right reverend Prelate the Bishop of Chichester that early intervention spending in Middlesbrough, where he worked, reduced by 64% between 2010 and 2019. I know Middlesbrough very well, as my family is from South Bank. When you read statistics like that and you know that community, you have to wonder what on earth was going on that a decision such as that could have been made. We know why it happened—it is because there was no strategy. If there had been, decisions about local government spending would not have been divorced from decisions that were made about child poverty and the Department for Education. Those things just have not been joined up. When local government finances were squeezed from 2010, when local government was responsible for many of the early intervention services that we are discussing this evening, what did Ministers think would happen to support for the most vulnerable children, often provided by their local council?

In their response to the report, the LGA said that

"funding announced by the Government in the Spending Review to invest in children's health and wellbeing and parenting support was helpful. However, with spiralling demand on children's social services and future cost pressures in children's social care set to increase by an estimated £600 million each year until 2024/25, councils still find themselves in the unsustainable position of having to overspend their budgets."

This is not the best way to encourage child-centred, cross-government support.

This is important because support for vulnerable children is not just about the Department of Health and the Department for Education; it requires leadership from local government, the Home Office, the MoJ, DCMS, Defra, the DWP and probably others as well. As the noble Lord, Lord Davies, said, co-ordination among regulators would also help. I do not know how we will get this without a strategy. Working across government, as we are witnessing and as the Government have proven, does not happen organically, especially at a time of cuts in public spending. It takes leadership from the centre, a clear vision, priorities and a plan. What we have are multiple and, to an extent, complementary initiatives, plans and programmes, but we lack the energising leadership that government intervention always needs if it is to be sustained and effective.

Vital too is the role of the private, voluntary and charity sectors. We heard from my noble friend Lady Pitkeathley that local statutory services should work closely with the voluntary sector to identify and understand need.

I agree with her that that is important and I would be interested to know what the Minister, with the invaluable experience she brings to this role, can say about how the Government can make this happen. In my experience, voluntary and community organisations are particularly good at building relationships of trust with parents that can help encourage positive engagement in health and other services.

Will the Minister also comment on why it appears that the Government are not adopting the recommendation for a local authority duty to evaluate local early intervention programmes? We agree that it is essential to assess the effectiveness of locally provided services and that this is not always straightforward, especially in the case of early intervention, given the length of time sometimes needed to demonstrate impact, but does this not make it all the more valuable for practitioners to agree sensible ways to regularly assess and evaluate programmes? Better still, how about an approach that allows co-production, so that interventions have the best chance of success?

On family hubs, the Government say that they

"welcome the committee's feedback and thoughts on family hubs, which we will consider carefully."

That is not really saying anything much, so have the Government really thought about what the committee has had to say on family hubs? I do not accept that family hubs are a progression from Sure Start. Hubs followed the decimation of Sure Start. Sure Start focused on the very youngest because that is where the biggest impact is made. If the choice were hubs or Sure Start—I wish it were a choice for us—I would have Sure Start every time. Hub coverage is just not comparable, but if the Government could extend the reach of hubs to cover the 20% most deprived communities, that would be a very good move.

The committee praised the fact that family hubs support children up to the age of 19, and I agree that that is a really good thing to do. The committee went further, though, in proposing that each hub should include domestic violence and addiction services, mental health support and parenting classes. Those are sensible suggestions and I would be very grateful if the Minister could let us know whether she will take them away and think about them. Will she also let us know what plans the Government have to speed the roll out of hubs and to make sure that the most vulnerable children are able to benefit?

It is really difficult not to compare family hubs with the Sure Start centres that came before them. It has been devastating to see the closure of so many Sure Start centres. Sadly, most of them were not around long enough for their full benefit to be known. The range of services, the inclusive ethos, the breaking down of barriers between communities, the understanding that everyone struggles from time to time when you have a young child, the infectious enthusiasm and sense of mission of the staff, from health visitors to managers and volunteer storytellers, were all irresistible. As the noble Baroness, Lady Wyld, said, family hubs are supposed to be Sure Start-plus-plus-plus, but she is worried about a lack of urgency and so am I.

Not only does this report explain the inadequacies of the Government's current approach but it highlights a way of doing government that is not joined up, where words are not followed by deeds, and individual plans are not supported by strategy. The Minister should use the opportunity of a new Secretary of State and his desire to make an impact in his first Cabinet role to explain this report to him so that he can reconsider the Government's approach and commit to a national strategy. Will she do so?

8.45 pm

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I thank all noble Lords for their thoughtful contributions today, and I echo other speakers in thanking the noble Baroness, Lady Armstrong of Hill Top, for her leadership of the committee. As your Lordships have reflected, the real test of any society is how it treats those who are most vulnerable within it, and I welcome the committee's report for shining a light on some of the challenges that we face. On a personal note, I am extremely grateful for the generosity of the noble Baroness opposite, and for her kind words.

Before I turn to many of the individual points made, I want to start by saying that, as our response showed, the Government do not agree with every recommendation on how we should take things forward, but our direction of travel on what we should be trying to achieve is, we believe, strongly aligned. One of the elements of "how" has come up a lot in the House tonight; namely, co-production with vulnerable children and their families. That is something which perhaps we need to talk a bit more about because it is present in a number of the policies that the Government are pursuing. I thank the Children's Commissioner for the work that she is leading in this area, and the example that she is setting.

I turn to the committee's recommendation on having a single, cross-government strategy for vulnerable children. As the noble Lord, Lord Hogan-Howe, described, we have concerns about whether this would be a manageable approach and whether it would have sufficient focus to deliver. We also prefer to delegate authority in these matters to local areas, as the noble Baroness, Lady Armstrong, pointed out. Since the inquiry reported, the special educational needs and disabilities and alternative provision Green Paper, the schools White Paper and the independent care review have all set out an enormous agenda that touches on these areas, one which seeks to deliver a coherent education, health and care system that works in the interests of all children, but in particular for those who are especially vulnerable. We are working at pace to take those reviews forward and we have committed to setting up an implementation panel in relation to the care review which will report at the end of this year.

Whatever language we want to use to describe it, we are thinking strategically about a range of policies in this area. We are introducing as much independent scrutiny and challenge as possible, with the care review but also with the consultation on the Green Paper. That will build on strong governance across all departments and plans for particular aspects of vulnerability that affect children. To share a few examples of this, we have announced a new child protection ministerial group to make sure that safeguarding is championed at the very highest levels; we have cross-government

[Baroness Barran]
strategies or plans in relation to serious violence, mental health and domestic abuse; and programmes such as Supporting Families and the family hubs show how we join up services locally, which I hope responds a little to the challenge from the noble Baroness, Lady Chapman. We also have departmental outcome delivery plans. Our plan in the Department for Education includes a priority to:

"Support the most … vulnerable children … through high-quality local services so that no one is left behind",

so we are working very closely to deliver on that.

I turn to the calls in the report for ring-fenced funding for early interventions to return to 2010 levels. We absolutely accept that local government funding has faced pressure in recent years, as the noble Baronesses, Lady Chapman and Lady Pinnock, pointed out. This year, local authorities have access to £54 billion of core spending to deliver their services, which is an increase of £3.7 billion from 2021-22. I can say in response to the noble Baroness's points that the most deprived areas of England will receive 14% more per dwelling than the least deprived, so we remain cautious about the concept of ring-fencing and prefer to leave discretion to local areas.

We have been encouraging more focus on vulnerable children and early intervention via a step change in funding levels at the spending review, with over £1 billion for government programmes to improve support, advice and early help services from birth through to adulthood, including, as your Lordships have referred to, family hubs and Start for Life services, but also the Supporting Families programme and the holiday activities and food programme. This funding will help to improve access, and we aim to put relationships at the heart of family support for all the reasons that your Lordships described so eloquently. Those who gave evidence to the committee articulated the anxiety that I think any of us might feel when seeking help.

On the issues about working with the voluntary sector, I absolutely support the points made by the noble Baroness, Lady Pitkeathley, and the right reverend Prelate the Bishop of Chichester about the important role that the sector plays. The Government work very actively with the voluntary sector across many areas, including addressing some of the causes of vulnerabilities, such as alcohol misuse and domestic abuse, and working with the sector to prevent children being drawn into crime. We have also renewed a £560 million commitment for youth services, and many of our partners in the holiday activities and food programme are also from the voluntary sector.

I thank the right reverend Prelate for his reference to loneliness among young people. It was genuinely an incredible honour to be the Minister for Loneliness—a post that was set up in memory of the late Jo Cox—particularly during the pandemic, when loneliness was so prevalent and terrible. I talked to many young people about that in that role.

While talking about some of the underlying issues, my noble friend Lady Wyld asked for an update on our commitment to improving capacity in mental health services, particularly for young people. She will be aware that we have committed to increasing the investment in mental health services by £2.3 billion by 2023-24, and we believe that this will allow access to services for an additional 345,000 young people. We are also increasing the number of mental health support teams in schools and colleges to around 400, which will support approximately 3 million students in England by 2023.

Moving beyond the role of the voluntary sector to the points raised by the noble Baroness, Lady Chapman, on local and central government collaboration, I say that obviously the committee was keen to see a new duty on local authorities to collaborate to improve long-term outcomes. Local partners already have a duty to work together to safeguard and promote the welfare of children, and local authorities to promote co-operation to improve the well-being of children. Of course, as we have heard tonight, the challenge is to make these work in practice.

The reforms from the independent care review and the SEND Green Paper have an important role to play in driving collaboration. The care review has a real focus on improving multi-agency working, and the Green Paper proposes requiring local areas to develop a co-produced inclusion plan; I hope that is a helpful example of co-production in practice. This will build on existing mechanisms to evaluate the effectiveness of joint working; for example, the joint targeted area inspections of multi-agency safeguarding arrangements. We are strengthening these including via thematic deep dives, such as "The effectiveness of early intervention".

On effective data-sharing, as your Lordships reflected, the sharing of information for safeguarding purposes is already supported by legislation, but the data reform Bill will change the law to make it even clearer that there is no barrier to sharing data where child safety is concerned. We will also report to Parliament on our plans for information sharing, including the feasibility of a common child identifier, which the noble Baroness, Lady Tyler, mentioned. I can reassure her that work has started on that; there was a launch event last week.

We also have an ambitious digital transformation agenda for health, with the rollout of electronic patient records and the development of digital red books, which my noble friend Lord Davies of Gower referred to. As regards the scale-up and development of this, we are keen to start with infants and early years—very young children—and will make sure that this works well before going any further.

The noble Lord, Lord Hogan-Howe, asked about why we still need MASHs. I lost many years of my life trying to set up multi-agency information-sharing arrangements around the country, so perhaps he and I need a cup of tea to discuss this in more detail. However, the serious point is that information sharing itself does not make children any safer; what makes them safer is people taking actions, having shared the information and understood the situation fully. Genuinely, that is why people still need to meet.

On family hubs, we absolutely share the committee's interest in earlier intervention which is better joined up. As part of the £1 billion of government programmes which I have already referred to, we are investing £300 million to transform Start4Life and family support services in 75 local authorities across England. The noble

Baroness, Lady Chapman, asked when we would get to the 20%; our commitment in the first stage is half of all local authorities in England. We are making good progress too on delivery; we have announced the areas that will benefit, and obviously the focus there has been on areas with the greatest deprivation levels. We are expecting the programme guide to be finalised soon, and local authorities will sign up for the programme later this year, paving the way for family hubs to be up and running from next year.

My noble friend Lady Wyld asked about the evaluation of the programme. We have committed £2.5 million to the family hubs evaluation innovation fund, which is a three-year commitment, and that will also cover funding for the National Centre for Family Hubs. Our aim is to capture and learn iteratively through this process. The evaluations will focus on three areas: first, process, service implementation and performance; secondly, outcomes and impact; and, finally, an economic evaluation, which will look at value for money.

In closing, as I set out at the start of my speech, there is a lot of common ground in our aspiration for vulnerable children. We are ambitious in the reforms we want to implement, and making sure that our delivery is effective is a vital prerequisite to any future scaling. We thank all those who served on the committee and those who gave evidence. I know that those of your Lordships who were on the committee felt strongly that you wanted to make sure that the voices of those who gave evidence were heard in the House, and we can all reassure you that that was the case. I am deeply grateful to the committee for its contribution.

9.01 pm

Baroness Armstrong of Hill Top (Lab): My Lords, I thank the Minister for her responses. I was very relieved when I saw that she was to respond because I know, and have discussed with her, the work she did before she came to the House. I had an email today from SafeLives to make sure that I was aware of its points; I know that she will be too.

I thank everyone involved. I forgot to mention in my speech one person who helped us enormously through the report and the evidence taking. That was our specialist adviser, Anne Longfield, a previous Children's Commissioner, so we had a lot of knowledge and a lot of challenge on how we were doing things, which was extremely useful. The House will recognise that I also had amazing people on the committee, and I was very confident that they would cover areas that I did not have time for in my speech. I thank the noble Baroness, Lady Pitkeathley, for emphasising the voluntary sector and the voice of the child and the family. Throughout our inquiries, we have become convinced, if we were not before, that listening to and involving people with lived experience is critical to both design and delivery of services across the board, and children's services are very much part of that. I am pleased that the Minister recognised that too.

The other issue is mental health, and I am very grateful to the noble Baroness, Lady Wyld, for spending some time on it. We will never be able to train the number of psychologists and psychiatrists in time to deliver what we all want to be delivered. That means that we must use the voluntary sector, which works at an earlier, less intensive level, so that, for those for whom problems can be contained before they reach the crisis level that the noble Baroness discussed, we can do so with many more people. I know from other work I am doing at the moment that many young people are involved in what can only be called psychotic behaviour and need very specialist attention.

I was also grateful to the right reverend Prelate for his contribution—not as a member of the committee, but if he is interested; we are always interested in the Bishops' Bench. He was able to talk about somewhere that my noble friend Lady Chapman and I both know very well: Grangetown. I visited that Sure Start centre myself. It was always so great to visit, because there was so much energy, commitment and determination to make things better. I thank him for his contribution.

There are so many issues here but there is unanimity around the House that this is a crisis and an issue that we have not got right—although there are examples of where we can get it right. This is not about saying, "We don't know what to do". The reality is that we know what to do. There are examples out there showing us that, with the right sort of support at the right time, things can be different in every community. I am sorry that my noble friend the Whip—the noble Baroness, Lady Blake—has left because she was the leader of Leeds City Council when, despite all the cutbacks, it managed to maintain its investment in Sure Start and children's centres across the city. While everyone else was seeing the number of children going into care rise, Leeds saw a fall. We know what to do. The challenge for the Government is making sure that they pull together that knowledge and implement it. I thank everyone for a really interesting debate.

Motion agreed.

House adjourned at 9.06 pm.

Grand Committee

Monday 11 July 2022

Arrangement of Business

Announcement

3.45 pm

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

Procurement Bill [HL]

Committee (3rd Day)

3.45 pm

Relevant document: 3rd Report from the Delegated Powers Committee

Clause 8: Light touch contracts

Amendment 30

Moved by ***Baroness Noakes***

30: Clause 8, page 6, line 28, at end insert "and which are health or social care services supplied for benefit of individuals"

Member's explanatory statement

This amendment probes why light touch contracts are not more narrowly defined in Clause 8.

Baroness Noakes (Con): My Lords, I shall also speak to Amendment 207 in my name. My noble friend Lord Lansley has Amendment 35 in this group but is unable to be with us in Committee this week. At his request, with the leave of the Committee, I shall be speaking to his amendments on both Committee days this week.

At Second Reading, I noted that the definition of light-touch contracts is extremely wide since it concerns the supply of services of any kind, provided that they have been specified by regulations under Clause 8(2). It is my understanding that light-touch contracts are currently for health and social care services—indeed, that is implied by the reference to those services in Clause 8(4)(b). The wide scope given by the lack of restriction in Clause 8(2) means that, notwithstanding the "have regards" in Clause 8(4), it would be possible, for example, for the Government to specify legal services, accountancy services or any other kind of services. The "have regards" are simply not an effective curtailment of the very wide power in Clause 8(2).

My Amendment 30 seeks to confine light-touch contracts to health or social care services provided to individuals, on the basis that, it is my understanding, that is how they are used at the moment. However, if the Government believe that there should be a wider concept than that, they should put that in the Bill. Open-ended regulation-making powers should not be necessary and are not desirable.

My noble friend Lord Lansley's Amendment 35 would add another "have regard" to Clause 8(4): whether suppliers of light-touch services consist of small and medium-sized enterprises and few larger enterprises. The other three "have regards" seem to be designed to reflect the current scope of light-touch contracts: they do not generally involve overseas suppliers, they are generally for the benefit of individuals and they involve suppliers that are close to service recipients. Another feature of current service provision is the presence of small and medium-sized service providers in both the private sector and the voluntary sector.

If the supplier market features large suppliers, including overseas ones, there really is no good policy reason for the light-touch regime to be applied; the full-fat version of the procurement rules should be in place for them. A light-touch contract should not become a convenient escape from the procurement regime for contracting authorities. They should be focused on the supplier end of the market, where a lighter regime would be appropriate.

Amendment 207 is rather different. It tries to tease out the Government's intentions for contracts under Clause 33, which covers the reservation of certain light-touch contracts to public sector mutuals. A qualifying public sector mutual is one that has not been awarded a contract in the previous three years, under Clause 33(5). So if I am a public sector mutual and I am awarded a contract on 1 January 2022, that means that I may be excluded from tenders under subsection (2) for the three years until 31 December 2024, and under subsection (3) a contracting authority must exclude me from tenders assessed under Clause 18 until the same date—that is, the end of 2024.

If my earlier contract is for five years, which is the maximum allowed under Clause 33(1), I think that I would not be excludable from retendering when the contract came up for renewal, because the retendering process would almost certainly have started after the end of December 2024. If, however, my initial contract was for three years, I would almost inevitably be excluded from bidding for its renewal because the retendering process would by definition have to start before the end of December 2024.

My amendment proposes changing the period in subsection (5) from three years to five, but that is for probing purposes. I do not understand whether the Government are trying to allow or prohibit public sector mutuals from carrying out consecutive contracts, if indeed they were awarded them under a competition. It seems bizarre that a shorter contract could prohibit the public sector mutual from retendering while a long one would not.

In addition, I am less than clear on how contract award and commencement dates are supposed to interact, given that a contract could be awarded some considerable time before it is intended to commence. I know that my noble friend the Minister has Amendment 206 to Clause 33, which is not in this group and would slightly alter its wording, but I do not think that that will answer the basic question that I have posed. I beg to move.

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite the noble Baroness to speak.

Baroness Brinton (LD) [V]: My Lords, I will speak to Amendment 30 but just want to say that I agree with Amendment 33, in which my noble friend Lord Wallace asks why suppliers from outside the UK are likely to want to compete for contracts for the supply of services. Amendments 34 and 35 remind us that there are a wide range of different bodies that need to be able to tender for services, probably mainly local, but they should not be either excluded formally or informally as a result of this Bill.

Returning to Amendment 30, I thank the noble Baroness, Lady Noakes, for her helpful introduction and I want to raise with the Minister matters that we will be returning to in Clauses 41 and 108. As the noble Baroness, Lady Noakes, has laid an amendment that includes health and social care services supplied for the benefit of individuals, there are questions that need to be raised. Had we been debating the second group of government amendments today, I would have covered this topic in the Minister's Amendment 526 as well.

Clause 108 sets out the disapplication for this Bill in relation to procurement by NHS England, but Section 79 of the Health and Care Act talks about

"health care services for the purposes of the health service in England, and … other goods or services that are procured together with those health care services."

It goes on to define a relevant authority in healthcare services in subsection (7) as

"(a) a combined authority;
(b) an integrated care board;
(c) a local authority in England;
(d) NHS England;
(e) an NHS foundation trust;
(f) an NHS trust established under section 25".

The problem is that that definition excludes certain parts of health services. For example, an integrated care board will be commissioning, but not procuring directly, some services to primary and secondary care organisations. However, not all NHS organisations are covered by the relevant authority in the healthcare definition. For example, a GP surgery might be a private partnership or a company employing surgery staff including GPs. This might be UK based or even an overseas company, but not a trust or any of the other definitions. The same definition also exists for dentists' surgeries. I was wondering if the noble Baroness, Lady Noakes, was thinking that this type of organisation would be covered by her amendment. Most of them are small organisations.

I ask the Minister this question of principle, really as advance warning that we will return to it later in the Bill. Why are health services, clinical and

"other goods or services that are procured together with those health care services",

going to have a completely different procurement regime entirely delegated to the relevant Secretary of State, who can enact it by SI? That can ignore all the important clauses that we are debating in this Bill—value for money, value for society, transparency and the technical elements critical for anybody wishing to procure goods and services using money from the public purse, except for those parts of the health service that do not fall into that definition in the Health and Care Act, which will have to abide by the Procurement Bill.

Secondly, can the Minister advise on exactly where the dividing line is for those parts of the health service that are commissioned by other parts of it, but do not fall under the definition? It would be perfectly logical to have a contractor team preparing a bid for a contract with a regional consortium that includes a hospital trust and a non-NHS body, perhaps a charity—exactly the sort of small organisation that the noble Baroness, Lady Noakes, referred to—that worked with patients. It would have to remember, if syringes were included in that PFI contract for the new wing, for example, when the NHS procurement system would therefore be used, that there would be an entirely different set of rules, processes, et cetera, compared with a contract for a hospital trust that covered only non-clinical items, and therefore used the terms in this Bill.

This will be horribly messy. It will not just be confusing for contractors, which will need teams fully au fait with where the dividing line is between the completely different rules that will apply, but I suspect it will be total chaos inside the NHS. Can the Minister explain the thinking behind this and where the differences are? If possible, could we have a meeting with him and other noble Lords interested in the interface between this Bill and the Health and Care Act legislation, and in how it will work in practice?

Lord Wallace of Saltaire (LD): My Lords, I will speak to Amendments 33 and 34, but I start by thanking my noble friend Lady Brinton for highlighting the need to make sure that this Bill and the Health and Care Act do not contradict each other. I was struck by a speech by the noble Lord, Lord Willetts, at the Second Reading of the Higher Education (Freedom of Speech) Bill the other week, in which he suggested that the Minister consider whether definitions of freedom of speech in the Online Safety Bill and the higher education Bill were compatible. The noble Lord very much doubted that they were. In spite of the current chaos within the Government, they need to ensure that different Bills going through in the same Session are compatible and do no cut across each other.

Amendments 33 and 34 are concerned with light-touch contracts. Amendment 33 is purely a probing amendment. We wish to understand the circumstances in which suppliers from outside the UK are likely to want to compete for contracts of the sort that the noble Baroness, Lady Noakes, suggested would be covered under the light-touch system—primarily, the provision of personal and social services to be delivered on the ground, in local communities, by people with sufficient local knowledge to be effective.

My concern here was heightened by the outsourcing of the initial test and trace contracts to two large companies, one of which has its headquarters in Miami, Florida, and neither of which has any appropriate expertise in local delivery or geography. Not surprisingly, therefore, testing stations were set up in inconvenient places and local volunteers, who offered to assist in large numbers, were often ignored. My colleague, my noble friend Lord Purvis, would have wished to ask whether the new trade agreements the DIT is negotiating would nevertheless open these contracts to overseas

companies, including those from non-English speaking countries. Can the Minister therefore explain and justify the paragraph concerned?

Amendment 34 would put in the Bill the importance of local provision of services and the constructive role that non-profit entities can play in the provision of services in which sympathy, personal relationships and concern for welfare above immediate profit are important parts of the motivation for those who work in them and in which volunteers can also contribute to effective supply. My experience here is mainly from the care home sector, although I believe the argument stretches a good deal more widely than that. Private companies, including offshore-based private equity companies, have made excessive profits out of care home provision in a number of cases. Noble Lords will be familiar with Terra Firma, which the Minister will recall is based in the Channel Islands. That is why I have a later amendment that challenges the question of whether companies based in the Crown dependencies and overseas territories should be considered UK suppliers—but there are other examples.

4 pm

I speak from direct experience of the higher quality of charity-run care homes and the greater dedication and commitment of their staff. We all know of effective social care provision by mutuals, social enterprises and charities under contract to government. This amendment emphasises that there is and should be a significant role for this sector alongside profit-making outsourcing companies and government agencies, particularly in this sensitive area of personal social public services. We support a mixed economy in the provision of public services, not an overwhelming dependence on large outsourcing contractors regardless of the type of service provided. I hope the Minister does too, and that she will recognise that the Bill, in its current position as a skeleton Bill, needs to have more of the principles set out in it.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to make my first contribution in this Committee, so I declare my position as vice-president of the Local Government Association. I must also, slightly belatedly, thank the Bill team for last Wednesday morning's briefing, which was very helpful in trying to come to grips with the complexity of the Bill. There are many people with a great deal more experience than me who are also wrestling with the complexity.

I rise to speak chiefly to Amendment 34 in the name of the noble Lord, Lord Wallace of Saltaire, who has just very ably introduced it. I also support Amendment 33. As the noble Lord, Lord Wallace, was speaking, I was thinking of the case study of the Dutch firm Randstad and the disaster of the Covid tutoring. That was a very large and important contract that I think the Government would now acknowledge went horribly wrong and should clearly never have been let overseas in the first place. The noble Lord also referred to care homes. Financialisation and hedge fund or overseas ownership of care homes is something I have been very concerned about since a brilliant report, which is highly relevant, from the Centre for Research on Socio-Cultural Change in 2016. It put that issue on the agenda and it has been focused on since by, for example, the *Financial Times*.

On Amendment 34, I perhaps come at this from a slightly different philosophical position from the noble Lord, Lord Wallace, in that I would like to get rid of all financialised provision and see it all in non-profit hands. I believe that is what is appropriate for this. This amendment is probing to ensure that organisations such as local social enterprises, not-for-profit companies and charities are able to apply for contracts. I would like to go stronger on that. I would like to see a preference for those organisations having many of these contracts. I think I am going to anonymise this case study because I have not had the chance to check with the people concerned, but a number of years ago I knew an excellent local rape crisis service that had been providing provision in a city for a number of years. Eventually I found out a month or so after a new contract was supposed to have started that it had been handed to a large national organisation. It was a total mess.

We have seen far too many cases like that where excellent local provision, which may not be expert at putting in tender documents but is expert at providing services, is swept aside under our current arrangements. I mentioned the *Financial Times*. There is very general agreement across the political spectrum that we need to stop that happening and ensure that good local services and social enterprises are able to continue, have stability, surety and certainty and do not need to put so much of their resources into the endless cycle of bidding and bidding again. I am not sure whether this amendment exactly gets to where I want to go, but it is certainly heading in the right direction. That is why I wished to speak in favour of it.

Lord Coaker (Lab): My Lords, good afternoon. When the noble Baroness, Lady Noakes, leads a group of amendments, I often end up agreeing with her; it is a bit of a surprise sometimes. Amendment 30, which the noble Baroness has moved, goes to the heart of it, as do all the amendments, because of the lack of clarity about what Clause 8 really means and what is meant by light-touch contracts. It is a really important job of this Committee to try to tease out a little bit more detail.

As the noble Baroness, Lady Noakes, probes in her amendment, why are they not more narrowly defined? There is also an argument for asking why they are not more widely defined. I think the noble Baroness—she will no doubt correct me if I am wrong—is seeking to understand the Government's thinking and how they have arrived at their conclusions. I think that is what all the various amendments from the noble Lord, Lord Wallace, the noble Baroness, Lady Bennett, and so on, are about.

In speaking to these amendments, I too am seeking clarity from the Government on what this clause means. I will start with the most obvious point. I have read the Library briefing, which refers to the Government's own memorandum to the Delegated Powers and Regulatory Reform Committee on light-touch contracts, and will quote a couple of things that I

[Lord Coaker]
think are relevant to all the amendments in this group, including lead Amendment 30 from the noble Baroness, Lady Noakes:

> "The light touch regime is a facet of the existing rules … and has fewer rules regulating how a procurement is conducted for these contracts. This is reflected in the bill by a series of exceptions of obligations under the procurement regime for the relevant contracts."

I will be frank: what does that actually mean? Which rules are not applied? There was one set of rules before, under the light-touch regime, which at one point the Government were not going to include in the Bill. That then moved to light-touch contracts, but we are told by the Government that there are fewer rules.

It would be helpful to know what the difference is. What are the fewer rules which the Government have explained to the Delegated Powers and Regulatory Reform Committee? The noble Lord, Lord Wallace, made the point that what we are all struggling with is that Clause 8(1) says what "light touch contract" means and then that it will all be done by regulation. In fact, it is a bit like knitting fog to try to understand exactly where we are coming to and what we are doing.

The Government also said in their memorandum to the Delegated Powers and Regulatory Reform Committee, which, again, is relevant to all these amendments:

> "Whilst the scope of what is to be included in the power is known, it is not practicable for the bill to include a long list of detailed CPV codes to indicate which categories of contracts may benefit from the light touch regime. In addition, both CPC and CPV codes may evolve over time, which would … require amendment to the bill. The power will be used to ensure that the scope of what is included with the light touch regime does not extend beyond what is permitted for the UK by reference to the GPA and/or other international trade agreements."

Again, we are trying to understand what that really means for the light-touch regime which the Government are seeking to bring in as a result of Clause 8 and associated regulations. Some clarity on that would help to answer the questions from the noble Baroness, Lady Noakes, about why it is not more narrowly defined and why it is defined in the way it is. That would help us to understand the Government's thinking behind much of the clause.

The amendment from the noble Baroness, Lady Noakes, gets to the heart of what we are discussing: how the Government have arrived at their position. However, in particular, Amendment 34 from the noble Lord, Lord Wallace, and the noble Baroness, Lady Bennett, raises a very important point about ensuring that light-touch contracts will involve various other services and bodies and that they are properly considered for such contracts.

Time and again, at the heart of previous groups, this group, and no doubt groups of amendments to come is a general debate on what a Procurement Bill should or should not include and how far the Government should or should not interfere with the operation of the market. What the noble Baroness, Lady Noakes, is trying to get at, and what I believe is really important, is some of the ways in which this clause has been put together, so that we understand what exactly a light-touch contract is and the difference between the light-touch regime and the light-touch contracts in this Bill, and the Government's thinking on what regulations may come forward in due course so that, as a Committee, we can consider whether they have got the balance right and whether this makes sense. The noble Lord, Lord Wallace, made the point that this clause is wishy-washy—one bit says this and another says that—and the Government's get-out clause all the time is that it will be sorted out by regulation. This really is not the way forward for primary legislation.

Baroness Scott of Bybrook (Con): My Lords, I will start with a question from the noble Lord, Lord Coaker. I will probably not answer it in a way he understands, but I will give it a go and we will probably have more discussions on this as we go forwards.

The services currently identified via these CPV codes, as the noble Lord talked about, are outside the scope of the GPA, albeit within scope of some national treatment provisions in certain international agreements. As such, these could arguably be subject to even less regulation, but we think we have the balance right to ensure competition where possible, value for money, and appropriate transparency and fairness. That is the background to this. The Green Paper proposed removing the separate light-touch provision entirely, but it was clear that this was a popular concept, recognising that these types of services warrant special treatment with a light touch. If they were subject to the full regime, we would be adopting a more stringent approach than that taken by any other European country. That is why we have put them in, and we think that is correct. I am sure we will have more discussions on that.

Before we turn to the amendments, because they were slightly separate, I will answer the questions of the noble Baroness, Lady Brinton, and the noble Lord, Lord Wallace, on how this Bill interacts with the Health and Care Act. At Second Reading, concern was raised regarding the interaction between the Health and Care Act 2022 and the Procurement Bill. I hope that my noble friend's letter of 8 June allays these concerns. To confirm, the intention is that the provisions in the Procurement Bill will be disapplied for a tightly defined subset of healthcare services that will instead fall within the provider selection regime. The provider selection regime has bespoke rules which commissioners of healthcare services in the NHS and local government will follow when procuring healthcare services in their area, and only where delivered directly to patients and service users.

The scope of the provider selection regime will be supported by reference to the common procurement vocabulary—CPV—codes, which will help procurement personnel to determine which regime applies. As the provider selection regime will sit alongside the reforms introduced by the Procurement Bill, DHSC and the Cabinet Office are working together to ensure that the two regimes remain clear and coherent. The Procurement Bill, and therefore the light-touch contract provisions, will continue to apply to healthcare or health-adjacent services that are not delivered to patients but support the infrastructure of the NHS. Light-touch contracts will also continue to include all services procured by authorities other than NHS bodies and local authorities. I hope that helps.

There was another question from the noble Baroness, Lady Brinton, about how the PSR interacts with the new reforms in the Procurement Bill. The PSR will cover the procurement of healthcare services that are delivered to patients and service users, as I have said, and only when they are arranged by relevant healthcare authorities, including NHS bodies and local authorities. The Procurement Bill will not apply to these but will cover all other goods and services.

4.15 pm

We recognise the need for the integration of healthcare commissioning across local authorities and the NHS. DHSC and Cabinet Office are working together to ensure that the two regimes remain clear and coherent. This includes healthcare or health-adjacent services that are not delivered to patients but help support the infrastructure of the NHS and, as such, are outside of the scope of the PSR. It also includes all services when procured by authorities other than NHS bodies and local authorities. I hope that makes it clearer for the noble Baroness, Lady Brinton. We understand this and are working to make sure that the two regimes work together.

I turn now to the amendments in this group, beginning with government Amendment 32 in the name of my noble friend the Minister. This is put forward simply to insert "appropriate" before "authority", to make it clear that the body taking into account the matters in Clause 8(4) is the appropriate authority—that is, the body making the regulations under Clause 8(2) and not any other type of authority.

Amendment 30, tabled by my noble friend Lady Noakes, proposes narrowing the scope of light-touch contracts to cover only health or social care services supplied for the benefit of individuals. In our opinion, this would not be desirable as the broader range of services can and should benefit from the light-touch provision, where they are subject to fewer obligations in free trade agreements—for example, catering and canteen services and possibly some prison-related services. We would not want to adopt a more stringent approach than that taken in other countries in Europe.

Lord Wallace of Saltaire (LD): My Lords, could we ask for some clarification on this, perhaps in a letter? Probation services are obviously a personal service that falls outside healthcare. Personal tutoring was raised by my colleague the noble Baroness, Lady Bennett. If this is to be a wider sector than purely health and social care, we would like a little more guidance as to how wide it might go.

Baroness Scott of Bybrook (Con): I understand. We will make sure to get that guidance well before Report.

Amendments 33, 34 and 35, tabled by the noble Lords, Lord Wallace and Lord Lansley, and the noble Baroness, Lady Bennett, relate to Clause 8(4). This subsection identifies features that may constitute light-touch contracts and complements the regulation-making power to determine light-touch contracts in Clause 8(2). The noble Lord, Lord Wallace, included a probing amendment to delete Clause 8(4)(a). However, recognising that Clause 8(4) is an indicative list, the relevance of the provision is to identify that light-touch services are often unlikely to be of cross-border interest. I hope that that makes sense; if not, we can discuss it further.

This is still a useful identifying feature of light-touch contracts and helps readers of the legislation to understand why some contracts have light-touch rules. Set against subsections (4)(b) and (4)(c) of Clause 8, subsection (4)(a) identifies that the services are not exclusively domestic. We are content that Clause 8(4) is appropriate as drafted.

Amendment 34, proposed by the noble Lord, Lord Wallace, and the noble Baroness, Lady Bennett, requests an addition to Clause 8(4), which aims to ensure that local authorities, social enterprises, not-for-profit organisations, mutuals and charities are properly considered for such contracts. Similarly, Amendment 35, proposed by the noble Lord, Lord Lansley, has been put forward to include a consideration that

"the suppliers of such services consist of small and medium-sized enterprises and few larger enterprises."

Clause 8(4) does not dictate how contracting authorities award light-touch contracts. We already have adequate provision in the Bill to support these groups to obtain public contracts—for example, reserved contracts, the introduction of a new user choice direct award ground, and maintaining significant flexibility to tailor award criteria for light-touch contracts. We think that we strike the right balance in the Bill by creating opportunities for these sectors while maintaining fair treatment of all suppliers in the awarding of public contracts.

Amendment 207, proposed by my noble friend Lady Noakes, would make the time limit at Clause 33(5) equal to the maximum duration for such a contract. The intention behind the change is to prevent a public sector mutual from being repeatedly awarded a contract for the same services by the same contracting authority.

It is not considered appropriate to align the time limit with the maximum duration permitted under the clause. It should be noted that there is no obligation on the contracting authority to award contracts that were run for the full five years' duration allowed, or indeed that use the reserved contracts provision at all. In fact, stakeholder feedback indicated that the existing provision under the Public Contracts Regulations 2015 is underutilised due to its tight restrictions.

Public sector mutuals are usually organisations that have spun out from the public sector and most often deliver services to their local communities rather than nationally. It is therefore feasible that a reserved competition may result in a sole compliance tender, especially if the purpose of the contract is to provide services for the single local authority, which is likely often to be the case. If the restriction time limit were to match the maximum duration time limit, this could prevent the reserved competition from resulting in compliant tenders and require a new and unreserved competition to be run, which may not be in the best interests of the public.

The clause currently empowers the contracting authority to manage this risk when considering the procurement strategy, using its knowledge of the market and supported by guidance. If the time limits were to align, it would require more complex drafting of Clause 33 explicitly to enable this risk to be overcome within the

[Baroness Scott of Bybrook]
time of restrictions. As I have said, if the restriction is too long, it may result in the reserved competition receiving no compliant tenders, given, I repeat, that public sector mutuals are usually organisations that have spun out from the public sector. Therefore, I respectfully request that these amendments are not pressed.

Lord Aberdare (CB): I am somewhat baffled by subsection (4) of the light-touch contracts clause. The noble Baroness has rejected several suggestions that criteria might be added to it regarding what light-touch contracts might be used for, on the grounds that it already provides sufficient scope. There are three criteria in the clause and all that the clause says is that the authority must consider the extent to which they are met. Does that mean that they are good criteria or bad criteria? If a supplier is from outside the United Kingdom, does that mean that one should favour them or not? I find it completely baffling.

Baroness Scott of Bybrook (Con): My Lords, it is up to the organisation that is procuring. That is exactly what we are saying; we are freeing up that procurement process.

Baroness Noakes (Con): My Lords, I am not sure that we have advanced very much on either of the clauses. I thank all noble Lords who have taken part in the debate, particularly the noble Baroness, Lady Brinton, who raised a number of good points about the interaction with NHS contracts, which I had simply not appreciated, not having followed the most recent NHS legislation. I agree with her that the interaction of the two codes is likely to be confusing to all those who come across it and, with respect, I do not think that my noble friend made that any clearer in her answer. Nevertheless, we will come to that later on in the Bill and I am sure that it will be teased out again.

On Clause 8, the main thrust of my amendments was to try to find out what was likely to be covered under light-touch contracts. I am still no clearer at all. I have heard that the "have regards" in subsection (4) are appropriate as drafted but have not heard any argumentation as to why. I have heard quite a lot about how it is really up to the contracting authority to decide what it wants to take account of, and that whether it is good or bad to have overseas suppliers is up to the contracting authority.

I am quite unclear what the Government are intending by this light-touch contract regime. I have no idea at all what they are going to allow to be specified under the regulations, which is what I was trying to tease out by saying that it should be confined to health and social care. That was a placeholder to say, "Tell me what you're going to put in them"—but I am afraid my noble friend did not tell me what she is going to put in them.

So I am left probably slightly less satisfied with Clause 8 than I was when I tabled my amendments to probe what was in it. I will of course consider very carefully what the Minister has said between now and Report, and we may have further conversations about it, but I politely suggest to her that the Government appear to be in a bit of muddle about what they are expecting from light-touch contracts. Are they simply saying, "We'll create this power and let contracting authorities tell us what they want to do, and then we'll have some regulations and do what we like with it"—because that is what the clause allows—or are they intending to restrict the scope in some way and, if so, in what way? That is all still waiting to be teased out, in addition to the issues raised about interaction with the NHS.

I turn to my Amendment 207, which is in connection with Clause 33. I think I heard the Minister say that the Government's intention was to prevent repeated contracts. That is not necessarily what this measure achieves, except that it tends to prevent a repeated contract if it is of shorter duration. If the initial contract is for three years, they almost certainly do not have a time window to be involved in tendering for a repeat of three years, because of the three-year prohibition—whereas, if they take a contract for five years, that three-year prohibition on retendering will have expired before the retendering comes up again. My noble friend simply did not answer that question, so again I am no clearer about what the Government are really trying to do. Are they trying to stop repeated contracts or allow them? They are allowing them for longer contracts but not for others, which does not seem to make sense.

We have all summer and quite possibly a lot of the autumn between Committee and Report to consider what we need to probe further on Report, but I hope the Minister will be taking back the *Hansard* of this discussion to her officials and looking at the points that have been raised but not dealt with in her response. However, this is Committee, so I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Amendment 31 not moved.

Amendment 32

Moved by ***Baroness Scott of Bybrook***

32: Clause 8, page 6, line 35, after second "the" insert "appropriate"

Amendment 32 agreed.

Amendments 33 to 35 not moved.

Clause 8, as amended, agreed.

Clause 9 agreed.

Clause 10: Procurement only in accordance with this Act

Amendment 36 not moved.

4.30 pm

Amendment 37

Moved by ***Lord Moylan***

37: Clause 10, page 8, line 5, leave out "this Act" and insert "section 11 (procurement objectives)"

Member's explanatory statement

The effect of this amendment would be to limit obligations on contracting authorities to compliance with the procurement objectives in section 11.

Lord Moylan (Con): My Lords, in moving Amendment 37 I will speak also to Amendment 460 in my name, which is closely linked to it. They work to a similar effect.

The purpose of these amendments is to go back to the question of what we are trying to achieve in this Bill—what its purpose is. I think we all agree that we want honesty, transparency and value for money in public procurement, in broad terms. However, as I said at Second Reading, it seems that what we are achieving is the bureaucratisation of honesty, whereas we should be focusing on the principles. We are creating a great beneficial bonus for lawyers, as was identified by the noble Lord, Lord Fox, earlier in Committee.

The key to real-world management of procurement is flexibility: to be able to respond to circumstances as they change during a tender. The current system, as I said at Second Reading, operates by setting up some conditions at the beginning over which the contracting authority has very great control. However, the system operates with great rigidity after that, so that it is very difficult to respond to changing circumstances in the course of the tender, or to surprising tenders that might be received.

I gave some examples at Second Reading, particularly the great non-existent iconic London bus shelter. I will detain noble Lords with a couple of further examples because I have been contacted since then by a former local government officer, for whom I have great respect, with two examples from the waste sector. One related to a contract in which—I cannot supply the names—the officers had set up in advance the very precise and clear criteria by which to analyse the tenders they received for a waste collection contract. When one of the tenderers said "For certain types of waste, we will pay you in order to collect it"—which can make sense for certain recyclers—the whole assessment system effectively collapsed because it had not contemplated that sort of bid. As far as I am aware, everything had to be scrapped and started again, whereas a sensible approach would have allowed it to be flexibly adapted.

The second was a case where the local authority decided to take a relaxed "Let's see what the market comes up with" approach to the tender—which can be appropriate as well—which was also for a waste collection contract. Unfortunately for the local authority, the cheapest bidder proposed collecting waste from households only once every four weeks—which was why it was the cheapest bidder. Of course, that was neither environmentally nor politically acceptable, but what could the authority do about it at that stage? All it could do was put pressure on the second-lowest bidder, which had sensibly proposed a two-week collection cycle, to cut its price to make it competitive with the four-week people. That duly went through. The two-week collection was awarded the tender, and within a matter of months the contract had effectively collapsed because, of course, the company could not make it work at the price it had been obliged to agree.

So why is there no flexibility in the system once the initial conditions have been set up? The practical reason is that the moment you say, "This is daft. We should be able to do something about it", the people whom I described in my Second Reading speech as the high priests of procurement will turn up and say, "Ah, but if you do that, a disappointed bidder may sue you for failures in the process." That is why you are tied at the outset with iron hoops to the process that you have set in motion.

What we need is a Bill that focuses on principles rather than on process. These two amendments do that by preventing disappointed bidders from suing a contracting authority for process faults; they could sue only for breach of the objectives set out in Clause 11. I remind noble Lords that those are to do with: delivering value for money; maximising public benefit; sharing information; acting with integrity and being seen to act with integrity; and equal treatment of tenderers.

It is important to explain that the approach I am proposing is not necessarily tied to Clause 11, because certain noble Lords are proposing that the Bill be augmented with a further set of principles—the amendment in the name of the noble Baroness, Lady Hayman of Ullock, adds a set of principles to the objectives in Clause 11. My amendment is perfectly compatible with her approach. If the House decides that the objectives for the Bill and the principles underlying it are not sufficiently and adequately expressed in Clause 11 and that further objectives and principles are required, on Report my amendment could be adapted to fit in with those principles. In this particular debate, I am staying neutral on the various proposals for how to develop the principles; I am totally neutral on the noble Baroness's amendment, because mine would fit with it if that is the direction that the House and the Government wish to take. It is important to bear in mind that I am not tying this explicitly to Clause 11.

It is also important to bear in mind something else that I said. This is not a Bill for combating fraud, corruption or malfeasance in public office. All those things are criminal offences. If a contracting authority commits those offences, it will be prosecuted not under the terms of this Bill but under the relevant provisions of the criminal law—and quite properly. What this Bill does is create a huge bureaucratic minefield for contracting authorities in which disappointed tenderers can sue for some sort of compensation or damages—not that they do so very often, but it is a chilling factor when it comes to the flexibility that contracting authorities should rightly have.

Now, some people would say that this would radically alter the whole approach of the Bill. I think it is a fairly radical alteration of the Bill's approach, but I speak with some experience when I say that it would also make it a workable Bill. I hope that my noble friend, if he or she is not immediately inclined to agree, will at least explain why this approach does not commend itself to Her Majesty's Government.

Baroness Hayman of Ullock (Lab): My Lords, I shall speak to my Amendments 43 and 51 in this group and comment on the other amendments. I thank the noble Baroness, Lady Bennett, for supporting Amendment 43. Amendment 43 would reintroduce the procurement principles that were laid out in the procurement Green Paper and put them in the Bill.

The procurement Green Paper stated that the principles of the new regulatory framework for public procurement should be consistent with the Treasury's *Managing*

[Baroness Hayman of Ullock]

Public Money and the seven principles of public life as set out by the Committee on Standards in Public Life. The Green Paper states:

"The Government proposes that the following interdependent principles should be included in the new legislation."

I shall remind noble Lords of the interdependent principles: they are public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination. We absolutely support these principles, as I am sure all noble Lords do, because they are crucial for good business practice. Will the Minister say why these principles are not in the Bill as expected, particularly when we consider that, in the consultation on the Green Paper, the majority of the more than 600 respondents supported the principles for procurement being in the Bill? If we look at the Government's response to the consultation, they said:

"The Government intends to introduce the proposed principles of public procurement into legislation as described."

What has changed since then? Why now are those principles not in the Bill?

We believe that these principles are an integral part of procurement and a vital tool for setting out what this legislation wants to achieve and how its success will be judged. In the Bill as currently drafted there is a notable absence of mentions of equality or protected characteristics. The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. This includes promoting equality and eliminating discrimination through public procurement as well as ensuring that the PSED is adhered to by those with whom public bodies contract.

Furthermore, this is important domestic legislation that asserts that international obligations on procurement in the UK entered into must be compatible with social objectives. We are concerned that the UK has signed a trade agreement with Australia that potentially threatens the inclusion of social criteria in procurement rules. The UK-Australia agreement states that social and labour considerations can be used in the government procurement process only when based on objectively justifiable criteria. This means that social criteria could be challenged by Australian companies via their Government as unjustified. Furthermore, the World Trade Organization's government procurement agreement that the UK has acceded to does not contain social criteria for procurement. We believe that the current positron needs to be revised and that these principles should be clearly in the Bill.

Moving on to my Amendment 51, it would add proportionality to the procurement objectives. The Procurement Bill covers a wide range of goods, works and services and a range of scales from tens of thousands of pounds to hundreds of millions, but it can be implemented effectively only if proportionality is applied throughout the process. Ensuring the Procurement Bill is proportionate is also key to achieving two of the Government's key aims in this legislation: to improve value for money and to open up the market to smaller providers, including charities. Proportionality is crucial to the effective procurement of person-centred public services through ensuring that resources are not wasted on overly complex processes when they are not necessary and that the most appropriate provider to run the service can be procured rather than being excluded because of their size or where this is disproportionate to the scale or nature of the contract. Proportionality is referenced in the legislation, but only in specific parts, yet we believe it is relevant right across the entire process.

NCVO, which represents over 17,000 voluntary organisations, charities, community groups and enterprises across England, and the Lloyds Bank Foundation have drawn attention to the fact that this Bill will impact on the services and support that people access. We therefore believe that it is important to ensure that it is appropriate for the commissioning of procurement of people-centred services that are delivered by a range of service providers that also include charities. Charities are often well placed to deliver these services because they are embedded in local communities. They are trusted by local people and often able to reach those whom other services fail to reach.

4.45 pm

Resources should not be wasted, as I said, on overly complex processes. We must make sure that we always have the most appropriate provider to run a service; we must not risk them being excluded because they are too small. Will the Minister consider accepting my amendment or, if not, propose something similar so that we do not lose the important services that charities and smaller providers are so often able to provide?

I will briefly say that I also support Amendments 128 and 130 in the name of my noble friend Lord Davies of Brixton. These amendments would provide that consideration of value for money does not override other procurement objectives. Amendment 57 in the name of the noble Lord, Lord Wallace of Saltaire, also looks at the meaning of "value for money". These amendments are important, because the Bill does not define value for money; nor does it set out what can or should be considered when assessing what is the "most advantageous tender". We support the removal of MEAT and its change to MAT, in order that "economically advantageous" is no longer right at the centre. However, we need to make sure that, in practice, value for money does mean that tenders that are perfectly good and acceptable are precluded because that is still being taken as the number one priority.

I will finish with some comments on the introduction to the amendments that the noble Lord, Lord Moylan, put down. I must say that I was very interested to listen to his introduction and hear his proposals. He is absolutely right that we need flexibility when we are procuring, and he is also absolutely right to say that we should be focusing on the principles. To me, the principles that we are looking at and which the Government have already said are important and should be part of the Bill are what will be needed to underpin any new procurement law.

I look forward to listening further to this debate and to the Minister's responses.

Lord Wallace of Saltaire (LD): My Lords, I will speak to Amendments 44, 56 and 57. I too have gone back to the Green Paper and the Government's response to that consultation and I remain extremely puzzled that this entire consultation process was undertaken,

that the Government responded in their response document rather favourably to it, but that almost none of that is reflected in Part 2 of the Bill. Part 2 declares that it is about principles and objectives, but Clause 12 reserves the detailed definition of those objectives to the Minister—whoever he or she may be when it comes to it—to set out later in a policy statement. This is a skeleton Bill and, reading through several parts of it, and this section in particular, I am reminded that the DPRRC commented that leaving things to regulations often disguises the fact that Ministers have not yet quite made their minds up as to what their policy and intentions will be when it comes to it.

If Ministers continue to turn over as rapidly as they have under the current Government, we might anticipate that, every nine to 12 months, a new Secretary of State will wish to issue a new strategic statement. Clause 12 tells us that the statement will be presented to Parliament after carrying out

"such consultation as the Minister considers appropriate"

and making

"any changes to the statement that appear to the Minister to be necessary in view of responses to the consultation".

So we are asked to leave all that—the underlying principles of this Bill—to the Minister, whoever she or he may be by the time this becomes law. Much better to start with a parliamentary debate on what the agreed principles for procurement should be, from one Government to another, than to present Parliament with changing Ministers' changing ideas after lengthy discussions with others outside.

On that topic, can the Minister tell us which Cabinet-level Minister is now responsible for this Bill, or which Commons Minister he is co-operating with in managing it as it moves through the two Houses? That would help the Committee understand how and whether it is likely to progress and what difficulties or changed circumstances the Minister is operating under. I appreciate and almost sympathise with some of the difficulties he may be going through in those circumstances, but if we intend this Bill to last, to provide some stability for non-governmental suppliers and the clients of public services, we need to put agreed principles and objectives in it.

There was much more about principles in the Government's response to the Green Paper. Can the Minister explain why it is not here? Why did it not appear necessary, in view of the responses to the consultation? Amendments 43, 44 and others insert statements of principles largely drawn from government publications. They are central to the Bill. I hope the Minister will accept that it was a mistake not to include them and that it is not acceptable to Parliament to leave this to a future Minister—or perhaps Government—and that he will return on Report, after consultation, with a form of words on this that can command a cross-party consensus and which reflects the consultation already undertaken. Amendments 43 and 44 offer different, though overlapping, drafts of what it might be appropriate to include in the Bill.

I will speak also to Amendments 56 and 57. Amendment 56 is purely exploratory; we deserve an explanation in clear and simple language of the grounds on which some suppliers are to be treated differently from others. Amendment 57 inserts clearer language on the criteria by which procurement decisions should be judged: value for money, cost, quality and sustainability—as the noble Lord, Lord Moylan, pointed out, it is the principles that matter most in setting the tone and culture under which the entire public procurement process will take place. These are important terms, not to be left to the policy statement when it comes but fundamental to the principles under which procurement decisions are taken. They must be in the Bill.

We are all aware of procurement contracts where the cheapest bid has produced unsatisfactory outcomes, where what has been promised has not been produced and where insufficient attention has been paid to quality or sustainability. The noble Lord, Lord Moylan, mentioned one, but there are many others. These need to be spelled out for future procurement, with the blessing and approval of Parliament. Parliament has been sidelined under the recent retiring Government; we hope that whoever succeeds our current Prime Minister will treat it with rather more respect and consideration.

Lord Clement-Jones (LD): My Lords, I will speak to Amendment 46, which comes from a slightly different angle. In our report *AI in the UK: Ready, Willing and Able?*, our AI Lords Select Committee, which I chair, expressed its strong belief in the value of procurement by the public sector of AI applications. However, as a recent research post put it:

"Public sector bodies in several countries are using algorithms, AI, and similar methods in their administrative functions that have sometimes led to bad outcomes that could have been avoided."

The solution is:

"In most parliamentary democracies, a variety of laws and standards for public administration combine to set enough rules to guide their proper use in the public sector."

The challenge is to work out what is lawful, safe and effective to use.

The Government clearly understand this, yet one of the baffling and disappointing aspects of the Bill is the lack of connection to the many government guidelines applying to the procurement and use of tech, such as artificial intelligence and the use and sharing of data by those contracting with government. It is unbelievable, but it is almost as if the Government wanted to be able to issue guidance on the ethical aspects of AI and data without at the same time being accountable if those guidelines are breached and without any duty to ensure compliance.

There is no shortage of guidance available. In June 2020, the UK Government published guidelines for artificial intelligence procurement, which were developed by the UK Government's Office for Artificial Intelligence in collaboration with the World Economic Forum, the Government Digital Service, the Government Commercial Function and the Crown Commercial Service. The UK was trumpeted as the first Government to pilot these procurement guidelines. Their purpose is to provide central government departments and other public sector bodies with a set of guiding principles for purchasing AI technology. They also cover guidance on tackling challenges that may occur during the procurement process. In connection with this project, the Office for AI also co-created the AI procurement toolkit, which provides a guide for the public sector globally to rethink the procurement of AI.

[Lord Clement-Jones]

As the Government said on launch,

"Public procurement can be an enabler for the adoption of AI and could be used to improve public service delivery. Government's purchasing power can drive this innovation and spur growth in AI technologies development in the UK.

As AI is an emerging technology, it can be more difficult to establish the best route to market for your requirements, to engage effectively with innovative suppliers or to develop the right AI-specific criteria and terms and conditions that allow effective and ethical deployment of AI technologies."

The guidelines set out a number of AI-specific considerations within the procurement process:

"Include your procurement within a strategy for AI adoption … Conduct a data assessment before starting your procurement process … Develop a plan for governance and information assurance … Avoid Black Box algorithms and vendor lock in",

to name just a few. The considerations in the guidelines and the toolkit are extremely useful and reassuring, although not as comprehensive or risk-based as some of us would like, but where does any duty to adhere to the principles reflecting them appear in the Bill?

There are many other sets of guidance applicable to the deployment of data and AI in the public sector, including the Technology Code of Practice, the Data Ethics Framework, the guide to using artificial intelligence in the public sector, the data open standards and the algorithmic transparency standard. There is the Ethics, Transparency and Accountability Framework, and this year we have the Digital, Data and Technology Playbook, which is the government guidance on sourcing and contracting for digital, data and technology projects and programmes. There are others in the health and defence sectors. It seems that all these are meant to be informed by the OECD's and the G20's ethical principles, but where is the duty to adhere to them?

It is instructive to read the recent government response to *Technology Rules?*, the excellent report from the Justice and Home Affairs Committee, chaired by my noble friend Lady Hamwee. That response, despite some fine-sounding phrases about responsible, ethical, legitimate, necessary, proportionate and safe Al, displays a marked reluctance to be subject to specific regulation in this area. Procurement and contract guidelines are practical instruments to ensure that public sector authorities deploy AI-enabled systems that comply with fundamental rights and democratic values, but without any legal duty backing up the various guidelines, how will they add up to a row of beans beyond fine aspirations? It is quite clear that the missing link in the chain is the lack of a legal duty to adhere to these guidelines.

My amendment is formulated in general terms to allow for guidance to change from time to time, but the intention is clear: to make sure that the Government turn aspiration into action and to prompt them to adopt a legal duty and a compliance mechanism, whether centrally via the CDDO, or otherwise.

Lord Davies of Brixton (Lab): My Lords, I am speaking to my Amendments 128 and 130, although the issues raised there have already been addressed by earlier speakers. I fully support the amendments spoken to by the Front Bench and Amendment 57 tabled by the Liberal Democrats.

5 pm

The discussion has centred on value for money and what it means. The starting point for all of us, I hope, is the Government's Green Paper, which I think was widely welcomed. The introduction says:

"By improving public procurement, the Government can not only save the taxpayer money but drive social, environmental and economic benefits across every region of the country."

So saving the taxpayer money is put alongside social, environmental and economic benefits; there is no issue of priority there. However, the executive summary of the Green Paper says that

"we want to send a clear message that public sector commercial teams do not have to select the lowest price bid, and that in setting the procurement strategy, drafting the contract terms and evaluating tenders they can and should take a broad view of value for money that includes social value".

Putting it like that—that bodies should take a broad view of value for money—says to me that somewhere out there is a narrow view of value for money, and the use of the term "value for money" is uncertain as it depends on who is defining it. I am happy with what the Green Paper says, but where in the Bill and the statutory statement are we assured that it will be this broad view, which we all agree with, rather than a narrow one?

We have moved on from the Green Paper and we have had the Government's response, which carried those forward, but now we are presented with the Bill. We are always told that the Explanatory Notes are not the Bill, but it is worth looking at what they say because they reveal what is in the Government's mind. Paragraph 10 says:

"place value for money at their heart"—

that is, at the heart of the process. Again, we have to focus on what is meant by "value for money". I very much hope that the Minister will give us an assurance that the Government take the broad view of value for money, but if that is the case, why can we not have it in the Bill? The issue is: why is the broad view of value for money not incorporated in the Bill?

There is another note in the Explanatory Notes that refers to the award criteria and makes me nervous. My amendment is to Clause 22—I have leapt forward. I want it to be absolutely clear in that clause, which sets out those criteria, that price does not have priority. That is what I take the broad view of value for money to mean. I am scared that a future Government over whom we had no control could use what was in the Act to give priority to price as opposed to the different criteria. Even if the Minister gives us excellent assurances that this Government are sticking by what is in the Green Paper, unless it is in the Bill we cannot rest confident that it will achieve what we want.

My Amendment 130, which would be the substantive change, may well be technically defective but would require an assurance that the different criteria—price and the objectives set out in Section 11—should have equality of regard. That is what I am looking for in the wording of the Bill, and that is what my amendment seeks to do.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Davies of Brixton, who I think is seeking to achieve the same goals as two amendments in this group to which I have

attached my name: Amendment 43, in the name of the noble Baroness, Lady Hayman of Ullock, and Amendment 57, in the names of the noble Lords, Lord Wallace of Saltaire and Lord Fox. I will focus on those amendments because I have done my best to get round their technical detail.

Having listened to the powerful introductory speeches that were made, I noted that the noble Baroness, Lady Hayman, highlighted the issues with the Australian trade deal. It is a pity, therefore, that this Committee is taking place at the same time as the Australian trade deal is being debated in the Chamber; some joined-up thinking might have ensured that people were able to participate in both debates. However, that is perhaps a very large aspiration that we can all work towards.

I want to focus on perhaps the most crucial provision, which is subsection (1)(a) in the new clause proposed in Amendment 43, which refers to,

"promoting the public good, by having regard to the delivery of strategic national priorities including economic, social, environmental and public safety priorities"—

although I think I might prefer the wording "public health", which is perhaps broader than "public safety", for reasons that I will come to in a second. That is something that we might consider in future. However, the Government are already signed up to those principles, at least theoretically, in everything that they do because, like the rest of the world, they are signed up to the sustainable development goals. I cite the paper from the Cabinet Office and the FCDO *Implementing the Sustainable Development Goals*, dated 15 July 2021, which says:

"The UK is committed to the delivery of the sustainable development goals. The most effective way we have to do this is by ensuring that the Goals are fully embedded in planned activity of each Government department".

Now one might think that making legislation is a planned activity of a government department. However, that is a very centralised view because it refers only to central government spending and is not focused on other spending. Surely, if we are going to deliver the sustainable development goals, they have to be embedded right across the broad breadth of spending. Essentially, Amendment 43 broadens out and attempts to deliver something that the Government are fundamentally, nationally and internationally, signed up to do.

I note further that the Cabinet Office report states that "all signatories" are

"expected to … deliver them domestically."

However, NGO studies demonstrate that the UK is not on track to deliver a single sustainable development goal. Surely this Procurement Bill is a crucial mechanism for delivering those sustainable development goals of economic, social and environmental advance, meeting people's basic needs while looking after our natural world and ensuring that we have a natural world for the future. I suggest that Amendment 43, in the name of the noble Baroness, Lady Hayman—and Amendment 57, in the name of the noble Lord, Lord Wallace of Saltaire, comes at this in a different way—is absolutely crucial, as it would put the principles of the sustainable development goals, to which the Government are signed up, on the face of the Bill.

Let me also address subsection (2) of the new clause proposed by Amendment 43, which states:

"If a contracting authority considers that it is unable to act in accordance with any of these principles in a particular case, it must—"

essentially, publish a report and take reasonable steps to ensure that it is not discriminating. When I considered signing the amendment, I worried about this because I thought that, surely, these are principles we should be delivering on. However, of course, we all know the practical reality is that many organisations procuring essential services simply do not have enough money to do what they need to do.

This is where we come to the value for money point of Amendment 57. I was thinking of putting this in practical terms, because much of what we are talking about here is technical and abstract. Think of the very common fable in which a poor person, who has only £10 in their pocket, is forced to buy a cheap pair of shoes. Then every three months, he is forced to buy a new cheap pair of shoes. A wealthy person, who has £100 in their pocket, can buy a pair of shoes that lasts for 10 years. So of course, in the end, the poor person ends up spending vastly more on shoes than the wealthy person, because they had no choice. So, given our current situation, maybe we need Part 2, but we have to look at whether this is a bigger, broader problem, beyond even the realms of this Bill. None the less, this group of amendments demonstrates that the Bill is fairly deficient in its current form. This cannot be an area for a framework Bill.

I will briefly mention another issue that is important and I commend the noble Lord, Lord Clement-Jones, for his amendment. We are seeing increasing levels of automation in many aspects of judgments—the human judgment being taken out and AI and algorithms being put in its place. There is a great deal of evidence demonstrating that the way they are being developed and the data on which they are based often fit the old adage of "garbage in, garbage out". We need to make sure that any automation of these processes is not discriminatory. The noble Baroness, Lady Hayman of Ullock, pointed out that anti-discrimination elements are entirely lacking from any provisions in the Bill at the moment; proposed new subsection (1)(f) provides these as well.

Lord Hope of Craighead (CB): My Lords, I return to Amendment 37 in the name of the noble Lord, Lord Moylan. He made the point that the words at the end of Clause 10(1),

"except in accordance with this Act",

are a hostage to fortune. The words range right across the whole of this complicated Bill and of course a disaffected client will invite his lawyer to search through all the provisions to find some flaw in the way in which the procurement exercise was carried out, which he can then attack.

I wonder whether the words

"in accordance with this Act"

are wider than they need to be. First, Clause 10 contains a prohibition, but Clause 10(2) contains a definition of procurement and Clause 10(3) tells you that

[Lord Hope of Craighead]

"a contracting authority may only award a public contract in accordance with"

the four matters set out there.

In my mind, that raises the question of whether the words at the end of Clause 10(1) should really be

"except in accordance with this"

section, the purpose of which is to describe the framework or scope of the power, before Clause 11 tells you that that power must be exercised in accordance with the procurement objectives set out there. It would make sense if Clause 10 simply said what may be done in accordance with that section. If I am wrong about that, the Minister might like to reflect on whether the words

"in accordance with this Act"

go further than they need to.

Choice of words, as I say from time to time, is always very important and the noble Lord, Lord Moylan, raises an important point. What he wishes to put in place at the end of Clause 10(1) is already in Clause 11 and will have to be complied with. I understand that the Minister may be reluctant to go as far as the noble Lord, Lord Moylan, has invited him to go, but he has raised an important point. That is why I suggest that the word "section" might be a more sensible and less dangerous word to use than "Act", at the end of Clause 10(1).

Baroness Neville-Rolfe (Con): My Lords, it is always a great pleasure to follow the noble and learned Lord, Lord Hope of Craighead, who is always so brief and makes such constructive suggestions. The more I listen, the more I feel that this Bill in many respects strikes the wrong note. It is overregulatory and calls for a rethink, which I hope the Government will be thinking about.

5.15 pm

I also rise to support my noble friend Lord Moylan. He prefers a more flexible, more principled approach. I think he also, rightly, is trying to reduce the frequent legal challenges seen in procurement—which I know very well from my own varied career—by disappointed bidders. I agree with the noble Baroness, Lady Bennett, that it is a great pity the Australian deal is being debated in the Chamber at the same time as this Bill, because there are a lot of people with practical knowledge in this debate who cannot contribute. However, I do not agree with her about adding the sustainable development goals. That could encourage yet further challenge to this Procurement Bill because once it goes through the various people engaged in procurement will again think of ways to challenge contract decisions. There is a balance to be achieved in this Bill.

We all want good, transparent rules on procurement, but the Bill is something of a monster. It is wide-ranging and full of significant delegated powers, some of them of the Henry VIII variety as we know because of the amendment put down last week by the noble Lord, Lord Wallace of Saltaire. We need the Bill to focus on essentials and try to cut down the red tape. Schedules 6 and 7 are very well-meaning but very burdensome in practice and costly in terms of resources to both the public and private sectors. That will mean that the £300 billion of expenditure on procurement is spent less effectively and is not the driver of productivity improvement which I had hoped for.

I fear we are going to continue to lag behind France and the United States on productivity unless we use opportunities like this to get things simpler and better. With so many new and continuing rules and regulations, I worry that the more dynamic part of our economy will go elsewhere, leaving procurement to a much smaller pool. Inevitably, this will push up the cost and discourage the competition that the Government wish to inject.

In reappraising where we are with this Bill, I want to emphasise that it is a Lords starter, so it is possible to make changes; sometimes we get Bills and we are asked to make no substantive amendments. I hope that economists and small businesses will be consulted, not just those with an interest in complex procedures and procurement or in social value, which obviously is well-represented here.

I fear there is too much emphasis on regulation in this Bill, allegedly to create public benefit, which we all want. However, if you look at Clause 11(1)(b), I fear it could have perverse effects. I am also worried about Clause 11(1)(d)

"acting, and being seen to act, with integrity".

How do we—let alone business, or the courts on appeal, for example—define "being seen to act"? It is highly subjective. For me, what matters is integrity and not appearances. It is the integrity that matters, so I do not quite understand that provision. I cannot believe parliamentary counsel has agreed to it. It will certainly put off small business from engaging in procurement and others who are not PR and media led. I ask the Minister: is this integrity provision and "being seen to act" precedented in legislation elsewhere, or is it a dangerous novelty that we could come to regret? We have a duty to try to get this legislation right for many years to come.

This issue raises a wider question of what, in this provision and elsewhere in the Bill, replicates what is in EU law and what is additional. It is a theme I am going to come back to again and again. I ask the Minister if, during the recess, government could provide a full side-by-side of the provisions in the Bill and what they replace from the EU. Then we can satisfy ourselves that the Bill does not go too far and consider what might be left out if it is inappropriate or overzealous.

Other amendments in this group seem in several cases to go further down that road, so I am glad to see the various government provisions probed. It is good that we are probing this issue in Committee today, but I fear that some of the amendments could cause problems. The noble Baroness, Lady Hayman, wants to add extra principles. I am not convinced that we should do so because I fear that it would open up lots of further opportunity for legal challenge, and that those extra costs—think about legal challenge in other parts of the public sector—would further reduce value for money for this important part of the economy. Indeed, I fear that the legal duty proposed by the noble Lord, Lord Clement-Jones, could create a similar field day for the lawyers. I am keen to be persuaded that I am wrong. I very much agree with the noble

Baroness, Lady Hayman, on the importance of small business and charities, which we are going to discuss in the next group.

We have discovered in this Committee that there is an effective international framework through the GPA, so I encourage the Minister to go away and consider whether we can slim down the Bill, which I think is the logic of my noble friend Lord Moylan's creative amendment. In any event, perhaps I can say that I would find it useful if we could see what is old, what comes from EU law, what is new and why. I am open to persuasion that all is well, but I have my concerns, which I have articulated today.

Lord Scriven (LD): My Lords, I have listened with great interest to this debate and seen the tension between those who want what they call a flexible and open framework and those who want a more principles-based framework with an understanding of what public procurement is about. We have to be clear that the public procurement is not just about the monetary bottom line; it is about ensuring that social good comes from every pound that the public sector spends. It is not just about ensuring that value for money is the bottom line—the pounds and pence; it is about the environment, the local economy and trying to ensure that people have opportunity, and ladders of opportunity are sown in communities so that people can grow.

I have worked as a public sector employee, I have worked in the private sector on procurement, I procured in the public sector as a health service manager and, like others here, I have been a politician who set the framework for public procurement, particularly when I was the leader of Sheffield City Council. I think that, sometimes when we speak, we are divorced from reality. Most suppliers use a legal challenge not on the process but on the criteria and how those criteria have been judged for the award of a particular contract. I cannot think of any time in my life when I have been involved in procurement that a legal challenge has been brought against an organisation that I either worked for or have been a senior politician in where the criteria have not been the particular legal point on which a supplier challenges; it is not normally the process.

Interestingly, the noble Lord, Lord Moylan, gave many examples of why suppliers might not be able to do anything. Nothing in the Bill would stop that; in fact, the noble Lord, Lord Lansley, has an amendment in a future group that talks about having a more of an outcome approach to procurement, which would allow innovation. It would allow that innovation to be seen as something that it brought into the tendering process right at the beginning by going out to talk to suppliers about what outcomes were required, as the noble Lord suggests. So we have to be careful about how we frame this discussion and about saying that being less clear about principles and what is required will somehow stop legal challenge.

I would argue the other way: if there is no definition in the Bill of such things as value for money, that is a charter for lawyers to start saying, when a contract has been awarded, "What did you mean by value for money?" If over 400 different procurement authorities have a different view of value for money, and I am a supplier looking for a contract in 100 of them and everybody is giving a different definition, then legally there may be more challenges to come. There have to be clear definitions in the Bill of certain aspects, such as what we mean by value for money—or, interestingly, social value. Again, if there is no national definition of that, it is a lawyers' charter.

The tension between what is in the Bill and having more flexibility has to be thought through. It comes down to what a number of noble Lords have said, namely that this Bill is very confused. It is complex and contradictory. It has not been thought through, particularly the elements which need to be clearly defined so that it does not become a lawyers' charter. I ask the Minister, in replying, to say what we actually mean by social value. Once this Bill has passed, if I was a supplier, how would I know what value for money was? Will value for money be defined for every contracting authority and understood by every supplier? Or will it be open to local interpretation to determine what social value is? The Bill is contradictory and has some holes, but we should be very careful of saying that being more flexible stops lawyers challenging. Sometimes not having things in the Bill means that lawyers will challenge more.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I thank all those who have spoken. Lest anybody be alarmed by the coughing I have inflicted on the Committee and my not very brilliant voice, I should say that I tested several times over the weekend and this morning for Covid and the results have been negative.

It has been a very interesting debate. I have listened to it very carefully, including the many contradictions within it, which were summed up ably by the noble Lord, Lord Scriven. There are differences of opinion. Indeed, one challenge was laid down at the beginning by my noble friend Lord Moylan and spoken to eloquently at the end by my noble friend Lady Neville-Rolfe. Of course, we know the other extreme is the intervention from the noble Lord, Lord Coaker, who wished to use the Bill for very extensive potential government intervention.

All of us in this House and in public service care passionately about the principles in which we believe. Those principles differ and that is the nature of the change that can be made when Governments change. The question this Committee is wrestling with, and will I am sure continue to wrestle with through to Report, is the extent to which one encrusts the Bill with the total sum of all the hopes of those contributing to Committee, with some of the attendant risks that have been referred to in relation to litigation; or, at the other extreme, the extent to which one strips it down and concentrates on simplicity. There is an inherent tension, which is expressing itself in a very interesting and informative debate. I can assure noble Lords that, as we go forward, the Government will be listening carefully to both sides of it.

It started with Amendment 37 to Clause 10 and Amendment 460 to Clause 89, tabled by my noble friends Lady Neville-Rolfe and Lord Moylan. These seek to limit the scope of remedies for breach of statutory duty under Part 9 to compliance with only the procurement objectives in Clause 11.

[Lord True]

A supplier's ability to properly hold a contracting authority to account is essential for a well-functioning and fair procurement system and helps to ensure that contracting authorities comply with specific requirements under the Bill. Our submission, in presenting this legislation, is that, without such obligations to comply with the detailed provisions of the Bill, many of the important things that it seeks to deliver would fall away. For example, some of the transparency obligations in the Bill are intended to ensure early publication of information in order to support small businesses. If these cannot be enforced, we risk losing that important support mechanism.

5.30 pm

In addition, many of the specific requirements outside Clause 11—to which my noble friend wished to limit it—are required to implement our international trade obligations, such as the need to publish a tender notice and a contract award notice, which are requirements under the WTO's GPA. That agreement also requires that we have a domestic review mechanism that can address failures to do so. If we do not undertake these things, we also risk adversely impacting supplier confidence and engagement, absent appropriate remedies for breaches beyond Clause 11.

However, I do understand the points put forward about flexibility and I listened very carefully, as I always do, to the noble and learned Lord, Lord Hope of Craighead—it did not seem that way when we had an earlier session in Committee and were talking about another aspect of the Bill, but I always listen extremely carefully to the noble and learned Lord. We will reflect on these matters. Our position is that we think, for the reasons I have explained, that the reference needs to be to the "Act" rather than just "section", as it ensures that objectives such as those in Clause 11, and indeed elsewhere, are included. We will reflect and read the various contributions carefully in *Hansard*, particularly the advice given by the noble and learned Lord, and we will undertake to engage on these matters between now and Report.

Another important thread of the debate was in relation to the Green Paper. This was reflected in Amendment 43, tabled by the noble Baronesses, Lady Hayman and Lady Bennett. As I have said before in this Committee, a Green Paper is a Green Paper. The noble Lord, Lord Wallace of Saltaire, always waxes lyrical on the absence of something in the Green Paper, but a Green Paper is part of the process of reflection and consideration of an area of legislation. I do not think that there has ever been any constitutional principle that what is in a Green Paper must form the text of a piece of legislation—nor have any Governments adhered to that.

I recognise, as argued by the noble Lords who have spoken, that the six principles in Amendment 43 are the same as the principles set out in the Green Paper. However the Government have refined these principles following the response to the Green Paper to help contracting authorities understand what they are obliged to do. An obligation to pursue all these principles at all times risks creating conflicts in the obligations imposed on contracting authorities. However, I can assure the noble Baroness, Lady Hayman, that the Government have considered each of these matters carefully and have, we believe, included each in the Bill in a proportionate way.

The principle of transparency is reflected in both the information-sharing objective in Clause 11(1)(c) and in procedural obligations at each stage of the procurement process. "Public good" is in the Bill as "public benefit". "Value for money" is unchanged, though I understand that there are questions about the definition, which we will no doubt pursue further in Committee. "Integrity" is unchanged. The principle of fair treatment can be found in specific rules on the "same treatment" of suppliers, in Clause 11(2) and (3). As with transparency, we feel that specific legal obligations are more appropriate here than a simple principle to be followed. The principle of non-discrimination can be found in specific rules on national treatment in Clauses 81 to 83. The Bill therefore deals with procurement principles in what we submit is a more effective manner than the broad-based principles in the amendment would allow. However, I have no doubt that we will hear more on this as we come to later clauses in Committee.

I turn to Amendments 44 and 350, tabled by the noble Lords, Lord Wallace of Saltaire and Lord Fox. By the way, the noble Lord, Lord Wallace of Saltaire, rather ingenuously asked which Cabinet-level Minister is in charge of this legislation. The Minister concerned is Mr Jacob Rees-Mogg; he was in charge before and is in charge now. So I think we can dispense with that consideration.

The amendments propose new procurement purposes related to social value in the local area and local economic growth. They require post-completion evaluations against these purposes and create a mechanism for inclusion on the debarment list if they have not been met. Social value and local economic growth are important considerations in the context of procurement. Contracts below thresholds can currently be reserved for local businesses, local charities and voluntary organisations, where it is good value for money to do so. On that I agree with noble Lords opposite that we are perhaps not explicit enough sometimes about the important regard we have for the immense social contribution of the activities of these smaller bodies. Delivering value for money for taxpayers should, however, always be the key driver behind any decision to award contracts to suppliers using public money.

The "public benefit" objective in Clause 11 requires buyers to think about the extent to which public money spent on their contracts can deliver greater benefit than it otherwise would, so the Bill already contains provisions on considering greater social value and economic growth. This is not the same, though, as making social value and local economic growth part of the purpose of the procurement.

In addition, such an approach could draw us into conflict with the UK's obligations under its international trade agreements: for example, each of the trade agreements listed in Schedule 9 to the Procurement Bill requires that, for the procurements covered by the agreement, the UK treats the relevant overseas suppliers no less favourably than UK suppliers.

Lord Scriven (LD): Would the Minister give way? That is one definition of local growth: that it has to be a local company that gets the business. Local growth is completely different: it could be subcontracting or the value sustainability that it puts into the economy, which gets to the nub of the problem. Without having clear definitions, we get these kinds of differences. Would the noble Lord agree that his definition of local growth is predicated on who gets the supplier contract but, actually, local growth could be much broader?

Lord True (Con): My Lords, I will look carefully at what I have said and what the noble Lord has said. I think I said—and will repeat if I have not said it already—that it is important to have some flexibility, particularly at the lower end of contract letting, precisely to give local authorities and others the freedom of judgment for which the noble Lord asks. The more one codifies these aspects in statute, and tightens the definition, the greater the risk—this is something we have wrestled with in Committee—that one limits the flexibility that the noble Lord seeks for local action.

A formal regulatory evaluation of whether each public contract delivered "social value" and "local economic growth" could also be an unnecessary burden on contracting authorities. I repeat my view that local contract management should be able to judge the effectiveness of all aspects of the contract. The Bill makes provision for the publication of information on the performance of large contracts—currently, those valued at over £2 million—which we consider a reasonable and balanced approach.

The Government do not support the use of a debarment list for any purpose other than to designate suppliers that meet a ground for exclusion and have failed to address their risk. Debarment is a last resort to be used when a supplier poses a significant risk to contracting authorities or the public, following criminal or other serious misconduct. We do not consider it appropriate that failure to meet characteristics such as social value should form the basis of such a punitive sanction.

Amendment 46, tabled by the noble Lord, Lord Clement-Jones, who spoke with, as always, great passion and authority on these subjects, seeks to insert an additional principle on automated decision-making and responsible and ethical use of data when carrying out a procurement. The new data platform will deliver enhanced centralised data on UK public contracts and spending. All data that is published will be freely accessible through the central digital platform. This is in support of the objective set out in Clause 11(1)(c), which expects contracting authorities to have regard to the importance of

"sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions".

The data displayed in the platform pertains to the public sector's commercial activity, including tender opportunities, contract awards, spending and so on. The UK's historic commitments to data protection standards and public trust in personal data use will continue to be at the heart of the regime. The proposals build on the fundamental principles of the UK GDPR, and these will continue to underpin the trustworthy use of data to support our central digital platform.

The noble Lord asked why one would be reluctant to legislate for the ethical use of data and automated decision-making. We are not legislating for specific rules for certain sectors but instead setting the legislative framework for public sector procurement. In the same way that we are not legislating for the standards for construction projects, we are also not legislating for the standards for data projects. The Government already issue extensive guidance—the noble Lord referred to some of it—on best practice where appropriate, and contracting authorities should have that in mind when purchasing AI or data products and services.

The Government are resisting this amendment, as policies are still evolving at government level on ethical use of automated decision-making and data. This is a fast-changing world—as the noble Lord knows better than most—so legislating in the Bill could be a premature fix, as it were. I have already referred to the existing guidelines on responsible use of AI procurement for public sector organisations on how to use data appropriately. These evolving policies should be applied by contracting authorities as appropriate. That said, we are open to more engagement on this topic, and I have listened again very carefully to the points that the noble Lord makes. I can give an undertaking to him, as I did earlier to others, that we will engage with him between now and Report, because he is right that this is an important area. We are just cautious about seeking to fix specific things in legislation at the moment.

My noble friend Lady McIntosh of Pickering is, regrettably, unable to be here, for reasons referred to earlier in this Committee debate—and I confess I had nothing to do with that. Her amendments are around the subject of acting with integrity and being seen to act with integrity, which my noble friend Lady Neville-Rolfe also referred to. The integrity objective will oblige contracting authorities to consider how best to prevent fraud and corruption through good management, prevention of misconduct, and control. As well as oversight and control, open competition and the strengthened transparency requirements in the Bill will enhance integrity in public procurement.

It is essential that the procurement regime in the UK commands the trust of suppliers, the public and our international trading partners. While it is important that contracting authorities actually act with integrity—and that is a fundamental point—the objective is drafted as it is due to the importance that those observing procurements can see that contracting authorities are acting with integrity. We will, however, reflect on my absent noble friend's amendment and the points made in debate, including the direct question that my noble friend Lady Neville-Rolfe asked me, to which I do not have an answer as I stand here, about precedents in legislation—clearly, her question will be in *Hansard* and requires an answer.

5.45 pm

Amendment 51, tabled by the noble Baroness, Lady Hayman, and the noble Lord, Lord Coaker, seeks to add proportionality to the list of procurement objectives. Proportionality is a key concept but only when applied in the right way. To ensure that it is captured appropriately, we have introduced proportionality where it is useful to do so in specific clauses in the Bill

[Lord True]
in order to explain exactly what the contracting authority is obliged to do. For example, in Clause 19 the procurement procedure is to be proportionate to the
"nature, complexity and cost of the contract",
something that noble Lords who have spoken have asked for. In Clause 22, award criteria are to be
"a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract",
and in Clause 21 the conditions of participation in the procurement are to be a proportionate means of checking that suppliers have the necessary capability, in order to avoid treating smaller suppliers unfairly.

I have certainly heard what noble Lords on both sides have said about the importance of also respecting and protecting the position of small charities and voluntary providers, and we will go away and see if there is some way in which we can underline the importance that the Government attach to them. However, we are not of the view that it is helpful to introduce a broad, free-standing concept of proportionality on top of what we have put in the Bill, which could call into question the application of that concept in key areas where it is actually written into the Bill.

Amendment 56, tabled by the noble Lords, Lord Wallace of Saltaire and Lord Fox, would change Clause 11(2) so that contracting authorities would have to treat all suppliers the same, rather than being able to treat them differently where differences were justified. The equal treatment of suppliers is clearly a key principle in procurement law, and Clauses 11(2) and (3) of the Bill acknowledge that. However, there are circumstances in which it is right to prefer some suppliers over others; indeed, the regime would not work if contracting authorities could not treat those who offered better bids differently from those who offered worse ones. Clauses 11(2) and (3) together seek to draw a distinction between those circumstances under which differential treatment is unacceptable, and can form no part of the procurement regime, and those where it is a necessary part of delivering improved bids through legitimate competition. Even if such a difference is justified, contracting authorities must do what they can to ensure that it is not unfair. We believe that the amendment would remove that flexibility, but again I am happy to engage with the noble Lords on that in more detail.

Lord Wallace of Saltaire (LD): My Lords, although I am not a great expert on this subject, it seems that this is a case in which judicial review would be extremely easy because the question of how one justifies it is not spelled out here. Could the Minister perhaps write to us between now and Report about what criteria would then be used to justify the decisions taken? I entirely agree with the noble Baroness, Lady Neville-Rolfe, that one wants to ensure as far as possible that we do not leave large holes for judicial review to come in.

Lord True (Con): My Lords, obviously I accept that, but we will certainly undertake to provide further information.

The noble Lord, Lord Scriven, was adumbrating cases where it should be possible to take different issues into account in terms of local activity. I understand the point that noble Lords are making about clarity. Clarity can either be sought through superdefinition, chasing the Snark through the end of the rainbow—sorry, I am mixing my metaphors—or it can be something for which the Government set out a clear framework that ultimately it is open to anyone in a free society to test under the common law. There is a balance to be found here and we will write further.

On Amendment 57, the noble Lords, Lord Wallace and Lord Fox, and the noble Baroness, Lady Bennett, complain that Clause 11 does not define value for money in order to leave a degree of flexibility for different types of organisation with different drivers to place a different emphasis on the concept. That is not unusual in legislation. Value for money as a concept is not uncommon on the statute book without further definition. It has been used in relation to setting high-level objectives for organisations, including the general duties of Ofcom in Section 3 of the Communications Act 2003 and indeed those of the Nuclear Decommissioning Authority in Section 4 of the Energy Act.

There are many precedents, I am told, but I have only given two of them where the term is left undefined, and this allows a degree of flexibility. We are happy with the broad interpretation of value for money, but Amendment 58 would have the effect of limiting the scope for future reviews of what value for money means. That is something that future Governments might wish to do. We do not support that position at the moment but, again, I am ready to listen to further discussion in Committee.

Amendments 128 and 130, tabled by the noble Lord, Lord Davies of Brixton, amend the provisions on award criteria. I am grateful to the noble Lord, first for the explanatory statement which sets out that his amendment intends to ensure that value for money does not override other procurement objectives, and secondly for his exposition of it. While it is important to be clear that Clause 22 does not affect the relative weighting of the objectives in Clause 11, I am grateful to the noble Lord for his consideration of this point and respond on that basis.

Public procurement needs to be focused on achieving value for money, and we submit that this is rightly at the top of the list of objectives set out in Clause 11. The noble Lord laid an amendment, the second part of which would in effect—taken literally—relegate or at least abnegate the possibility of placing value for money exclusively at the top. Our submission is that, while value for money will be the highest priority in procurement for the Government and that is reflected in the drafting of the Bill, it does not disapply or override the obligation on contracting authorities to have due regard to the other matters in Clause 11. I have no doubt that this will be probed further, but I hope that this will reassure the noble Lord that the amendment is not only unnecessary but, in its detail, we could not accept it. There is a balance to be sought here, and that balance will be seen differently by successive Administrations in successive places.

There was a very interesting range of amendments put forward in this group. I have listened carefully, and we will engage further on the points raised. I hope on that basis that noble Lords will feel ready to withdraw or not move their amendments.

Lord Moylan (Con): My Lords, my noble friend the Minister has a difficulty with his throat, and I commiserate with him on that. He also has a difficulty with the Bill. He wants to have a Bill which is highly prescriptive, but his answer to those who wish to amend it is that that would make it too prescriptive. The question is: what are the bounds of prescription, and has he given an adequate defence of them? It may be the heat, but I suspect we are condemned this afternoon to receiving a series of responses from Ministers which are not as adequate and embracing of our original ideas as one might hope.

It has been a very important debate because it is about the principles underlying the Bill. My noble friend said that there was a degree of confusion and contradiction in the debate. There is often confusion in debate when you have a broad range and number of topics to discuss, but I do not think there was any contradiction if one understands that the debate on principles has been taking place on two levels. The first is about what the principles should be—whether they should involve what the noble Baroness, Lady Hayman of Ullock, has suggested should be incorporated and whether they should involve a certain interpretation of value for money. We all agree that has to be an element of it, but what does that actually mean? That has been the tenor of part of the debate. I have said that I intend to remain neutral in a sense on that question.

The second level on which we have been debating the principles is: on the assumption that we can agree what the principles are, what role do they then play? What purchase or leverage do they give in the procurement process? In particular, should they be a basis on which disappointed contractors should be able to nitpick through this procedural Bill in order to bring complaints when, in my view, it would be better if they were limited to doing that only if the broad principles of the Bill—which we might have agreed on—had been breached? The noble and learned Lord, Lord Hope of Craighead, clearly grasped that point, and the noble Baroness, Lady Hayman of Ullock, heartily agreed that we should ensure that there is a degree of flexibility in the tendering process so that unforeseen circumstances that lead to idiotic outcomes can be handled in a sensible way.

My noble friend Lady Neville-Rolfe made a similar point, but I am going to quibble with her very slightly, because she used the word "frequent" in reference to frequent legal challenges to procurement processes. In my experience, they are not very frequent, because what happens is that precise attention to the detail of the process is often prioritised over sensible outcomes in order to avoid those legal challenges in the first place. The structure of the approach that we are taking often leads to poor outcomes in procurement terms precisely to avoid legal challenges, but we congratulate ourselves on having gone through a successful procurement even though we have a suit with a pair of trousers with one leg shorter than the other, or something like that.

Baroness Neville-Rolfe (Con): On the business of frequent challenge, I think it would be quite useful to have some information before we discuss this again. My experience—I have worked in the industry, although admittedly not as an executive—is that there are quite a lot of challenges, and they absorb a lot of resources. However, if they are rare, that is important as well.

Lord Moylan (Con): I heartily second that call for information.

To conclude, my noble friend the Minister said that he thought that flexibility in response to the sort of circumstance that I am describing is desirable. To that extent, he agreed in principle with me and with my noble friend Lady Neville-Rolfe, and it is for him, as we go forward, to show how he intends to instantiate that in his own amendments, so as to give us that sensible, practical outcome. In the meantime, I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendment 38

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

38: Clause 10, page 8, line 5, at end insert ", unless tenders will only be considered from suppliers with an annual turnover of less than £5 million."

Member's explanatory statement

This amendment seeks to reduce the burden on business of the Bill's provisions.

Baroness Neville-Rolfe (Con): My Lords, Amendment 38, on helping small business, would free up procurement for those businesses with a turnover of under £5 million. I am particularly grateful for the support of my noble friend Lady Noakes, and I am glad of the opportunity to endorse her review amendment, Amendment 534, which she will introduce later.

I shall also speak to my Amendment 50, which aims to keep the bureaucratic burdens on small businesses as low as possible, and to Amendments 97 and 100, which seek to exclude small businesses from complex competitive procedures. Finally, I will also speak to Amendments 290 and 295, which seek to exclude SMEs from the bureaucratic burden of cross-compliance in Schedules 6 and 7, which give long lists of reasons for excluding suppliers from bidding.

6 pm

I know from experience what a deterrent effect these schedules would have. Noble Lords will know what a nightmare of bureaucracy banks and financial service accounts have become, forcing costs and red tape on customers so that they can show their compliance and innocence. I believe the new schedules could lead to the introduction of similar tick-box requirements across all procurement, stretching right across the firms or social enterprises concerned. This will certainly deter new suppliers, discourage existing ones and introduce bureaucratic delays into procurement when the opposite is what we need. There is a cost to every compliance procedure, and we need balance.

My amendments are probing in nature, but serious in intent. I am keen to work with the Government and across the Committee to make the Bill more SME friendly. The Minister said at Second Reading that the Bill will

[Baroness Neville-Rolfe]

"more effectively open up public procurement to new entrants such as small businesses and social enterprises, so that they can compete for and win more public contracts".—[*Official Report*, 25/5/22; col. 856.]

I would like to hear today how this will be achieved. My concern is that this admirable political spin will not in fact be delivered by the Bill.

There are a couple of positives that I should mention. First, we heard at Second Reading that below-threshold contracts can be reserved for UK suppliers and small suppliers where it is good value for money, but unfortunately the thresholds are very low: £138,760 for goods and services and £5.336 million for central government construction. Moreover, at present, the Bill lacks thresholds to exempt small business as opposed to small contracts. It does something about small contracts but not about small business. I want to give SMEs preference in contracts more generally, so that they are in with a chance. SMEs are the lifeblood of our economy and, with more than 5 million of them before Covid, they were one of the reasons for our comparative economic success in the OECD. In Brussels, other member states used to be envious of our rate of small business formation. Things are much less rosy now, thus my various suggestions in this group to try to improve matters.

My second positive is Clause 63, which appears to introduce 30-day payment terms on a statutory basis. This will presumably improve current public sector practice. It is extended to new areas such as the supply chain of bidders and utilities. This may work, but I fear that the compliance arrangements could be very bureaucratic. Moreover, the one-off working capital hit could be reflected in tougher requirements on those very suppliers. In my experience, when new rules and practices and red tape are introduced, small suppliers that lack buying power can find their deals eroded in subtle ways. I also believe that 30 days is often too long a payment period for small suppliers, but it depends on the commodity. Fresh food and things that are consumed instantly should be paid for more quickly, whether they are supplied to prisons or to the House of Lords, which I assume is covered by these new provisions.

The Minister mentioned a third positive, which is the early publication of contract details which can be helpful to small businesses and new entrants. He may be able to point me to other areas where life will improve for SMEs as a result of the Bill, and I hope that he takes the opportunity to do so.

My feeling is that there is not enough, certainly not enough to fuel the supply side revolution that we need to get Britain growing again, and I call on the Government to do more. I will, of course, be very happy to look at other options. I beg to move.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite the noble Baroness to speak.

Baroness Brinton (LD) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Neville-Rolfe, in championing small and medium-sized enterprises to get access to many contracts, which needs to happen. There are many amendments to the Bill to this effect, and I hope the Minister will take serious account of making sure that they are not excluded by virtue of the complexity of procurement rules.

I wish to speak briefly to Amendment 534 in this group, which sets out the important principle of ensuring that a Minister carries out reviews of the operation of this Act. Proposed new subsection (2) states:

"'Procurement rules' means the requirements related to procurement set out in this Act or issued under the authority of this Act, and the health procurement rules referred to in section 108."

While I was very grateful to the Minister for her explanations to my question at the end of the first group of amendments, I am afraid that I do not think she answered—

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): Lady Brinton, we believe that you are speaking to the wrong group at the moment. Is that correct? I am not sure. We are just clarifying.

Baroness Noakes (Con): It is the right group, but I have not introduced the amendment. The noble Baroness, Lady Brinton, is speaking before all the amendments have been spoken to.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): The rules are—I can see the problem—that remote speakers speak before the other amendments. Lady Brinton, it is quite difficult in that the amendment has not yet been spoken to; would you rather proceed, as per the current regulation, or wait and speak at the end of the group?

Baroness Brinton (LD) [V]: I am used to speaking in this way, if the Committee will bear with me. These are the rules, and I do not believe that I have the luxury of choosing to change them. What I usually do, but did not do earlier when I first spoke this afternoon, is to apologise to anyone where I might have to speak ahead of them speaking to their own amendment. I assure the Grand Committee that this is not of my making. The rules about remote contributions are extremely clear, mainly, I believe, to help those chairing the proceedings. I am happy to continue.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): I think the rules are to help those chairing proceedings—that is, Deputy Speakers—but also to help the people who are coping with having to come in remotely. Having said that, we will proceed within the rules, but I promise that I will take this back to the Lord Speaker's office again at our meeting on Thursday. Lady Brinton, please continue.

Baroness Brinton (LD) [V]: I apologise again to the Committee. I was just quoting the element of Amendment 534 that talks about "procurement rules" as meaning

"the requirements related to procurement set out in this Act or issued under the authority of this Act, and the health procurement rules referred to in section 108."

While I was very grateful to the Minister for her explanations to my question on the first group of amendments, I am afraid that I do not think she

answered the core question about the interface between this Bill and the provisions in Section 79 of the Health and Care Act.

I refer the Minister to his Amendment 528 to Clause 108 of this Bill which, because it was among the government amendments in the second group of amendments, was not moved or debated. It is important, however, because that amendment states

"If the procurement of goods or services by a relevant authority is regulated by health procurement rules, a Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to such procurement."

I appreciate that that amendment makes an important link to the Health and Care Act, which both Ministers have pointed out to us that they are trying to do. However, it does not pick up the issues raised by a number of noble Lords, including me, about the problem that provisions in the Health and Care Act do not cover the entire NHS.

I am very grateful to the noble Baroness, Lady Noakes—and I look forward to hearing her introduction to her amendment—for picking up my concerns at the end of the first group. Her Amendment 534 would ensure a review by a Minister, including looking at the procurement provisions in the Health and Care Act. That would at least ensure that any emerging tensions and practical problems could be identified and published.

Having raised this, there are two fundamental questions that were not answered by the Minister's letter, nor by the Minister earlier. First, why are the rules for NHS public spend—which, in 2018-19, was in excess of £70 billion—to be created by a statutory instrument without the same level of public scrutiny that this Bill is receiving and no guarantee of the same protections that this Bill is affording to public money being spent on public contracts? Secondly, I ask again exactly where is the interface between the Bill and the Act, given the gap in the Health and Care Act legislation that is covered by the Procurement Bill? I ask again whether it might be sensible to have a meeting for noble Lords interested in this particular and perhaps esoteric problem. It is vital that public procurement works across the board.

Baroness Thornton (Lab): My Lords, I find myself being drawn into this Bill in all kinds of ways. I apologise for not speaking at Second Reading, but I was not able to do so. I declare interests as the founding chair and current patron of Social Enterprise UK and as a senior associate of Social Business International, which is an organisation concerned with social enterprises that contract with the public sector. Both of those positions are unpaid.

Over the 20-odd years I have been in your Lordships' House, I have been involved in putting community interest companies on the statute book and, as a Minister, in the right to request for social enterprises and the Public Services (Social Value) Act. I will speak to Amendment 75B in my name but, because this is the first time I have spoken, I will say that there is a suite of amendments to this Bill that are all about social enterprise. They follow the introduction by the noble Baroness, Lady Neville-Rolfe, very well, because many of the problems are the same, although there are some huge social enterprises providing public services.

This amendment proposes a new clause for the Bill, which addresses market stewardship. The reason is that we are interested in how you give voice to the social value Act in this space; that is at the heart of this amendment. There is a policy background to this that the Government will recognise. The 2015 review of the social value Act carried out by Lord Young of Graffham found that

"where the Act is being used, it has a positive impact and that the variety … of organisations that support the Act is quite striking."

In 2018, Her Majesty's Government announced that all central government contracts would be evaluated on the basis of social value. In December 2020, a new social value model was published by the Cabinet Office, which was to cover all procurement by central government departments and bodies under its responsibility. In June 2021, the new national procurement policy statement required contracting authorities to consider how they could maximise social value in creating new businesses jobs and skills, improving supplier diversity and tackling climate change.

Less than seven months ago, in December 2021, in its response to the consultation in the Green Paper *Transforming Public Procurement*, the Cabinet Office promised that

"A procurement regime that is simple, flexible and takes greater account of social value can play a big role in contributing to the Government's levelling-up goals."

Her Majesty's Government's flagship levelling-up White Paper calls for greater use of social value yet, despite all this, social value is nowhere to be seen in this Bill. When it was in the Commons, the Minister for Brexit Opportunities and Government Efficiency was directly asked why social value was missing. He refused to even use the phrase "social value".

That is a considerable disappointment because, over the last decade, a strong cross-party consensus has developed on the need for all public bodies to consider social value when making procurement decisions. Indeed, the social value Act was introduced by a Conservative Member of Parliament, championed in this place by a Liberal Democrat Peer and supported by Labour and the Green Party during its passage.

6.15 pm

It is not just a political consensus; businesses are also backing social value. The Confederation of British Industry, the Federation of Small Businesses, Social Enterprise UK and many other business groups are championing greater use of social value in public procurement. Charity representatives such as the NCVO are also calling for greater use of this. The reason there is a consensus behind social value is because of the huge opportunities that exist—

Baroness Noakes (Con): I am sorry to interrupt, but I am struggling a little as to which amendment the noble Baroness is speaking to. Amendment 75B, which deals with market stewardship, is in this group, but Amendment 75A, which is about social value, is not.

Baroness Thornton (Lab): I beg your pardon. I was trying to give the basis as to why this amendment is down and then the other amendments that will be in the groups following this one, but I take the noble Baroness's point and will just address this amendment.

[Baroness Thornton]

Social enterprises report higher levels of staff engagement. The Bill does not place any duty on contracting authorities to consider the impact of their decisions on the range of providers, such as social enterprises or SMEs, but there is a risk in ignoring these organisations. There may not be the providers that the public sector needs for the future and this may reduce innovation in our supply chains. That is what this amendment addresses.

Baroness Noakes (Con): My Lords, I have added my name to Amendments 38, 50, 97 and 100 in the name of my noble friend Lady Neville-Rolfe and, as she has already said, she has added her name to Amendment 534.

I will come to that in a moment, but I start with Amendment 86 in the name of my noble friend Lord Lansley. This returns to the question of preliminary market engagement and fostering the involvement of SMEs about which my noble friend spoke on our last Committee day in relation to his Amendment 88. Clause 15(1)(f) makes building capacity among suppliers a permitted purpose for preliminary market engagement. My noble friend's amendment adds some words of emphasis so that capacity building should be particularly for small and medium-sized enterprises.

I know that noble Lords need no reminding of the importance of SMEs to the UK economy. They account for around 60% of employment and over half of turnover in the UK. Not all small businesses achieve scale and not all want to, but most large and successful businesses were small businesses once. We have a responsibility to ensure that SMEs are given every opportunity to thrive and grow. That is why we should be looking at this Bill on the important area of public procurement and its role in the economy and considering the way that can be used to foster SMEs.

SMEs find engaging with public procurement daunting. They simply do not have the time and resources to get involved in complex tenders, let alone things like dynamic markets. It has to be in the interests of both the individual contracting authorities and the economy as a whole to foster as much competition as possible and to assist SMEs in growing their businesses. Building capacity among SMEs is a good thing to do and this Bill should recognise that. It may occasionally be important to build capacity among larger businesses and my noble friend's amendment does not preclude this. But large businesses have the kind of resources that make participating in public procurements pretty straightforward. SMEs, not large businesses, should be the focus of policy in this area.

My noble friend Lady Neville-Rolfe's Amendments 97 and 100 also recognise that getting involved in public sector procurement is hard for SMEs. The complexity of procurement processes makes it quite likely that an SME might not satisfy all the participation criteria and even more likely that they will mess up on an aspect of the procedural requirements. They need to be cut some slack, which is what my noble friend's amendments would do.

I am, as my noble friend knows, less convinced by her Amendments 290 and 295 because there are some serious issues in Schedules 6 and 7 which rightly debar businesses from public tenders. On the other hand, Schedules 6 and 7 are very heavy-handed and there may well be a case for further discretion to allow some of the matters in those schedules to be disregarded in the case of SMEs.

I now come to Amendment 534 to which the noble Baroness, Lady Brinton, spoke so eloquently earlier. It is rather different from the other amendments in this group because it requires a report every year. It is relevant to SMEs because the first area of the report is about how procurement rules have impacted the award of contracts to SMEs. I think we are agreed that we want to see awards of contracts to SMEs growing, and that means making it easier to include SMEs in the process and helping them to win.

There have been some changes to the previous EU rules on which this Bill is largely based which could make it easier for SMEs, but I suspect that the overwhelming effect of the procurement rules as we have them in this complex Bill and the secondary legislation that will follow will continue to deter SMEs from participating fully in public procurement. We really ought to be keeping this matter under review. The noble Baroness, Lady Brinton, raised the issue of whether the health procurement rules are covered. I drafted the amendment with the intention that it should cover health, but I recognise that this is a very complex area and will need to be teased out later in Committee.

A second area covered by my suggested report is whether there is scope to simplify the rules while remaining consistent with the procurement objectives set out in Clause 11. This will also be relevant to SMEs because I believe the complexity of the public procurement code is a major barrier to entry for small and medium-sized businesses. I am sure that large businesses, large tenderers, are quite comfortable with having barriers to entry for small and medium-sized entities, but government and Parliament should not be comfortable with that, and we should at least be striving for greater simplicity and keeping it under regular review.

Lord Wigley (PC): My Lords, I am delighted to follow the noble Baroness. I support Amendment 38 moved by the noble Baroness, Lady Neville-Rolfe, and support very strongly the points that she and, more recently, the noble Baroness, Lady Noakes, have made. They relate to the pressing need to ensure that the burden on small businesses tendering for public contracts is addressed. This issue has arisen under other amendments, and I have no doubt that we need to get this nailed one way or another on Report. It is an important question.

We all draw on our experience. My experience, immediately before coming to the House of Lords after I had left elected politics, was when I chaired the board of Bangor University's Bangor Business School. It related to the small business sector. These issues arose time after time. Some colleagues may be aware that way back, before entering full-time politics, I was involved in the manufacturing industry. I had two incarnations, the first of which was with large supernational companies, Ford, Mars and Hoover, when I was financial controller. Although those three corporations were not generally involved in public sector contracting, their approach to any question of contractual relationships was highly

professional with relevant legal advice in-house and with the resources to buy in specialist advice when needed.

My second incarnation, which I undertook as a serving MP in the 1980s, was to chair a small company from its creation to when, after 11 years, it merged with a larger American-owned company to form a significant new entity employing 200 people at Llanberis in my constituency. We built—the hard way—the acorn from which that grew, raising our own capital locally and starting up by employing just one person full-time, an engineer to build automated diagnostic equipment for the medical sector.

In competing for contracts, we had to beat competitors that were much larger and with far greater resources and in-house expertise. A small company such as ours had a serious uphill struggle to compete on anything like a level playing field. We did so by being fleet of foot, resilient and flexible and by engaging proactively with potential customers. But it is unrealistic to expect SMEs to be in a position to compete on a level playing field with suppliers which have professional resources in depth. The danger is that such SMEs will be scared away from tendering for public sector contracts where the bureaucratic imposition is totally unreasonable for such small-scale operators.

In this context, the amendment is particularly relevant. If our company had not succeeded with the early contracts, we would not have grown to employ some 50 people, as we did at the point when the merger took place. Had we fallen by the wayside in that highly competitive situation, we would not now have the Siemens company that took over our successful company now employing more than 400 people at Llanberis, and with a further expansion a real possibility soon.

I support these amendments because I feel that there needs to be some mechanism written into the Bill to counterbalance the inevitable bureaucratic safety net which public sector bodies build with their procurement procedures. Providing some lower level of bureaucratic imposition on SMEs could make the difference between those companies, on the one hand, being suffocated out of the competitive arena by impositions that they cannot handle and, on the other hand, securing contracts which enable them, in the fullness of time, to grow, given the impact that that might have on our economy.

Lord Aberdare (CB): My Lords, many of my amendments and those to which I have added my name relate to the issue of promoting greater access to public procurement for small businesses, but for whatever reason none of them has come up in this group, so I will just make two brief points.

First, I very much support all the amendments in this group. I wonder whether they will successfully address the large-supplier focus of procurement hitherto and whether they will be enough to bring in those much smaller suppliers, many of which could make a real impact on the provision of, for example, personal services at a local level but which are often excluded on the ground of having too small an income or no track record of delivering high-value contracts, even when the contracts that they want to deliver are far lower than that and they have delivered them at that level. So I suppose my question to the Minister is: how will the contracting authorities—local authorities or whatever—be dissuaded from imposing, or persuaded not to impose, thresholds and contract terms that actually deter or prevent some of those smaller enterprises from bidding? We have heard a lot about opening things up to small businesses, but unless you put restraints on the contracting authorities, those opportunities may not work.

Secondly, I very much welcome the amendment in the name of the noble Baroness, Lady Noakes, although it was spoken to first by the noble Baroness, Lady Brinton. It seems to me that one of the elements that is lacking from the Bill is any indication of how its provisions will be monitored and enforced. How will we know that it is working? I strongly support the review proposed in Amendment 534. Six years seems to be rather a long time to wait, but on the other hand this process will take time to work through.

Beyond that, I hope the Minister says something about how the Government intend to monitor the effect and impact of the Bill, specifically including whether it is actually succeeding in unleashing the energy, dynamism, innovation and entrepreneurship that come from smaller suppliers, and what mechanisms there might be to resolve the issue if it turns out that is not happening. I do not think we can rely on the courts, and certainly these small businesses do not have the will, resources or even time and energy to pursue issues such as this in court. So what mechanisms might the Government be able to use when the system does not seem to be working?

6.30 pm

Baroness Bennett of Manor Castle (GP): My Lords, I rise not solely to demonstrate that there is broad ideological support for small and medium-sized enterprises being given a larger share of the kind of procurement that we are talking about; I do so also because I have attached my name to Amendment 75B in the name of the noble Baronesses, Lady Thornton and Lady Hayman.

I am going to attempt not to repeat everything that has been said but I want to pick up something said by the noble Lord, Lord Wigley. No one else has drawn attention to the fact that the previous group and this one are related. They have aspects acknowledging that SMEs bring different qualities—particularly quality. The noble Lord suggested that, if we do not put in specific provisions about SMEs, it is inevitable that the big companies will dominate. I say that if we do not put in provisions about social value and quality of services—as the noble Baroness, Lady Thornton, said, that is delivered under the Public Services (Social Value) Act—and do not account for those things, it will possibly be even more telling against SMEs than the rules and the points addressed by the amendments.

I am not particularly picking on the noble Lord, Lord Aberdare, here as I was going to say this before he spoke, but I have seen from all sides of the Committee a huge focus on productivity improvement and innovation, but we need to be careful about that terminology. Again, this point comes back to the previous group: a lot of what we are talking about here is the provision of care and the caring services, the type of provision

[Baroness Bennett of Manor Castle]
that really does not lend itself to the same kind of measurement as how productively you are producing widgets. If a nurse is caring for a dying person, maybe it would be more "productive" if they were caring for two dying people at the same time instead. We really have to ask ourselves about that. I can see some head-shaking happening but a lot of our measures of productivity have been that gross and raw, and have failed to acknowledge issues of quality and service.

We need to acknowledge that there are many elements of our service economy where those measurements would be inappropriate. If you are providing a rape crisis service to people in rape crisis, how do you make that more efficient? What does that actually mean? What does innovation mean in that context? I think we sometimes fall into a narrow, widget-based, economistic way of looking at these issues, and we need to look at them much more broadly.

I am going to finish with something on which I think the noble Baronesses opposite will agree, picking up on the point by the noble Baroness, Lady Neville-Rolfe, about 30-day payment terms. Speaking as someone who many years ago used to work for a small independent business that supplied supermarkets on 120 days, which usually meant 150-day payment terms, I think that is crucial. I say to the Minister, if he is responding to this group, that perhaps this is an issue that we could look at in future in the form of a letter. It is crucial for SMEs that it is acknowledged when 30 days or less being part of the procurement process needs to be written into the contract to enable them to bid. That could be an important factor.

Lord Scriven (LD): My Lords, this has been a fascinating as well as nearly unanimous debate about the importance of small to medium-sized enterprises and the role they can play in innovating, stimulating, changing and helping local economies grow. Part of that will be—I have to say to the noble Baroness, Lady Bennett—through productivity. Productivity and quality in themselves are not too separate things; they can go hand in hand in caring services. I speak as a former health service manager. Productivity is not just about how you apply people; it is how you apply all the resources to get better outcomes for those you serve. Therefore, sometimes there are contradictions and it is hard, but they are not always separate.

I would like to speak to a number of amendments in this suite. I thank the noble Baroness, Lady Neville-Rolfe, for doing this in a previous life because—I am sure she will understand what I am about to say—every little does help, particularly with small to medium-sized enterprises. A number of the noble Baroness's amendments are probing for one reason, I think. I am sure that the Minister will come up with specifics in the Bill which will help small to medium-sized enterprises, but I think the general view is that it does not do it. It does not go in depth and give the clarity which I and other noble Lords have said will help to give a level playing field for small to medium-sized enterprises, which is what is required.

In particular, an important amendment spoken to by the noble Baroness, Lady Noakes, on behalf of the noble Lord, Lord Lansley, was on capacity building. In my life of working in local economies, I have seen that the big thing that helps is capacity building for small to medium-sized enterprises. If anything should be on the face of the Bill, capacity building for small to medium-sized enterprises and not-for-profits should be, because they can—with help from the public sector in terms of capacity building—achieve quite a lot.

I have seen that in a number of areas including my own area of Sheffield when I was leader. We had something called "Buy for Sheffield". It was not an issue of giving special treatment to small to medium-sized enterprises; it actually got ahead and gave a lot of capacity building. Through that capacity building and then through their own innovation, they could go to larger organisations and get part of the supply chain on their own volition rather than what normally happens, which is that the large organisations look for small to medium-sized enterprises down the supply chain because it gets them ticks. It actually meant that innovation came. There is something particularly in Amendment 86.

I am not quite sure why the noble Baroness, Lady Neville-Rolfe, chose £5 million because the average turnover of a small to medium-sized enterprise at present is about £756,000. I think because it is a probing amendment there has to be a cut-off point which says that for companies below a certain turnover there should be a special emphasis within this Bill. I hope that the Minister goes away and reflects on what has been said because it does not seem deep enough, and I am sure we will be coming back to this on Report as an important part of the Bill.

I agree with the noble Baroness, Lady Noakes. We have been diametrically opposed on many Bills, but on Amendments 290 and 295 there are elements I would want to see apply to small and medium-sized enterprises. I understand why the noble Baroness, Lady Neville-Rolfe, has done that, but there are some really important issues about the probity and capacity of small to medium-sized enterprises as to whether they get the procurement.

Finally, I want to re-emphasise what my noble friend Lady Brinton said. There is a huge contradiction between having a Bill for public procurement and then saying that, by statutory instrument, the Minister can take away that right for the health and social care provision. I was explaining this over dinner on Saturday to a number of friends who were asking me what I was working on in Parliament at the moment. When you explain the Procurement Bill, people glaze over, but when you explain that there is a provision for £70 billion-worth of their taxes to be excluded at the signing of the Minister's pen, suddenly they become very excited—the glaze stops.

The Minister tried to explain this to my noble friend Lady Brinton; I was more confused after the explanation than before it. She needs to try harder to explain where the contradictions are and how they will be dealt with as a unified Procurement Bill. On the whole, like most noble Lords, I agree with the thrust of these amendments, but Ministers need to go away between now and Report and think carefully. It is clearly not strong enough to give a level playing field to small to medium-sized enterprises.

Lord Coaker (Lab): My Lords, this has been another interesting debate, with that clash of views the noble Lord, Lord True, reminded me about over how far the state should interfere with the market. Some think it should interfere more; some think it should interfere less. No doubt, the noble Lord will pursue the Government's objective of ensuring that we have a social market which operates for the benefit of the many. We look forward to continuing that debate, and I am sure he will respond in due course.

On a serious point, I will start this slightly back to front in terms of the amendments. The really important amendment—apart from my noble friend's Amendment 75B, which I will speak to in a moment—is Amendment 534, which looks at reviewing the procurement rules to see whether they have made any difference or not. You can argue what those rules should be and how far something should go, and the Government will say, "Of course we will have a review; it is a matter of course. We keep under review all the legislation that is passed and look to see how effective it has been", but this is really important.

The amendment refers to the awarding of contracts to small and medium-sized businesses. I appreciate that it does not deal with all the various points that have been raised, but the general point of reviewing what takes place and whether what is passed by the Bill has the impact we think it should have—or any impact at all—is an important principle that we should not lose sight of. However, Amendment 534 is much more narrowly drawn than that, and I suggest that six years is too long.

I will try to be reasonably brief in closing the debate, but I thought there were some really interesting suggestions in Amendment 38 from the noble Baroness, Lady Neville-Rolfe. They went to the heart of what the Government need to do; there has clearly been a procedural problem, but the Committee is trying to address and support the Government to achieve their own objectives. The noble Baroness, Lady Bennett, supported the point about 30 days in Clause 63(2). Is it immediate payment or late payment? Is it sufficient? Is it too long or not long enough? It raises the point that there are a whole series of measures about supporting small and medium-sized businesses with public procurement that need to be looked at and addressed. That is one example.

The point that there are thresholds in Schedule 1 and that below-threshold contracts can be reserved for small contracts was really interesting—if I have understood what the noble Baroness said. She raised the possibility of whether there was the opportunity to have a below-threshold business amount. That is quite an interesting concept for the Government to address and look at.

As the noble Lord, Lord Wigley, pointed out, we are trying to look at how we can expand this and ensure that small and medium-sized enterprises—as the noble Baroness, Lady Noakes, argued—will benefit from the public procurement provisions in the Bill. Everybody wants that, but is it going to happen? Will the measures on public procurement make any difference or not? It is in everybody's interests that they should.

6.45 pm

As to Amendment 86, put down by the noble Lord, Lord Lansley, and introduced by the noble Baroness, Lady Noakes, how do you ensure that the barrage of big business and the huge money that it can spend on winning contracts does not drown small and medium-sized businesses? They cannot compete with that professional body of people, who have all set out to win those contracts. This goes to the heart of it. The Government will say, "Of course that is what we want to happen. Nobody could be against that." That is true, but how will it be made a reality? Why will passing this Bill make any difference? How will this Bill becoming an Act mean that, in three, four or five years, we all turn around and say, "In the Grand Committee of the House of Lords, a procedure started that meant that small and medium-sized businesses benefited from a change in procurement policy"? That is what the whole debate is about: some of us want the Government to go further; others think that, if you reduce burdens, as some of these amendments do, you can change that.

I want to say something about Amendment 75B, introduced by my noble friend Lady Thornton, which is also in the names of my noble friend Lady Hayman and the noble Baroness, Lady Bennett. Members of the Committee will know that, although this amendment talks about market stewardship, it also deals with small and medium-sized businesses, which proposed new subsections (1)(a) and (2)(a) refer to. In a different way, my noble friend Lady Thornton is trying to ensure that market stewardship means that all contracting authorities must consider the impact of their procurement policies on small and medium-sized businesses, but also on social enterprises and voluntary organisations. They should be looked at.

The importance of that is shown in the briefing that Social Enterprise UK sent us, which tells us that there are over 100,000 social enterprises in the UK, contributing £60 billion to the UK economy and employing 2 million people. That is a massive contribution. Everybody would agree with that, but Amendment 75B seeks to ensure in the Bill that we consider the impact of procurement systems on them. Proposed new subsection (2) is particularly important because the contracting authorities must consider how they can use procurement policies to improve the diversity of firms and businesses. This is to be supported by the procurement policy decisions of the Government and others, which is vital.

If I were the Government, I would be parading this. If you want a levelling-up agenda and to have business growth in many of the poorest parts of the country, including in parts of London and across the country—in Wales, Northern Ireland and Scotland, if this is cross-border or whatever it needs to be to be in scope of the Bill—if you want rural businesses to expand, much of that is not big business or massive enterprises. Small and medium-sized businesses, particularly small businesses, are at the root of that economic prosperity. Any levelling-up agenda has to ensure that the procurement policy will achieve the social and economic objectives of the Government to ensure that growth is across the country and tackles problems of inequality and all those things. Amendment 75B is crucial to the achievement of those objectives.

[Lord Coaker]

The amendments in this group, like many other amendments, differ in how far the state should intervene, how much it should be neutral or whether it should just allow businesses to get on with it. If they get off their backs, they can get on with it. To be fair, in some circumstances that is right, but there will be a debate about that and how it can happen. It is up to the Government to look at Amendment 38 moved by the noble Baroness, Lady Neville-Rolfe, Amendment 75B and all the amendments in this group and explain how, if they do not have to be in the Bill, the objectives within them that the Government agree with will be delivered.

I finish where I started: in the end, the Government will need to review all this—the various clauses and the bits that they will end up with when this becomes an Act—and, whether six years later or less, try to understand what difference has been made as a result of the Bill. This group of amendments, like many of the other groups that will be debated and discussed, is crucial for the success of the Bill and for the objectives that we all want to achieve.

Baroness Scott of Bybrook (Con): My Lords, I thank your Lordships for a really interesting debate. A lot of what has been said about support for small and medium-sized enterprises, social enterprises and voluntary organisations is something that the Government also support and, through the Bill, have been trying to support even more. After we finish Committee, we need to meet interested noble Lords and talk more about these issues because they are important to the Committee, as I can tell, but also to the Government. I make no promises, but we should be using all the knowledge in the Committee as we discuss it further.

In that context, I will answer a few questions. I say to the noble Baroness, Lady Brinton, that I am sorry if I did not quite get to the interface with the Health and Care Bill. I will try to get a bit further but I am afraid I do not think I can go as far as she wants. All public authorities will be covered by the Procurement Bill in relation to health except those that will come under the regulations made under Clause 108. There should therefore be no gap in procurement regulations between the two. On health issues, regarding entities under health procurement, further work is going on at the moment in both departments, and we will come back to the noble Baroness as things move forward.

I turn to the amendments in this group. I note that other non-government amendments have been tabled, some of which address prompt payment and relate to SMEs but are also about social values, which have been quite a big part of this debate. Those will be covered at a later stage so I will not cover them; my noble friend the Minister will do so, some of them probably in the next group.

Amendment 38 would impact Clause 10, Amendments 97 and 100 would impact Clause 18 and Amendments 290 and 295 would impact Clause 54. Each of these amendments has been proposed by my noble friend Lady Neville-Rolfe, and I thank her for them. They would enable contracting authorities to exempt businesses, based on their size and turnover, from certain obligations set out in the Bill. Public sector procurers are required to determine the most advantageous offer through fair and open competition, and the Bill sets out that the buyer should contract with the bidder offering the most advantageous tender. We want to focus on getting the best value for the taxpayer by opening competition to all businesses of all sizes.

That is not to say that we are not keen to open public procurement, as I have said, to more SMEs; in fact, quite the opposite. First, we are committed to ensuring that the new procurement regime is simpler, quicker and cheaper for suppliers, which particularly benefits SMEs and social enterprises, ensuring lower barriers for entry to the market. Secondly, bidders will have to submit their core credentials only once to a single platform, making it easier, especially for SMEs, to bid for any public contract. The single transparency platform means that suppliers will be able to seek all opportunities, including a pipeline of future opportunities, in one place.

Thirdly, the Bill will ensure that prompt payment flows down the supply chain, making it more attractive for SMEs to get involved. Fourthly, contracts below the threshold listed in Schedule 1 can be reserved for suppliers based in the UK and/or small suppliers where it is good value for money to do so. Thus, the Bill represents good news for SMEs.

While we share the noble Baroness's keenness to support SMEs in getting access to public procurements, we cannot do that by simply exempting them from procurement rules altogether, as her amendment to Clause 10 would do.

Amendment 50, also proposed by my noble friend Lady Neville-Rolfe, would require the procurement objectives in Clause 11 to make explicit the obligation on contracting authorities to have regard to the importance of keeping the burden on SMEs associated with tendering as low as possible. While we support this goal, there are risks in legislating in such stark terms. Contracting authorities must keep an open and fair playing field for all bidders. While we take steps which facilitate access, in particular for SMEs, it would not be wise to encourage the procurement community to believe that some form of active discrimination in favour of SMEs was appropriate.

That said, we have taken significant actions to level the playing field for SMEs without actively discriminating. Some of these I have mentioned, but I add that we have reformed commercial tools, such as frameworks. This will allow longer-term open frameworks, which will be reopened for new suppliers to join at set points, so SMEs are not locked out, and the new concept of dynamic markets—

Lord Scriven (LD): Does the Minister accept the feeling around the Committee that, while we accept that things are moving forward, they are not strong enough? On the framework issue, one of the provisions in the Bill is that a fee has to be paid every time is contract is let. That does not help. Once you get into the detail, there are barriers to the progression of SMEs. What we are not asking for is a system which supports only SMEs; we are asking for a more risk-based assessment, based on what the risk is of the procurement amount, to release some of the normal procedures

and bureaucracy that is required to give them a view. One of the issues that the Minister can perhaps look at between now and Report is a more risk-based approach to public sector procurement rather than a one-size-fits-all which, on the whole, the Bill still is.

Baroness Scott of Bybrook (Con): I agree with a lot of that and I think it is something that we will discuss further. I thank the noble Lord for his ideas.

This will allow a longer-term open framework which will be reopened for new suppliers to join at set points, so SMEs are not locked out, and the new concept of dynamic markets which, like the current dynamic purchasing system, will remain always open to new suppliers. All these will provide greater opportunity for SMEs to join and win work.

Amendment 75B, tabled by the noble Baroness, Lady Thornton, would insert a clause into the Bill on market stewardship, meaning contracting authorities must consider the impact of procurement on small and medium-sized businesses, social enterprises and voluntary organisations. They would also need to consider how to improve the diversity of their supply chains including, but not limited to, these organisations.

I have previously touched on how the Bill benefits SMEs and would also like to highlight Clauses 32 and 33 to your Lordships, which enable contracting authorities to reserve certain contracts to supported employment providers and public service mutuals. We indeed recognise the importance of diverse supply chains and the benefits to the delivery of public services, and that is why in Clause 63 we require that 30-day payment terms will apply throughout the public sector supply chain, regardless of whether they are written into the contract, ensuring SMEs and other organisations receive prompt payments and the increased liquidity they bring.

Amendment 86, tabled by my noble friend Lord Lansley, would make explicit obligations on contracting authorities to consider small and medium-sized enterprises in preliminary market engagement. Contracting authorities are able, under the new legislation, to design their preliminary market engagement in a way which gives consideration to SMEs, but too many obligations on contracting authorities will discourage them conducting this engagement. I therefore suggest this amendment is not needed.

My noble friend Lady Neville-Rolfe's Amendment 534 proposes a new clause that seeks to make legislation obliging a Minister of the Crown to carry out regular reviews to consider the Act's performance in relation to the award of contracts to SMEs. I draw to noble Lords' attention that the Government do capture SME spend data for those SMEs contracting either directly or in government supply chains.

7 pm

For 2021, spending through SMEs grew by £3.7 billion on the previous year, with £10.2 billion of the total spend with SMEs directly and a further £9.1 billion through supply chains. This transparency data on central government is published on GOV.UK by the Cabinet Office, so we already know where SMEs fit into this public procurement exercise.

As I said, Amendment 534 proposes a new clause to the Bill that seeks to make legislation obliging a Minister of the Crown to carry out regular reviews to consider the Act's performance in relation to the award of contracts to SMEs—I have suggested that we already keep that data—and consider if any simplifications or reductions should be made to the procurement rules. It proposes that reports are put to Parliament and published.

We recognise that it is best practice to carry out continued benefits analysis, and we are committed to measuring the Act's success against a range of indicators, including, but by no means limited to, the measure of spend with SMEs, in order to determine whether the benefits in the impact assessment have been realised. The results of that analysis will be used to shape the Act over time to ensure that it continues to deliver value for money for the public purse while meeting our international obligations.

This regime is new and will bring additional transparency to the whole lifecycle of public procurement, including access to the sort of data proposed in the amendment. The central digital platform will allow for free access to procurement data and allow interested parties to analyse and see the procurement policies and decisions of the contracting authorities in far more detail than they can at present. Over time, the volume of data will provide the opportunity for more complex data analysis, driven by the content of the notices and information on the central platform, allowing for detailed examination of the nature of the suppliers that the public sector is dealing with, including their beneficial ownership and size. The Minister must be able to keep the information generated under review to ascertain when performance measuring is appropriate, rather than meeting arbitrary timescales.

Finally, the scope of the review proposed is also problematic, as it includes procurements which were carried out under the National Health Service Act 2006 and, as such, may not be subject to the Procurement Bill, depending on the scope of forthcoming health procurement regulations, as we have been talking about. Any review of procurements subject to a different set of regulations would be inappropriate to enforce through this Bill.

Overall, I hope that I have assured noble Lords that this Bill is a good deal for SMEs and that there is good reason why we cannot go as far as noble Lords would like. As I have said, the Government support SMEs, the third sector and the voluntary and community sector. This is something on which we will have a number of meetings between now and Report to discuss what we can do further, if we can. I respectfully ask that these amendments be withdrawn or not moved.

Baroness Neville-Rolfe (Con): My Lords, I start by thanking everyone in this Room for taking part and for the widespread support for my amendment and for doing something in the Bill for small business.

I was sorry to get such a disappointing reply from the Minister. She repeated the positives that I had already identified and given the Government due credit for, but she did not offer a lot else. She said all bidders must be treated in the same way; I think that is at the

[Baroness Neville-Rolfe]
heart of the problem. We have to find some way to help SMEs. The Minister mentioned the billions going to SMEs, but that is compared to the £300 billion opportunity. There is a huge opportunity to grow the SME and social enterprise sector in the procurement area and to do it in a way that represents value for money—I am coming from that angle as well.

I also thank my noble friend Lady Noakes, who made a very strong case for a regular, five-yearly review of procurement to be written into the Bill. I remember that we did this in the intellectual property area and it has worked well. She rightly fears that SMEs will be discouraged by the new laws and SIs—there are so many SIs coming through—and that that might heighten the barriers to entry that deter small business from bidding. This was reinforced very strongly by the noble Lords, Lord Wigley, Lord Aberdare and Lord Coaker. The killer line from my noble friend Lady Noakes—I am going to embarrass her—was like something from Oscar Wilde: "SMEs find engaging with public procurement daunting." It is wonderfully understated, but it summarises the issue beautifully.

My noble friend also persuasively presented the capacity building amendment from the noble Lord, Lord Lansley, and attracted support for that from across the Committee, both in relation to SMEs and social enterprise. I strongly agree that capacity building is the way to improve productivity in the economy, so it would be great if we could encourage it in some way or another.

We also heard about social value from the noble Baronesses, Lady Thornton and Lady Bennett. The noble Baroness, Lady Bennett, reminded us that care is covered by this Bill, but I do not agree that you cannot have improved productivity in care. I have noticed how, as in Bupa homes, the distribution of medicines to old people is much improved as a result of private sector innovation in trying to make sure that they are not taking the wrong pills and that the nurses are giving them the right ones. There have been other improvements in the care area, with wheelchairs and so on, as well as the use of internet-enabled things, which can be really helpful. It was great that the noble Baroness reminded us of care even though, as usual, we come at this from slightly different angles. As the noble Lord, Lord Scriven, said, productivity and quality actually go hand in hand with good procurement in care.

It is clear that we need to do more for SMEs and social enterprise, and—not or—we need to put a review clause into the Bill or be assured that there will be a review of it, given its novelty. I very much appreciate the offer of a meeting with those of us who are interested in moving this forward with the Government during the Recess, before we come back to look at this gargantuan Bill again, presumably in October. With the leave of the Committee, I would like to withdraw my amendment.

Amendment 38 withdrawn.

Amendments 39 to 42 not moved.

Clause 10 agreed.

Amendments 43 and 44 not moved.

Amendment 45

Moved by ***Lord Wallace of Saltaire***

45: After Clause 10, insert the following new Clause—

"Procurement requirements

In carrying out a procurement, a contracting authority must have regard to—

(a) the target to reduce the net UK carbon account;

(b) the ethical and human rights record of the supplier;

(c) the need to maintain data security within the digital platform; and

(d) the necessity for transparency and openness."

Member's explanatory statement

This amendment specifies a number of overarching requirements that a contracting authority must have regard to when carrying out a procurement.

Lord Wallace of Saltaire (LD): My Lords, all the amendments in this group—which, the Minister will note, come from all the various groups and tendencies in the Lords, including the Conservatives—are concerned to spell out in the Bill in rather more detail the social and economic objectives that public procurement should promote. My name is on Amendments 45 and 59, but there is language in other amendments that I support and which I hope the Minister will accept. The concepts of "public benefit" and "social value" are broad and non-specific. We are asking for rather more spelling out of the kinds of benefit and value that are intended, in order to guide contractors and suppliers as well as Ministers and officials.

All of us on the Committee are conscious of the significant impact that the principles of public procurement can have on the broader UK economy and society. I am struck by the degree of consensus in the Committee around a number of issues. If I may say so, I have never before been so painfully aware of how much I am agreeing with the noble Baroness, Lady Noakes, and perhaps I shall ask to sign one of her amendments on Report. That shows a sense of what we are trying to do constructively with the Bill, and let us hope that we continue. I hope the Minister is indeed in a receptive and co-operative mood and will be willing to consult members of this Committee before Report and to return with agreed language that responds to these concerns.

I appreciate that there are some on the hard right of the Conservative Party who do not believe in moving towards net zero or in the concept of social value. Conservative Ministers and Liberal Democrat Ministers co-operated in producing the social value Act of 2012, which remains in force and is highly relevant to the Bill. With respect, there are a minority within the Minister's own party and a smaller minority within the wider public who resist this. The Minister himself is a self-declared one-nation Tory committed to conserving the nation's shared values and long-term interests, so let us put some of these shared principles and objectives in the Bill.

Amendment 45 would insert the target of reducing the UK's net carbon amount. The Minister will note the modesty of that objective since it does not even mention net zero, and indeed the noble Baroness, Lady Bennett, will probably disapprove of my modesty.

The ethical and human rights record of suppliers is a live public issue across the parties that will not go away, as the Minister must be aware.

Amendment 59 spells out what is a definition of public benefit that, again, I hope the Minister will agree with and shares. Will he now accept that such a definition ought to be in the Bill?

Baroness Thornton (Lab): My Lords, I shall speak to Amendment 47A in my name and Amendment 52. Basically, we believe that Clause 11 should include specific references to maximising social value as something that a contracting authority must have regard to in line with the social value Act and the national procurement policy strategy. The question to which I would appreciate an answer from the Minister is: why is that not included? In my previous contribution, I went through all the different policy streams—including levelling up—that lead us to the conclusion that social value and support for social enterprises and social businesses are a good, and they are good in procurement. It is therefore a mystery why this has been left out of the Bill. I hope the Minister will agree with that and, if not, explain to me why it is not the case. I hope he will support these amendments and add them in. They are modest amendments, really.

Lord Hunt of Kings Heath (Lab): My Lords, I have Amendment 48, but I very much endorse my noble friend Lady Thornton's remarks on this subject. In the group before last, it was interesting to hear the Minister talk about what I thought was a hierarchy in terms of the balance to be drawn in making judgments about procurement. He put value for money at the highest level. My major problem with that is that my experience in the public sector, mainly in the health service but in other worlds too, is that that is translated into the lowest price.

7.15 pm

So in all the arguments that we will have on this group and on the other environmental groups on Wednesday—and which had on the previous two groups and a on group on the first day in Committee—the Minister will say that this is covered because in prioritising value for money and with the other areas that the Bill has mentioned and that the procurement statement will deal with, we need not worry that the balance is right. The problem is that if we do not trust public procurement to deliver some of these wider objectives, we have to seek that the Bill enables it to happen. There is very little evidence, as far as I can see, that public authorities ever really move away from lowest price. The Government will have to do an awful lot to convince us that delivering value for money or maximising public benefit will actually work in terms of the wider policy objectives we want to see.

My amendment would add economic, social, environmental and cultural well-being to the objectives currently set out in Clause 11. I take us back to our debate last week, when my noble friend Lord Coaker put it very well. He said that we have a great opportunity to use public procurement policy to help

"produce the country and society that we want. Many Governments and local authorities have failed to use the power of that purchasing to drive social change."—[*Official Report*, 6/7/22; col. GC 285.]

He was absolutely right.

The recent report of the Committee on Climate Change to Parliament is surely a huge wake-up call on this. The committee essentially said that the UK is one of the few countries with many of the right policy ambitions and with emission targets in line with the long-term temperature goal of the Paris Agreement. However, the problem with the Government's approach is that they do not have the policies to put in place the progress needed to meet the targets they have set. If they are really serious about probably the greatest challenge that we face, surely procurement is the way to do it. Yet, so far, they seem to be setting their face against it.

I was interested in the comments by the noble Lord, Lord True, last week. He essentially said that my noble friend was making a dangerous attempt by the Labour Party to constrain private companies that sought to provide—

Lord True (Con): That is what the noble Lord said.

Lord Hunt of Kings Heath (Lab): No, the noble Lord, Lord True, was interpreting what my noble friend said.

Lord True (Con): I always like to use two words when either reduces to one.

Lord Hunt of Kings Heath (Lab): I could get into trouble quoting the noble and learned Lord, Lord Judge, to himself on constitutional issues in the Schools Bill, but surely I can quote the noble Lord, Lord True, to himself. He interpreted my noble friend's words of wisdom as a dangerous attempt by my party—the Labour Party—to constrain individual private companies that sought to provide public services to conform to the will of whatever its wishes in power might be. If only.

I think my noble friend was really saying—no doubt he will come back if he thinks I have got it wrong—that this Bill presents us with a unique opportunity to influence a huge public spend in the direction of policies that we wish to see implemented. In today's environment, climate change and sustainability are essential. One way or another, this Bill will leave this House with some form of words on that in it, and I doubt very much whether the Government will be able to take them out, bearing in mind that this is a Lords starter.

Baroness Worthington (CB): My Lords, I rise to speak to Amendments 49 and 58 in this group referring to Clause 11 on procurement objectives. I am very grateful for the support of the noble Baronesses, Lady Verma, Lady Young of Old Scone and Lady Parminter, on these amendments.

We have just had a very interesting debate about the need to support small and medium-sized businesses as a more explicit goal within the Bill. I am here on this group of amendments to make the case for more explicit support for future generations. We have a climate crisis on our hands. We are potentially facing temperatures of 43 degrees this weekend. This is not a pleasant situation to be in; it is going to cause people to die. This is not something we should turn away from, and we must future-proof every single piece of legislation that passes through the House during

[Baroness Worthington]
our watch. This Bill offers an opportunity for us to do just that. The Government have not introduced anything in the Bill that goes beyond guidance other than simply the words "public benefit". This needs to be given much more clarity, and my amendments seek to do that.

It was stated at Second Reading, and I apologise for being unable to attend it, that we need to improve the existing drafting. Therefore, I am looking forward to hearing from the Minister and, I hope, to meeting the Minister as I have to echo the words of the noble Lord, Lord Hunt. It feels that there is a huge amount of cross-party support for being clearer in this Bill about our intentions and that somehow or other we need to see something more explicit in the Bill, so a meeting on this topic would be most welcome.

Amendment 49 seeks to add more specific targets and a list of matters that the contracting authority must have to regard to including the importance of contributing to targets on our carbon budgets, the natural environment, air quality and other matters. I do not think anybody here is wedded to precise wording, and a number of noble Lords have come forward with different wordings in this group. Obviously, this is not an amendment I would seek to make final, but there must be a form of wording we could all agree on.

We have talked at length about the opportunity the £300 billion per year spent on government procurement offers in terms of driving forward the agenda we wish to see and increasing Britain's productivity, innovation and the diversity of the companies able to engage in the transition we need to see. Business as usual is no longer tenable. We need to drive change, and we know that procurement is a hugely important lever for doing that.

I asked some questions about precisely how much procurement is responsible for driving global carbon emissions, but I am told that that information cannot be given, so we have no way of knowing how well aligned government policy is to the achievement of these broader goal, which is regrettable. We want to see more clarity in the Bill so that we can, over time, know whether procurement is delivering on these multiple goals.

I am sure there will be responses from the Minister that call into question the sense of these amendments and suggest that somehow it would distort the hierarchy. I reassure the Minister that that is not what we are seeking to do. We are not trying to tie the hands but are simply trying to provide the clarity and direction for such an important lever. I am sure we will be told that the next clause on the national procurement policy statement should be relied upon to deliver this clarity. Yet—and we will debate this—there is not a requirement on the Government to produce a statement; it is simply a "may". Also, there is no fixed timetable I can see about when that will be produced so, really, we have nothing. There are no reassurances at all that this very poorly defined concept of public benefit will be given more flesh and more detail.

There is a precedent for putting something in the Bill. I highlight Section 9 of the Health and Care Act 2022, on which this amendment is modelled, which amended the National Health Service Act 2006 to give similar duties to the NHS to have regard to climate change including in relation to procurement, so it is not incoherent or without precedent to put this in the Bill. It would be more consistent to have it in legislation. If we do not do it, people will say that it was done in the NHS Act and ask why it was not done in the broader framework Bill that came subsequently. There is well-established similar terminology in the Financial Services Act 2001 and the Skills and Post-16 Education Act 2022, so we must be consistent about the future-proofing of Bills to ensure that we are sending the right signals and bringing about this transition.

I hope I have explained why I think this approach should be taken. I highlight that public benefit being undefined is a problem, which brings me to Amendment 58. Of course it is legitimate for a Government not to seek to define every word in legislation, and some legislation can be unambiguously understood when the words have the ordinary meaning that you would find in a dictionary. The trouble with not defining a term that needs to be understood by all and for that meaning to be as consistently understood as it can be is that it will introduce a level of subjectivity and a lack of clarity. In a search through existing legislation, I have found no use or definition of public benefit, except in relation to charities law, but that cannot easily be read across into procurement decisions. Amendment 58 seeks to remedy that and to define it more clearly. It would include local priority outcomes as well as national ones.

I am sure the Minister will say that the understanding of public benefit will evolve over time and therefore a degree of a flexibility is required, but that is why we have selected only the issues which are enduring and which will be playing out of the long term. We have chosen three national and local priorities. Of course, that does not limit other priorities, but these will be enduring outcomes that will be with us for the long haul and will not change. The need to address the issues that we have highlighted here will get only greater. I think this amendment should be supported; I am not particularly wedded to this way of doing it, but there needs to be something in the Bill to provide the clarity that enables us to future-proof it. We need to take the current crisis and the responsibility we carry for future generations seriously in all legislation we consider, and I therefore look forward to the Minister's response.

Baroness Noakes (Con): My Lords, this group includes my noble friend Lord Lansley's Amendment 53. Like some of the other amendments in this group, it is defines "public benefit" in Clause 11, which the noble Baroness, Lady Worthington, has just covered in her speech. My noble friend Lord Lansley regards it as important that there is a definition in the Bill. Public benefit is a very elastic term, which is good in some ways because it allows us to future-proof the use of the language for changes in circumstances, but there should be more guidance in the Bill on the kinds of things that are intended to be encompassed by it.

Clause 11 should be the guiding star for procurement professionals and we owe it to them to make it as clear as possible what is expected from them in applying

Clause 11 in their work. I think most people would understand that public benefit includes economic and environment benefits and social value, which is included in my noble friend's definition, but my noble friend is concerned that innovation and levelling up, which he also includes in his definition, should be mentioned explicitly. They are important topics and central to government policy, and they might not be obvious to procurement officials as coming within the term public benefit. Omitting them from the Bill raises questions about how important the Government think they are. The Minister may well say it will all turn up in the national procurement policy statement, but that is not the same thing. If something is important, it can easily bear repetition.

Other amendments in this group—Amendments 58, to which the noble Baroness, Lady Worthington, has spoken, and 59—also seek to define public benefit. They reference innovation but both contain rather long lists. One problem with rather long lists is that they tend to raise questions about what is not included in them, which is why drafting a long list is often a dangerous approach to trying to explain what something means in statute.

7.30 pm

At the end of the day, it is a question of balance. On one hand, leaving abstract phrases undefined gives you the most flexibility for the long term in order to live as things change, but on the other hand I firmly believe that professional procurement officials today need guidance on what is expected of them when they come to apply this legislation. My noble friend's amendment asks for a bit more guidance in the Bill, and I hope the Minister will see the sense in giving just a bit more help.

Baroness Parminter (LD): My Lords, I have added my name to the two amendments tabled by the noble Baroness, Lady Worthington, which she so ably introduced. I am also speaking to Amendment 59A by my noble friend Lord Purvis of Tweed, who, because of the scheduling announced today, cannot be here.

I support all the amendments in this group, which takes us on to the issue of whether the Bill should bring forward public benefit. If we are to be put into camps then I am certainly in the camp that wants public procurement to be developing social values. Clearly the Minister will argue with us on that, but what I do not think he can argue with is that on some of the issues that we have been talking about in relation to public benefit—I cite specifically net zero and biodiversity loss, which the amendments refer to—are not just issues of social value; they are the Government's stated objectives. They have legislative targets to meet for both net zero and biodiversity. So the Minister can argue with us if he does not want to use public procurement to deliver social value, which I firmly believe it should, but he cannot argue with the fact that, if his Government have targets, they need to deliver, and they should use every means at their disposal to do so.

I shall give an example of why I say that. The Environment and Climate Change Committee has been holding evidence sessions over the last three months on mobilising behaviour change. We have received evidence from academics, companies, schoolchildren and indeed everyone about how to change behaviour. The Climate Change Committee has said that about 60% of his Government's targets are going to need people to change their behaviour. We have learned that you can make people change by giving them a bit more money through fiscal incentives or disincentives, and you can change regulations so that companies can or cannot produce certain products, but a critical factor is that we are social animals that want to see what the social norms are. We do not just live our lives in our own little house; we live our lives in schools and hospitals, and if we see menus in those places that may not reflect net-zero values, or we go into council buildings and see that they are not dealing with energy efficiency, that encourages us to think: "Why should I bother changing my lifestyle?"

Unless the Government use every opportunity at their disposal, one of which is procurement, they are not going to meet their own targets. So I argue that even if the Minister differs—as I think he would—from those of us who believe that procurement should deliver social values, it is still the case that the Government cannot meet their own targets unless they use the Bill to maximum effect, and that means putting in it the commitments referred to in this group of amendments. As the noble Baroness, Lady Worthington, said, no one is precious about the wording; it is about the intent.

I was asked by the noble Baroness, Lady Verma, who had to leave early, to express her support for these amendments and to remind the Minister that he mentioned that there would be an opportunity for discussions with colleagues on these matters before Report.

As I said, I will introduce on his behalf—although nowhere near as ably as he would—my noble friend Lord Purvis's probing amendment to pick up the issue of the use of Fairtrade products in procurement contracts. Here, to be fair, there has been progress in recent years: many central government departments use Fairtrade products, we see many local authorities using Fairtrade products, especially in catering, and indeed even here on the parliamentary estate we use Fairtrade products. So I am not saying there has not been progress in the absence of Bills such as this, but there is much more that can be done. My noble friend's probing amendment aims to highlight the importance of fair trade in this arena and make sure that the Bill does all that it can to further that important agenda.

Baroness Bennett of Manor Castle (GP): My Lords, I rise in a very pleasing position for a Green: in a group of amendments addressing climate, biodiversity, social justice and indeed fair trade, to say that almost everything has been said, just not by me.

I am acutely aware of the hour so I am going to be very brief; I seek to add only a couple of points. Amendment 49 in the name of the noble Baroness, Lady Worthington, and addressed by the noble Baroness, Lady Parminter, has full cross-party support; I would have attached my name to it had there been space. It is clearly a crucial amendment.

[Baroness Bennett of Manor Castle]

We have to contrast this Bill with the UK Infrastructure Bank Bill, which I was recently in, half of which is entirely directed at something that is missing in this Bill. I was thinking of the tireless work of the other noble Baroness, Lady Hayman, the one who is not in the Room today, who has worked so hard. I can go back to my first ever time in Committee in this Room almost three years ago now, when we were fighting to get a climate provision into the Pensions Bill. We thought, "One day we'll get to the stage where we won't have to fight to get these into every Bill when they should clearly be there." Sadly, it is clear that, despite the UK Infrastructure Bank Bill, we are not there yet.

The points made by the noble Lord, Lord Hunt of Kings Heath, about the most recent report from the Climate Change Committee were hugely powerful. We have targets but not policies. How are we going to get those policies unless we have them written explicitly into Bills such as this? I commend the noble Lord's Amendment 48, which I would have signed had I not missed it, which contains important wording about "cultural well-being", something that is far too often missed out. The noble Baroness, Lady Parminter, made a point about culture in the broadest sense. We need to give people a rich life, one that may have less physical stuff in it but is of far better quality. The cultural point really starts to address that, as well as addressing public health and consumption issues.

I am aware of the time so I am going to be really restrained, and I hope I get some brownie points for that. I shall sit down.

Committee adjourned at 7.39 pm.