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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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

House of Lords

Monday 18 July 2022

2.30 pm

Prayers—read by the Lord Bishop of Carlisle.

Economic Downturn

Question

2.37 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government what assessment they have made of forecasts of an economic downturn later this year, and what steps they are taking in response.

Baroness Penn (Con): Her Majesty's Government do not prepare forecasts for the UK economy. In March, the independent Office for Budget Responsibility forecast growth of 0.3% and 0.2% for the third and fourth quarters. Recognising that the economic outlook has become more challenging since the OBR produced its forecast, in May the Government pledged a further £15 billion of support to help maintain consumer spending and head off the risk of an economic downturn.

Lord Haskel (Lab): The Minister has not mentioned rising inflation, rising hardship and inequality, low growth and productivity, strikes, a fuel crisis and, especially today, climate change. All tell us that the outlook is dire. What are we going to do about it? Judging by the Tory leadership hustings, we are going to cut taxes and cut public spending, either now or later. No wonder the Conservative-dominated House of Commons Treasury Committee accused Ministers of a

"lack of long-term thinking in economic strategy".

Those whom we rely on to invest and grow the economy do not make decisions based on headline tax rates and soundbites. Even though we only have a caretaker Government, will the Minister urge her colleagues to start thinking through a proper strategy to deal with this economic crisis, or simply adopt Labour's strategy?

Baroness Penn (Con): My Lords, there was quite a lot in that question. I am not sure that the noble Lord listened to my initial Answer, where I referenced the support that the Government are providing to help people with the cost of living. That was extended by £15 billion in May, but of course previous support was announced, which takes that to £37 billion. He mentioned a long-term plan for economic growth, which is exactly what the Government have. At spending review 2020-21, we made a landmark investment in capital projects and we are increasing public investment in R&D to £20 billion a year by 2024-25. Those are just two of the measures that we are taking to support our economy.

Lord Naseby (Con): My Lords, since our economy is facing a major backlog in almost every government department, is this not the time for our great public servants to be reminded that they are there to serve the public and in particular our business community—for instance, on passports, trade and business? Can we please ask them at this time to remove the backlogs that they are performing on at the moment?

Baroness Penn (Con): My Lords, I think that our public servants have at the forefront of their minds when they do their jobs the service that they give to the public. My noble friend refers to backlogs. I am not sure quite which ones he is referring to. My noble friend is beside me and she would say that there are no backlogs in passport processing, and that applies to a number of other government services too. There are in the NHS—we absolutely acknowledge that—but the Government have a plan to deal with that.

Lord Walney (CB): My Lords, does the Minister remain committed to the assertion by the former Levelling Up Secretary, Michael Gove MP, that levelling up may be more difficult in a time of economic hardship but that it is even more important to tackle regional equality and that investment must continue to be made to be able to do that?

Baroness Penn (Con): This Government are absolutely committed to levelling up. The former Levelling Up Secretary did an excellent job, but that commitment does not change with his departure.

Baroness Kramer (LD): The Recruitment & Employment Confederation found that the UK could lose up to £39 billion a year from 2024 if we do not resolve labour and skills shortages. What is the Government's future workforce strategy? If the Minister tells me that there is one, could she indicate where to find it, because nobody, including industry, can seem to locate the bones or the substance of such a strategy?

Baroness Penn (Con): My Lords, there are several prongs to that, one of which we discussed during the passage of the skills Bill, which the Parliament has just enacted, including increases in investment in skills and working with employers to ensure that the qualifications meet their needs. As part of that work, the Department for Education is also working with employers to look forward to what future skills the country will need.

Lord Woodley (Lab): My Lords, we all agree that soaring inflation is a great threat to the economy and is, without a shadow of doubt, fuelling the cost of living crisis, but new research from my union, Unite, shows that it is being driven by corporate profiteering and some greed, with profit margins of the FTSE 350 firms now 73% higher than pre-pandemic. What is stopping the Government bringing in a windfall tax on all companies found to be profiteering or price gouging, not just the oil and gas companies, as currently proposed?

Baroness Penn (Con): The Bank of England's independent Monetary Policy Committee said in its recent report that the vast majority of the increase in inflation over the past year reflects the impact of sharp increases in global energy and tradeable goods prices. On increases in energy prices, we have introduced

[Baroness Penn]
the energy profits levy, and more than the amount that will be raised through that levy is being returned to households through our cost of living support.

Lord Leigh of Hurley (Con): Does my noble friend agree that the great success in this country of the unicorns—greater than that in Germany, France and Israel combined—could be enhanced with the relaxation of the EU state aid rules, particularly on EIS and SEIS companies?

Baroness Penn (Con): My noble friend is right that the UK remains a great place to start a business and we will always want to make sure that our tax regime is incentivising businesses to start here. I am sure that he would agree that measures such as the super-deduction are a great initiative to help support that.

Lord Brooke of Alverthorpe (Lab): My Lords, can the Minister tell the House what she has discerned, having watched the interviews with the candidates to be Prime Minister, about their long-term thinking? None of them has talked about climate change. Is it not time, particularly on a day like this, that we started thinking about the need to travel less, to use less water in due course and to eat less? There is a whole range of areas where we need to do less, not more. When will we start that kind of debate and thinking?

Baroness Penn (Con): My Lords, I was doing some other things this weekend, such as celebrating my daughter's first birthday, and I will not comment on the leadership race. The noble Lord raised the need to have greater hybrid working, for example, and to look for other opportunities for efficiency in our economy and I absolutely agree with him on that.

Lord Londesborough (CB): My Lords, does the Minister agree that real economic growth will prove almost impossible in the long term while our workforce remains more than 1 million short? Given the current leadership debate, how long will we have to wait until the Government take action to address this growing labour crisis?

Baroness Penn (Con): I reassure noble Lords that they will not have to wait at all. We are investing in skills across the range of our workforce to ensure that those who are out of work, or in work where they could be making better use of their skills, can find those opportunities. We need to encourage people back into the workforce—for example, older workers who moved out of the workforce during the pandemic—and we need to use migration in a targeted way to ensure that we get the right skills that this country needs.

Lord Tunnicliffe (Lab): My Lords, media reports suggest that Ministers are to launch a multibillion pound business loan scheme in an attempt to counter a looming recession. Can the Minister confirm whether an announcement will be made to Parliament before the Summer Recess? Can she also confirm what measures, if any, are being put in place to avoid the level of fraud seen under the Covid support schemes?

Baroness Penn (Con): My Lords, I am not aware of any such plans, but I reassure the noble Lord on his question about fraud. In the Spring Statement, the former Chancellor announced a range of resources for the Government's counterfraud function to ensure that measures to counter fraud are designed into programmes from the very start. I know that the context for the question is the bounce-back loan scheme and I remind noble Lords about the need for speed in getting support to businesses at the time of the pandemic.

Lord Hannan of Kingsclere (Con): My Lords, one way to help with the cost of living is to bring down prices by removing tariffs. We still have tariffs that fall heavily on clothing, footwear and foodstuffs. Those hit people with the lowest incomes hardest, because they have to spend a higher percentage of their income on those basic commodities. Could we not scrap some of those tariffs or, if we absolutely must indulge the idea that that would mean some kind of disarmament in advance of trade talks, could we not suspend them for 24 months during the cost of living crisis, with an option to renew at the end?

Baroness Penn (Con): My Lords, I am not aware of any plans to take up my noble friend's suggestion, but I will take it back to the Treasury. He will know that the Government are focused on increasing opportunities for trade deals and free trade to bring down those barriers and bring down costs to consumers in the long term.

European Convention on Human Rights

Question

2.48 pm

Tabled by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government whether they intend to withdraw the United Kingdom from the European Convention on Human Rights.

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

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): Her Majesty's Government are committed to remaining a state party to the European Convention on Human Rights and protecting all the rights set out in the convention.

Baroness Humphreys (LD): My Lords, when the European Court of Human Rights halted the deportation of migrants to Rwanda, the Prime Minister and some of his government colleagues began considering withdrawing the United Kingdom from the European Convention on Human Rights. The convention is a major contributor to peace and democracy, and we cannot afford not to be part of it. However, if the Government will insist on pushing ahead with this reckless decision—and we have not had a denial from

some of the candidates in the leadership race—is the Minister confident that such a move will not negatively impact the rights of vulnerable groups in the United Kingdom?

Lord Bellamy (Con): Her Majesty's Government, with respect, are not pushing ahead with any reckless decision. The policy of the Government is to remain within the convention on human rights; speculation to the contrary is quite unfounded.

Lord Ponsonby of Shulbrede (Lab): My Lords, the noble and learned Lord has been asked this Question many times and has said that it is the Government's policy to remain inside the ECHR. However, scepticism and questions persist because a senior government Minister, the Attorney-General, has a number of times over the last week said that she wants to withdraw from the ECHR. What conversations has the Minister had with the Attorney-General in the last few days to resolve this?

Lord Bellamy (Con): I have had no conversations with the Attorney-General, and what the Attorney-General says or may have said in her capacity as a leadership contender is neither here nor there—as an unsuccessful leadership contender, I hasten to add. We need to get this straight. Unless we can define the boundaries of the debate we are about to have, we will be in a very unsatisfactory place. We are talking about the mechanisms of the convention—we are not talking about whether we should be in the convention or not. I remind the House that the UK has the best record of all member states within the convention; we are a party to, I think, seven United Nations conventions on human rights; we are very active in the Council of Europe in a number of respects; we fully support the ICC in its reaction to the Russian invasion of Ukraine; and there is no question of this fine tradition being mitigated, let alone abandoned.

Baroness Ludford (LD): The Minister is quite right that we need to be clear but unfortunately, only two of the five remaining candidates for the Tory leadership have been clear that they would not leave the convention. Liz Truss, who is still in the Government, has said that she would be prepared to leave the ECHR. Rishi Sunak and Kemi Badenoch have failed to clarify their positions. Can the Minister be confident about the position of the Government from September, when he even has present Cabinet Ministers who do not agree with him?

Lord Bellamy (Con): The Government have set out their position in the manifesto upon which they were elected. There is no change to that manifesto.

Baroness Chakrabarti (Lab): My Lords, I, for one, am very grateful to the Minister for the clarity of his Answer. However, I am concerned that the more popular of the two candidates in the Conservative race for the premiership who have committed to staying in the ECHR has been subject to an absolutely disgraceful campaign of smearing in the right-wing press. Can the Minister give some fatherly advice to these candidates that when they launch Islamophobic and misogynistic attacks on each other, and when they attack human rights, it is bad for his party and for the country?

Lord Bellamy (Con): I am not in a position to give fatherly advice to anybody. The Government do not support misogynistic or Islamophobic attacks on anyone. I have set out as clearly as I can the Government's policy, and I shall doggedly pursue that policy unless and until instructed to the contrary.

Baroness Jones of Moulsecoomb (GP): My Lords, it must be obvious that our suspicion stems from having had a lot of legislation come through this House that has shown no concern for human rights or political freedoms, which is what the ECHR is all about. How can we be sure about the next Prime Minister—a Tory party Prime Minister from the collection of leadership candidates that we are all horrified about?

Lord Bellamy (Con): The aim of the proposed legislation is to restore public confidence in the UK judiciary, to improve democratic accountability, to strengthen the right to free speech, to preserve the right to jury trial and to better protect journalists' sources. I defy anyone in this House to vote against those objectives.

Lord Hannay of Chiswick (CB): My Lords, can the Minister confirm that the trade and co-operation agreement which this country has with the European Union is contingent, from the European Union's point of view, on our remaining in the convention on human rights? Can he give us the names of countries which have withdrawn from that convention?

Lord Bellamy (Con): The noble Lord is correct that there are references to the European Convention on Human Rights in the trade and co-operation agreement. We are not withdrawing from the convention—I do not know how many times I must say it before people understand the Government's position. Since we are not withdrawing, the question of who has withdrawn or been expelled does not arise.

Lord Lexden (Con): Does my noble friend agree that the European convention should be regarded as particularly precious by Conservatives, given the part that Winston Churchill and Lord Kilmuir played in devising it?

Lord Bellamy (Con): Yes, I accept that.

Lord Watts (Lab): What do the Government mean by "mechanisms"? It seems to add something to the Minister's answer that he is not categorically ruling out changes. What are those mechanisms?

Lord Bellamy (Con): The provisions in the Bill are designed, in the words of Clause 1(2), to clarify and rebalance. The relevant mechanisms are to make clear the respective roles of the UK judiciary and the Strasbourg court, of the judiciary and Parliament, and of rights on the one hand and responsibilities on the other. Those are the mechanisms which I hope we will debate in detail in due course.

Baroness Ritchie of Downpatrick (Lab): My Lords, I recognise and acknowledge that the Minister has indicated that there will be no withdrawal from the ECHR. However, can he give an assurance to your Lordships' House today that he, along with other Ministers, will work to ensure that we remain within the ECHR, because any withdrawal from it would be a flagrant undermining of the Belfast/Good Friday agreement, which is hardwired into the ECHR?

Lord Bellamy (Con): I will happily give the noble Baroness that assurance, and I assure your Lordships that I will work with any or all of you to ensure that this Bill meets such concerns as you may have, in so far as it is within my power to do so.

Baroness Wheatcroft (CB): My Lords, the Minister is reassuringly adamant in his commitment to the convention. Can he assure the House about how he defends the export of asylum seekers to Rwanda in the face of the convention?

Lord Bellamy (Con): We are entirely satisfied that the Government's policy on asylum seekers is in compliance with the convention. In this context, I do not think that I can add to that answer.

Lord Mackay of Clashfern (Con): My Lords, it is right to look at the draft put forward by the Lord Chancellor, which makes it absolutely plain that the intention of the Government in that document is that we stay in the European Convention on Human Rights. The preciousness of that is absolutely clear, and I feel certain that a Conservative Government—and, I believe, a Labour Government—are unlikely to move away from it.

Lord Bellamy (Con): I respectfully agree, and I am particularly delighted to pay my personal respects to my noble and learned friend Lord Mackay of Clashfern following one of his last interventions in this House.

Noble Lords: Hear, hear.

Her Majesty The Queen: "The Faithful"

Question

2.58 pm

Asked by ***Lord Farmer***

To ask Her Majesty's Government what consideration they have given to advising Her Majesty The Queen to add "The Faithful" to her title; and what legislation, if any, would be required before such a title was adopted.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I am grateful to my noble friend for his thoughtful suggestion and for his kind words in the Motion on the humble Address about Her Majesty the Queen's long and successful—and, I submit, happy and glorious—reign. There are no plans for the Government to advise Her Majesty to change her title, which was set out by proclamation made under the provisions of the Royal Titles Act 1953.

Lord Farmer (Con): I thank my noble friend the Minister for that Answer, which I was expecting. Does he agree that the unprecedented occasion of a Platinum Jubilee demands marking for future generations and centuries the uniqueness of this reign? Adding "the Faithful" to the Queen's title, as in "Alfred the Great", would make her stand out in the sweep of history. This permanent and indisputable marker would acknowledge her constancy and outworked sense of duty. It has a double meaning, as it is directed both to God and to her fellow man. Can my noble friend the Minister suggest a constructive way forward?

Lord True (Con): My Lords, I agree with every sentiment that my noble friend has expressed about Her Majesty. The position is that the titles are proclaimed by the Accession Council and embraced in the Royal Titles Act. The Platinum Jubilee demonstrated the affection this country has for Her Majesty; it may be left to history to accord titles to past monarchs, but the Government have no plans to make a change.

Baroness McIntosh of Hudnall (Lab): My Lords, as the Minister mentions history in this context, would he not agree that such additions to the titles of our sovereigns, and indeed sovereigns in other states, have tended to be post hoc rather than during the lifetime of the person in question?

Lord True (Con): My Lords, that is true, and I think I alluded to that. I believe that the unfortunate title of King Ethelred the Unready, who died in 1016, was brought in only in the 1180s. The fact remains that the characteristic that my noble friend alluded to of the Queen's sense of duty and commitment to her people, which was set out while she was still Princess Elizabeth, shines forth, as it has done on every day in her reign, and I am sure will shine on long after her passing.

The Lord Bishop of Carlisle: My Lords, I am grateful to the noble Lord, Lord Farmer. I declare my interest as Clerk of the Closet, an office of service to the Crown dating back to the 15th century. At her coronation, the Queen first gave her allegiance to God before anyone came forward to give their allegiance to her. Does the Minister agree that the generous, hospitable and open interpretation by Her Majesty of that duty to people of all faiths and none, over so many years, is not only a foundation stone of our constitution but a reason to feel all the more thankful for the lifelong service Her Majesty has given?

Lord True (Con): Of course I agree with the right reverend Prelate. It is obviously not the custom of this place to comment on Her Majesty's opinion or that of any other member of the Royal Family. I think the objective facts we have observed from that time prove that everything the right reverend Prelate has said is true.

Lord West of Spithead (Lab): My Lords, does the Minister not agree that, in terms of recognition, building a national flagship is not actually what we should be doing? As far as I am aware, there has been no bid from the Royal Family, despite the fact that they loved the old royal yacht—and its removal was a disgrace.

Focusing on building this national flagship in advance of some things that are crucial for our defence is not a clever thing to do.

Lord True (Con): My Lords, I think that was mildly away from the subject of the Question, but I always note when a former Sea Lord is against the building of a ship.

Lord Lexden (Con): My Lords, does my noble friend agree that as people in the years to come look back on this extraordinary and glorious reign, they are likely to subscribe to it all manner of suitable loving and respectful epithets, and it might perhaps be wrong to single out any one term?

Lord True (Con): I agree. Is it possible to agree with what both my noble friends said? I believe it is. The Queen's reign provokes so many positive reflections, and I hope they will last. Her illustrious great-grandfather, King Edward VII, was known as "the Peacemaker" for his efforts to prevent war in Europe. Sadly, four years after his death, the Great War broke out.

Mr Mike Veale

Question

3.04 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what recent inquiries they have made about a date for the start of the misconduct hearing relating to Mr Mike Veale announced by the Police and Crime Commissioner for Cleveland in August 2021.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, arrangements for the misconduct hearing of former chief constable Mike Veale are a matter for the Cleveland police and crime commissioner and it would be inappropriate to comment further while those proceedings remain ongoing.

Lord Lexden (Con): My Lords, I remind the House that I have used every means open to me—Motions of regret, Oral Questions, debates—to try to help bring the notorious Mike Veale to book ever since, as chief constable of Wiltshire, he conducted an appallingly biased investigation of the allegations of sex abuse against Sir Edward Heath. I also remind the House that in Cleveland, where he is chief constable, he is due to face a gross misconduct hearing, to which my noble friend referred. It was announced a year ago but has not even started. Meanwhile, Veale lives the life of Riley on £100,000 a year as adviser to the so-called Conservative PCC for Leicester, Leicestershire and Rutland, who must have taken leave of his senses. This scandal really must end. How on earth can the Home Office stand by helplessly while a disgraced ex-policeman rakes in public money? May I ask that arrangements be made for a small cross-party group from this House to see the Home Secretary as soon as possible?

Baroness Williams of Trafford (Con): My Lords, I am more than happy to request that of my right honourable friend the Home Secretary. I hope that my noble friend would agree that, through all his years of effort, a remedy is on its way to being sought through the misconduct hearing. In terms of the individual's work in Leicester, that is, of course, a matter for the Leicester PCC. It might be that my noble friend, as well as my request for him to see the Home Secretary, might himself request that of the Leicester PCC.

Lord Bach (Lab): My Lords, how much longer must this farce go on? I am grateful to the Minister for her reply to my noble friend Lord Lexden, as I shall I call him, on this matter. I very much welcome the chance to talk to the Home Secretary about it. But you have a twice disgraced ex-chief constable awaiting a gross misconduct hearing that, by law, should have been heard months ago still advising for good money a police and crime commissioner in holding Leicestershire police to account. You could not make it up. A request for a meeting is actually the bare minimum. The Home Secretary is never short of advising on right and wrong; why are she and the Home Office so silent on this scandal?

Baroness Williams of Trafford (Con): My Lords, it is a matter for the legally qualified chair to convene a misconduct hearing. It is usually within 100 days but can be longer if the interests of justice will be served. Therefore, the LQC—the legally qualified chair—has obviously made a judgment on that. In terms of the issue of Leicester, that is a matter for the Leicester PCC.

Lord Howell of Guildford (Con): My Lords, to be fair, some of us have had meetings with the Home Secretary, who is obviously concerned about this. One obviously understands that the Government cannot intervene in the internal conduct and affairs of the police, but surely there is something a bit odd here. As my noble friend Lord Lexden said, here is someone who is under investigation for gross misconduct. Surely, at a time such as this, they would be asked to stand aside until the matter is cleared up for them, rather than being promoted and given enhanced status inside the police service. Is there not a way of getting a message to the police authorities that this is appalling behaviour, which led to nonsensical accusations which proved to be based on lies, and demands a sensible handling of a kind which, at present, does not seem to be obvious?

Baroness Williams of Trafford (Con): I do not disagree with my noble friend that sensible handling is required. That is why I made the suggestion. The Government will not intervene in a matter with PCCs. I suggested to my noble friend and perhaps also suggest to my noble friend Lord Howell that there might be a delegation from noble Lords to go and see him.

Baroness Doocey (LD): My Lords, it is unacceptable that something as serious as this has been going on for more than a year without any resolution at all, not even a day in court. I understand that the Minister cannot comment on an individual case, but can she undertake to review how the process of misconduct hearings

[Baroness Doocey]
takes place nationally? It just cannot be in the interests of justice for this situation to continue. It is not fair, either to the accused or to the accuser.

Baroness Williams of Trafford (Con): I do not disagree with the noble Baroness, but I reiterate that the legally qualified chair can, in the interests of justice, take longer than 100 days to convene the misconduct hearing. I do not want anything I say at this Dispatch Box in any way to undermine a misconduct hearing, which is why I am so cautious about the matter.

Lord Ponsonby of Shulbrede (Lab): My Lords, I was going to ask the same question as the noble Lord, Lord Howell. Why should Mr Veale not stand aside? I thought the Minister said in her response that she agreed with the proposition put by the noble Lord, Lord Howell. Does she think Mr Veale should stand aside while this investigation is under way?

Baroness Williams of Trafford (Con): I think noble Lords will all support the upholding of the rule of law, that justice is served and that anyone is innocent until proven guilty. The misconduct hearing will see that course of justice resolved.

Lord Hayward (Con): My Lords, many thousands of very good police men and women are doing a great job 24 hours of every day, every week, including many on this site, but is it not a comment on the current state of the police force at senior management that the BCU commander for central and east London can issue an email at lunchtime today to say that he has been appointed to help lead the Met's response to a recent finding by Her Majesty's Inspectorate of Constabulary, which has placed the Met into a form of advanced monitoring? I thought the Home Secretary described it as "special measures".

Baroness Williams of Trafford (Con): I think it is one and the same thing, in the sense that the Met Police will have to show obvious signs of improvement before the engage process, as the Home Secretary described it, is removed.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister will know that police and crime commissioners were established as elected postholders to increase accountability of the police forces to the local community. In the light of experience, does she think that has worked out well? If not, is it not time to put them to bed?

Baroness Williams of Trafford (Con): My Lords, I think there are some excellent examples of PCCs up and down the country, including the noble Lord, Lord Bach—Parliament's only PCC and a very good one indeed. Should the PCC not perform well at his or her job, they can be removed at the ballot box.

Lord Hunt of Wirral (Con): Will my noble friend the Minister accept that it is now generally acknowledged that a series of interrelated police operations—Yewtree, Conifer and Midland—were heavy-handed, disproportionate and founded on inappropriate assumptions of guilt? It is evident that there were manifest failings of procedure, governance and natural justice. Perhaps a complaint in this House was that the police were marking their own homework. When will anyone be held to account?

Baroness Williams of Trafford (Con): In answer to my noble friend's first question, I hope I have outlined the process by which remedy can be sought and secured for anybody accused of improper behaviour or misconduct in office. The whole system has changed, in the sense that now a police officer cannot just run, by retiring or resigning from their post, without facing the consequences of their actions.

Lord Lexden (Con): Should not the legally appointed chair in Cleveland be asked to explain why a year has gone by without her starting these extremely important misconduct proceedings? Can the Home Office at least get an answer from her?

Baroness Williams of Trafford (Con): The legally qualified chair is independent of government. Again, my noble friend might wish to put that to the legally qualified chair. It would be wrong for the Government to intervene in such a process.

House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL]

First Reading

3.15 pm

A Bill to amend the House of Lords Act 1999 so as to abolish the system of by-elections for hereditary Peers.

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

United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022

Motion to Approve

3.15 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the draft Regulations laid before the House on 9 June be approved. *Considered in Grand Committee on 12 July. Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee*

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, on behalf of my noble friend Lord Goldsmith of Richmond Park, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

Electricity and Gas (Energy Company Obligation) Order 2022

Register of Overseas Entities (Delivery, Protection and Trust Services) Regulations 2022

Motions to Approve

3.16 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the draft Order and Regulations laid before the House on 22 June be approved. *Considered in Grand Committee on 12 July. Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee*

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, on behalf of my noble friend Lord Callanan, I beg to move the Motions standing in his name on the Order Paper en bloc.

Motions agreed.

Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022

Motion to Approve

3.17 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the draft Regulations laid before the House on 16 June be approved. *Considered in Grand Committee on 14 July. Relevant document: 6th Report from the Secondary Legislation Scrutiny Committee*

Motion agreed.

Cat and Dog Fur (Control of Movement etc.) (EU Exit) Regulations 2022

Motion to Approve

3.17 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 20 June be approved. *Considered in Grand Committee on 14 July.*

Motion agreed.

Schools Bill [HL]

Report (2nd Day)

Relevant documents: 2nd and 8th Reports from the Delegated Powers Committee

3.18 pm

Motion

Moved by ***Baroness Barran***

That the Bill be now further considered on Report.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, with the leave of the House, I will begin with a brief note on scheduling. I know that there were concerns about progressing with Third Reading before the Summer Recess. The Government have listened to the concerns expressed, including on the first day on Report, and have agreed through the usual channels that a quick Third Reading is no longer desirable. As announced in the new version of *Forthcoming Business*, Third Reading has moved to Wednesday 14 September. The short delay does not affect the wider passage of the Bill. I hope this provides reassurance to your Lordships.

Lord Baker of Dorking (Con): My Lords, Report may be the last occasion on which this House will be able to consider the Bill because, as the Minister said, the suggestion is that it should get a Third Reading on 14 September. I do not know any example of a Government who do not yet exist determining whether a Bill should get a Third Reading. On 14 September there will be a new Government, who may have different views on the Bill. There will be different Ministers. I hope very much that the Minister will remain in her post because, quite frankly, she is the only Minister in the department who understands anything about education. She is surrounded by five Boris cronies who know absolutely nothing about education. They are there for a pay rise for five weeks and compensation for loss of office—a loss of office which will be richly deserved. I hope that she will survive, because she understands this Bill better than most.

The point I would like to make is that if we agree that the Bill should be voted upon on 14 September, there will be a different set of usual channels that may decide this, thank God—I should not have said that. There will be a different team. I am not insulting any of them individually; I would never do that. You do not insult the usual channels because you have to live with them, although you may never forgive them. To continue my point, I think the vote should be later than that.

I have had a most helpful letter from the Minister today setting out her intentions for the time that she is in office, saying that she will preside over a committee set up to begin the long process of determining what should be the relationship between the Government and MATs—multi-academy trusts. This is a very important measure because it is the creation of an administrative body that stands between the Department for Education and the rest of the schools. In the past, when we have set up administrative bodies of this importance, it has usually taken weeks, months, decades or, in some cases, centuries to determine the right relationship. In effect, many of these bodies will be local authorities and therefore the issues involved are of immense importance. What power do they have over the schools? Do the individual school boards count for anything? On what occasions can they cut or

[Lord Baker of Dorking]
increase the money to the schools? On what occasions can specialist schools protect their specialisms? In the Bill as it stands, a grammar school or a religious school is protected in a multi-academy trust, but, as the amendment from the noble Duke, the Duke of Wellington, showed the other day, there are many other schools with specialisms in maths, science and dance, all of which are not really protected at the moment when they go into academy trusts.

The Minister set out in her letter that she hopes to have, or her successor might hope to have, findings by the end of September, then a consultation period and determinations by Christmas. In that case, if the Bill came to the Lords on 14 September, there is no way that amendments would appear in the Commons until early spring next year. The Bill will therefore not come back to us until summer next year, and it will involve issues that we know nothing about; we do not really know what the recommendations will be.

This is a unique situation in the constitutional history of the House of Lords. We have never been asked to pass a Bill to the Commons where half of the Bill is not known. In all fairness, the Minister does not know it either, because she has to consult on it with the committee. This has never happened before and I think it is highly disrespectful to ask this House to pass a Bill on the undertakings. As far as I understand, in this sort of situation, in spring or summer next year we will get a Bill with maybe 10 or 20 new clauses and we will be given a day. How lucky we are that we will get a day to discuss them all. I do not think that we should put up with this.

The House of Lords started this Bill, not the Commons, and the importance of starting a Bill in the Lords is that we can make radical changes to it without knowing whether or not the House of Commons has been whipped to support it. That is what we have done in this Bill. I hope that we might set an example for other Bills that start in the House of Lords to be much firmer in making amendments and changes. That is our power as a second Chamber. We do not have many powers, but we have that power.

I very much hope that we will not agree to a Third Reading on 14 September. The constitutional arrangements should be that it should remain pending for the new Government. They may well want to accept all the recommendations that my noble friend is working on, but she will not even know what they are because they are not going to agree the recommendations until the end of September, and she will either be in or out of office on 7 or 8 September. This great uncertainty leads me to believe that it would be imprudent for us to consider a Third Reading on 14 September.

Lord Hunt of Kings Heath (Lab): My Lords, I echo and support the noble Lord, Lord Baker. I do not understand why the Government are in such a hurry to have a Third Reading on the Bill when they have already agreed to take out the first 18 clauses. Those clauses will be subject to a review being conducted by the Minister. She will need to keep to a very ambitious timetable, because essentially this is about the situation of how all schools, under the White Paper produced earlier in the year, are to become academies by 2030. The matter that the Minister's review is looking at is: what should the accountability system be for thousands and thousands of schools?

Even if the Minister reaches a conclusion by the end of September, a full consultation has to be held. At that point the Government have to make decisions. They then have to give instructions to parliamentary counsel to redraft Part 1 of the Bill. That is surely going to take many months indeed. I think the noble Lord is ambitious in thinking that this will be back with us in the spring. It could take very much longer. On that basis, why on earth are the Government going for a Third Reading? There is absolutely no need for it until they see what they are going to do to make the changes.

A second point I would like to make comes back to the points that the noble and learned Lord, Lord Judge, made at Second Reading and in other debates, and the noble Lord, Lord Baker, referred to it. The Government have sought to ride roughshod over this House in the nature of the drafting of the Schools Bill. We must set down a marker that this is unacceptable. I believe that we should not give this Bill a Third Reading until we have much greater assurances that when these new clauses come back—if they come back—we will go through a full process of Committee, Report and Third Reading before we can say that we have dealt with them satisfactorily.

Lord Judge (CB): My Lords, we understood that Third Reading was going to happen this week. I drafted a Notice of Motion for the House to decide whether Third Reading should be heard at all. I showed the Notice of Motion to the Chief Whip, he saw it and it was perfectly plain that, if the House agrees, we should not take Third Reading at all until we know exactly what is in the Bill. I happen to agree with the noble Lords, Lord Baker and Lord Hunt: whether or not we leave the Third Reading in *Forthcoming Business*, the House will also have to consider a Notice of Motion that we should not consider Third Reading at all.

Lord Grocott (Lab): My Lords, sitting where I am, I have repeatedly felt genuinely sorry for the Minister, who has done so much to try to improve the Bill or respond to concerns that have been expressed. But she must have realised by now that the Bill is beyond repair. If it does re-emerge, it will do so in such a different form from the one that started out that it will be tantamount to being a new Bill. In our attempts to improve it, I am reminded of the no doubt apocryphal British Rail announcement that the Wednesday afternoon train to Crewe would now run on Thursday mornings and would not stop at Crewe. That is the situation that this Bill is in. I think that the Minister can honestly and with real integrity report back to her political colleagues in the Commons that we really need to stop trying to amend a Bill that has gone way beyond that stage and that the last rites need to be performed and a new Bill brought before the House.

3.30 pm

Lord Addington (LD): My Lords, the Minister has done what in rugby they say happens to good players: they catch the bad ball. You catch the attention of the

entire team and you get flattened, but the good players get up. I hope the Minister will be able to get up and report back that—and I have made this point to her many times—unless we have a realistic amount of time and structure within which to discuss the changes, we are not doing our job. It is as simple as that.

I would be slightly more flexible about having a whole new Committee stage, but only one day has been suggested. I asked the Minister at the time whether that meant one day of business that might be extended to three or four—we might have a better reading if we had that—but a process that would be effectively guillotined, or at least very condensed, fills me with nothing but dread. We have to make sure that we have enough time to discuss the changes, and if that meant another process coming through, I would be quite flexible and would encourage my noble friends to do the same. But one day of Committee, with 12, 20 or who knows how many more new clauses and a structure that we have not heard of yet—come on, that is not on.

Baroness Jones of Moulsecoomb (GP): My Lords, the only thing that stops me wholeheartedly agreeing with everything that previous speakers have said is the thought that we would have to go through this again.

Viscount Stansgate (Lab): My Lords, that is one of the reasons why I support what has been said by the noble Lord, Lord Baker, and the noble and learned Lord, Lord Judge. This is not just about a particular Bill; it is about the way we do business. As I am just about to finish my first parliamentary year in this House, and, as other noble Lords have said, a situation of this kind has not arisen before, I would not like to think that this would set a precedent in any way for the way in which the House considers its business in future. When it comes to what I might call negotiating leverage, one day is a derisory offer to the House; with no disrespect to the Minister, that is not good enough. There is great merit in not agreeing to allow a date for Third Reading to be set at this stage.

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is quite clear that the Bill has been badly received across the whole House. Whole chunks of it have been taken out and it is in a very poor state, and it is clear that it should not have come here at all because it had not been put together properly. I am sure the Minister has heard that; it is not the first time that these views have been expressed. We will have a new Government in September, and then it will be up to the Prime Minister. This Bill may disappear completely—we do not know.

I have been part of the usual channels now for 13 months, and I hope still to be here in September—in one or other part of the usual channels. I will spend my summer working with colleagues in other parts of the House to ensure that the points raised by colleagues are fully understood by the Government, so that we can work together, bring things back and have a system that everyone is happy with. The Minister has heard how dissatisfied the House is. I am sorry, but I think that is important.

One thing I have learned as Opposition Chief Whip is that the forthcoming business can change from day to day, never mind what is going to happen in September. Particularly in March and April, the forthcoming business was changing literally every day. The fact that it is listed for September does not necessarily mean that it will happen then. We do not know. We will have those discussions then.

As the noble and learned Lord, Lord Judge, has mentioned, we have the other protection of his Motion. I am sure that if Third Reading is tabled and he is unhappy with it, his Motion will be tabled for the House to consider. There are many barriers in place to make sure that the House can make its views known if it is unhappy. I am sure the Minister has heard how unhappy the House is.

Baroness Barran (Con): The Minister has heard loud and clear. I suppose I would say a couple of things—but very briefly, because it is important that we get on and hear your Lordships' thoughts on the rest of the Bill.

I say to the noble Lord, Lord, Grocott that the Bill is not beyond repair. There are significant parts of it—relating to the children not in school register and illegal schools—that are definitely not beyond repair. I also point the noble Lord to the large section of the Bill where there have been no amendments at all.

My request to your Lordships is that when we come to look at the new clauses, noble Lords leave these debates behind and look at them objectively, fairly and with all the experience and critical judgment that they can bring to them. I hope very much that, when that happens, the Bill can see a speedy passage.

Motion agreed.

The Deputy Speaker (Lord Geddes) (Con): My Lords, before calling the first group, I should say that the noble Baroness, Lady Brinton, is taking part remotely. I remind the House that remote speakers speak first after the mover of the lead amendment in a group and may therefore speak to other amendments in the group ahead of Members who tabled them.

Clause 49: Registration

Amendment 64A had been withdrawn from the Marshalled List.

Amendment 64B

Moved by ***Lord Wei***

64B: Clause 49, page 42, line 9, at end insert—

"(5A) Condition C is not met if the parents of the child have made alternative arrangements to satisfy the duty in section 7 (duty of parents to secure education of children of compulsory school age)."

Member's explanatory statement

This amendment seeks to exempt home education from mandatory registration, where the standard of learning is such that parents are compliant with their duties.

Lord Wei (Con): My Lords, in moving Amendment 64B I shall also speak to other amendments in my name. I declare an interest, as I have before, that I am from a home-educating family, which I am proud of. I wish there were more noble Lords in this Chamber who had the privilege of being part of home education.

[LORD WEI]

As was discussed earlier, the Bill really should not exist in its current form. It has been thoroughly gutted already, and there were good reasons for that. The reasons for gutting the earlier parts of the Bill are no different from the reasons for doing the same to the end of the Bill, which I am afraid is just as much of a mess.

We live in an age of change. There is more remote working and people want to take more control over their health, and they want to do the same for education. I fear that this Government, and Governments generally, are on the run. More and more parents are choosing to take control of their children's education, which is their right in this country. We as parents have a duty to educate our children. When we want to, we hand over responsibility to the Government, academies, trusts and so on to fulfil that duty, but in this country it is parents who are legally obliged to provide education for their children, and that is only right. We are not some other countries where the opposite is the case.

In this time of change, where perhaps people are taking back control—though maybe not always in the ways that we might have imagined—that forms a threat, in health and to local authorities. I am afraid I have documentary evidence, which I shall share with the House today, about how that perceived threat has led to real injustices under the current regime, even before this Bill becomes law.

Without protections and, frankly, without a wholescale redesign of this law, on which I may push a vote several times today, we may end up with a circumstance in which the injustices that many families are already experiencing today will be heightened and worsened, and we will see many willingly go to prison to stand on this principle. Having spoken to the Minister and colleagues in the department, I do not think the Government truly understand why anyone would go to prison on principle in order not to have their children on the register. They do not understand why. Is that because they do not have any children who they home educate? I would love to see survey results on how many Ministers, people in the department and people in local authorities home educate their children. If they did then they would take a very different view of what they are trying to do today.

I start by apologising to my colleagues on the Benches who have had to come here in such heat—although, thank God, we are well air-conditioned in this Chamber—to potentially vote on my amendments and those of other Peers. I am truly sorry that my amendment was put in early on the Marshalled List so that they have had to take that kind of heat. However, I ask the House to imagine that they had to face that heat every day for four or five years with no end in sight.

As I start to present my amendments, I shall read the House a few excerpts from a testimony that has been shared with me which has broken my heart. It is under the current regime—the current legal means by which local authorities can monitor and vet home education. I will not share the name of the lady concerned but I want the House to hear her story because there are many similar ones that I and other Peers have been sent. Again, this is happening under the current regime and existing laws.

This lady, a teacher of 20 years' standing, decided to home educate after a parents evening where her six year-old daughter's teacher announced that she "would not set the world on fire". This is a teacher saying that a child will not do anything good in their life, basically. She decided, quite rationally, as is her right, to home educate and the child thrives. In fact, in Kent, where the family started to do this, the local authority visited them, with consent, saw the learning that was going on and valued it so much that it highlighted all the information and resources that were available to support this family. Soon after, the local authority said that it would be a waste of its time and resources to continue to visit this family. Clearly, education was a priority. They were always available and they did not need to have the level of monitoring that they initially had. They were happy for several years.

London, where my children are home educated, is an amazing environment for home education with all kinds of groups. However, this family then moved to Bromley. I am sorry that I have to mention this local authority by name, but it is one of many, according to the letters that I and other Peers have received, that have behaved atrociously under the current regime, which we are about to tighten, by the way. We already have many injustices and many families facing difficulties—I will describe the kind of things that happened to them—but we are about to give the authorities a great deal more power and not even to track down and deal with the bad actors that my other amendments try to start to deal with.

I will fast forward, because of time. This local authority visited the family, asked for lots of information and samples of work, which were kept on record over a long period. The authority's job was to identify children missing from education. This eventually became unnecessary intrusion. After four years, the family still had no answers; they were still under investigation. Their immediate request for information held about them—remember GDPR, which we will discuss later—was not heard. The family decided not to provide any more information, because the situation was getting ridiculous after four years of constant hounding. It got to the point where the children were scared of the postman coming.

The family requested information. They wrote to Ofsted and they wrote to the department. This is all relevant to my amendments, so forgive me for taking a little more time. Bromley was given a great report for the way it treated this family. Eventually, the family was given a school attendance order, after requesting information being held about them under GDPR rules, with the Information Commissioner's Office saying that Bromley had to comply. None of the ICO's requests was followed through. The information that was held about the family was not provided and a school attendance order was slapped on them. The home education was of a very high standard—there was no reason to do that.

We have found out since then that this is a common occurrence. School attendance orders are used to silence families who kick up a fuss, because you cannot complain

to the Local Government Ombudsman. I would love to hear from the Minister whether she disagrees and whether she has audited this kind of behaviour, but I hear that it is very common. Most families do not know that it has happened to them; they cannot appeal and they are silenced because they now have a school attendance order. We are about to make this process stronger in the Bill, forcing people to send their children to school where, ultimately, if they do not comply or provide information, prison is what awaits. The Secretary of State has not replied. We have heard before that there is provision for appeal, but both routes are closed for these families. Again, I have other amendments to create better ways to hear their voices.

The point of my first amendment today is that we need to provide protection. One of the ways that we can provide protection is simply to exempt home educating parents who are delivering a high standard of education, in line with current law, from this register. It is, in my mind, ludicrous that those who are doing a good job are put on a register in an open-ended way. At any time, their home education can be interrupted. Those who complain can be forced to send their children to school, so they do not complain or appeal. There is no recourse and no time limit and there is no easy way to overturn this.

3.45 pm

We have registers: we have registers for sex offenders and we have registers for criminals. Those who commit crimes are put on the criminal register. Those who commit a sex offence are put on the sex offender register. One of my amendments, Amendment 72A, which I want to talk to later, provides a means essentially to use a warrant mechanism to pursue families that are using home education as an excuse, to investigate possible breaches of the law such as neglect, sex abuse or just not providing an education of any standard at all. But for those many families in the home education community who do educate well—sometimes better, frankly, and sometimes because they have had to remove their children from schools that were not providing a good education, as we have seen in this example, and there are many others that I could share—there are other ways to do this. There are other ways to pursue the bad actors.

I ask noble Lords to think seriously about this. What we are about to do, if we let this clause pass, is create a very dangerous situation. We are two years away from an election. I am speaking here to my Benches, but it applies to other Benches as well. A future Government could come in and, conceivably, change the curriculum to ban a particular philosophical ideology; they could say that free markets are bad or that communism, socialism or green philosophies should not be taught in school. If you then choose to take your children out of school and home educate them, because you feel that it is important that they get a rounded education and that what is missing in schools should be taught as well, suddenly an inspector could come around, because you would be on the register by law, vet what you are doing, ask what you believe politically, observe how you teach your children and make a subjective decision that what you are teaching is not in line with what the Government want your children to learn. At that point you would be given a school attendance order and have no choice and not be able to get out of that system. They have you in your house, as well as at school.

God forbid—I hope that this never happens. I am young, but many of us have lived long enough to see countries around the world where this has happened. Many in this Chamber have left countries where this has happened. It is not beyond possibility that this could happen. On these Benches, we could put this Bill into law and find, in two years' time, that another Government come in and use the Act against us to go against what we believe is right and proper and say that we cannot teach that to our children.

By all means, let us go after the bad actors. Amendment 72A provides a warrant mechanism, as the police have, in limited means and under certain conditions, to pursue families who are clearly using home education as an excuse. That, in my view, is the biggest problem right now. The authorities need to investigate. Fine, investigate, but do not investigate everybody. Do not put everybody on the register when they are doing a good job and, frankly, need to be left on their own to do that good job. If they do not do a good job and the authorities find out about it, the law already provides the means to pursue them: the Children Act and the Education Act. There are many powers that enable local authorities and other authorities to find and root out bad actors. If we do this, the bad actors will leave the country, they will get into their camper vans and drive around and we will never see them, and they will go into farms, or they will go to prison and it will be on noble Lords' heads. I have warned today that there are many who feel so strongly about this that they will go to prison. They will take the Government to court and there will be judicial reviews. I have spoken to QCs. The Government's own report on human rights says that Articles 8 and 9 are under threat.

There is a clash of values: the right to educate children, with free speech and freedom of conscience and faith, with the right to look after children. We need to find the right balance, so I call upon my fellow Peers to support Amendment 64B to exempt parents who are educating their children to the standard required by law from this register. Let us have people on the register who have taken their children out of school but do not intend to educate them to a good standard. Let us have people caught by this amendment who are not doing that, but do not put this on every parent who wants to educate their child in their way and to a high standard. Even former teachers are being pursued, persecuted and threatened. In fact, this lady is prepared to go to prison; she is under this open-ended process that has already ruined the lives of her children for four or five years.

There are other amendments that I want to speak to, but I will stick with Amendment 64B for now and tie it together with Amendment 72A on having a warrant, because the two go together. If we decide to exempt legitimate home-educating parents from this register, we need to catch those bad actors. Amendment 72A goes together with Amendment 64B to provide a mechanism for catching bad actors. We are saying not

[Lord Wei]
that we do not want to catch them but "Don't use the register as a catch-all", making everybody guilty before they are proven innocent.

I have also tabled Amendment 85A because it is clear that local authorities and even the department itself, I am sad to say, have not been following GDPR rules. When you ask them for information, they drag their feet and do not provide it or agree to remove it if it was unnecessary. I am greatly fearful that, even though the argument will be that the GDPR law is already sufficient, it is not being followed by local authorities or departments, so we need to do something about that. If a local authority abuses the information that it is given there should be consequences, but right now there are not. Right now, there is a flagrant disregard of the law on GDPR in that respect, and we have received lots of evidence in relation to this that I could present if I am pressed.

Lord Grocott (Lab): I gently remind the noble Lord of the *Companion*, which says that speakers

"are expected to keep within 15 minutes".

That is not a formal limit but an advisory one. It says that

"on occasion, a speech of outstanding importance, or a ministerial speech winding up an exceptionally long debate, may exceed"

the limit, but the noble Lord has now been going on for 17 minutes.

Lord Wei (Con): Thank you, I will wrap up.

I have two final amendments in this group. Amendment 86A in my name relates to a refusal to provide info not being sufficient reason to impose a school attendance order on a family. In this instance, the fact that the teacher or home educator did not provide information was seen as evidence that they were not educating their children properly. If you do not provide education and choose on principle not to provide that information, that should not mean that you are not educating your children well or that a school attendance order is put on them. This amendment is to prevent such occurrences happening again.

Finally, I support Amendment 118C on a code of conduct, but others will speak to that. I will give way and let them do that now.

The Deputy Speaker (Lord Geddes) (Con): I assume that the noble Lord would like to move his amendment?

Lord Wei (Con): I beg to move.

The Deputy Speaker (Lord Geddes) (Con): My Lords, as I previously advised, I now invite the noble Baroness, Lady Brinton, to speak.

Oh, I have been advised that the noble Baroness does not wish to speak.

Lord Soley (Lab): I was going to get a glass of water, but that is going to be difficult. I thought for a moment that maybe the noble Lord, Lord Wei, was not going to move the amendment. I would have advised him not to. I am sure that he is well intended—I do not doubt that—but he has missed many of the debates on this over the years. I ask him to understand that, when I put the Bill forward on home education, that was five years ago. I never heard from the noble Lord then or had any involvement with him. He did not seem to be interested in it, but I consulted very widely. I consulted by all sorts of measures: I had meetings in the House; I had Zoom meetings up and down the country; I had emails and all those things. I was dealing very much with a small group of people who objected to the register. Most of them came on board; a small minority have not, but the majority support the Bill and the register. They do so because they know it is beneficial.

I think one of the things the noble Lord, Lord Wei, has missed quite seriously is that the provision is designed to be supportive. It is not a punishment, but he does not seem to understand that. In other words, for the first time a home-educating parent will be able to say to the local authority, "I want help to do this bit of home education, which I cannot deliver myself." It might be in advanced science, music or art; it might be any of those things, and the local authority has to do it. It is supportive, not punitive, and the noble Lord's whole speech was on the idea that it is punitive.

I say to him, as I have said in previous debates, some home educators are very good at it, but that does not mean that they do not need help at times. Just because you are able to teach certain things does not make you a good teacher without that support and backup which might be, as I say, in advanced sciences or whatever. The noble Lord's amendment would deny them that and actually make it worse for them.

My line on this—I give credit to the Government, who have adopted most of my Bill here—has been about doing it well, and they have. I had some doubts about the appeal system. I wrote to the Minister about this and she gave me certain assurances in her reply about how that system will work. I made other suggestions too, but I think the Minister is saying that the appeal mechanism is there for both the parents and the authority. We should remember that this is a two-way street. The noble Lord, Lord Wei, says that he has had complaints from people about the way that a local authority has behaved. I say to him: listen to those people, mainly children who are now grown up and had complaints about the way that home education was done to them or, importantly, where it was done partly as a cover for something else. You do not have to think just about abuse here: it is about a child working in a shop and then being told "Well, you're learning mathematics"; it is about trafficking, too.

Listening to the noble Lord, I think he has no concept of this. His speech was all about the terrible state and the wonderful home-educating parent. Most parents who home-educate in the way that he described do it well. They really have nothing to fear from this because what they will get is support from the local authority, if they ask for it. At the same time, they will have to demonstrate that the child is being properly educated. Is that really wrong?

Lord Wei (Con): Just to clarify a few of my remarks, I want to credit the noble Lord, Lord Soley, the Minister and the Government for doing research. That is important and I hope that the research and consultations that will take place, moving forwards,

will bring out more of the data and evidence that we sorely need. I feel that the most recent consultation, which was very short, did not get enough of the opinions of home educators. Many of those who oppose the register are painted as a minority, but that is not necessarily the case. A lot of people—

Baroness Jones of Moulsecoomb (GP): Will the noble Lord give way? My understanding is that it is not normal to have a backwards and forwards between Back-Benchers. I am getting nods from the Front Bench, which is a very rare occurrence from either Front Bench. I am going to speak to my amendment—oh, sorry.

4 pm

Lord Soley (Lab): I had not finished. It is very unusual to intervene on an intervention. I was speaking and I was giving way to the noble Lord, Lord Wei.

Baroness Penn (Con): My Lords, it is probably worth clarifying that on Report a Member should speak only once unless it is the Minister. I think we will finish the remarks we have heard; then if the noble Baroness, Lady Jones, wants to make her contribution separately, I am sure we would love to hear it.

Lord Soley (Lab): The noble Lord, Lord Wei, asked me to give way, which I did, but I am quite happy to continue as I have nearly finished.

I emphasise again that there has been far more consultation than the noble Lord, Lord Wei, is aware of. I did not spend the last five years arguing for this Bill just for the fun of it. I did not ignore people. I have had people say to me what they have said to him: "I'll go to prison rather than this". Mind you, in a very long career in politics of 40-odd years I have heard an awful lot of people say they would go to prison for one thing or another, but very few do. The poll tax was a near exception, but by and large they do not.

I was saying to those people—to be fair, I won over a lot of them—"Think of this as supportive". The noble Lord is falling into the trap of a tiny minority who say that this is a wicked state that is going to do terrible things. He has taken that as a fact; it is not. It is not even in the Bill that way. This is supportive. It is not a punishment. He is not doing himself or the House any favours in implying that it is anything other than supportive. I ask the House to reject the amendment.

Baroness Jones of Moulsecoomb (GP): My Lords, I am going to be very quick. I would like to speak to my Amendment 86B and later amendments which are essentially saying the same thing: that this Bill is dreadful and ought to be taken away and thought over completely.

Amendment 86B is to delete Clause 49 entirely because it is such a far-reaching clause that it will create a bureaucratic nightmare for thousands of families. At the same time, it will fail to achieve the Government's stated policy aims. I am also completely puzzled about how overstretched local authorities will be able to implement these new powers and duties. Having been a local councillor, I know how hard they work and how overstretched they are already—even before the recent government cuts.

Overall, I am convinced that Clause 49 will turn out as a total legislative failure and will leave a trail of destruction that will probably be ignored because home-schooling families are a minority in this country. I wish the Government would see sense on this and support the deletion of this clause, as they have with significant other parts of the Bill which they acknowledge were also unworkable. Within that, I would like to include my deletion of other parts of the Bill in Amendments 93A, 95A and 95B.

Finally, on my Amendment 118C, the government amendments are a step in the right direction, but a long way from the necessary protection that families need from these new powers. A code of practice would address the data protection concerns that many parents have. I urge the Minister to think about that.

Lord Lucas (Con): My Lords, I have several amendments in this group. If I were to say one thing to my noble friend the Minister, it is that I really hope the department will use the time it has while dealing with Part 1 to advance its thinking on the guidance and other aspects of the Bill so that, by the time it gets considered by the Commons, its thinking is rather more detailed and matured than what we have had the chance to look at. That would be a real help.

My noble friend Lord Wei raised some issues of true Conservative principle, which I hope home educators will find the opportunity to discuss with the candidates during August. Home education is a matter of freedom. Although the noble Lord, Lord Soley, and my noble friend both say that the Bill is supportive of home education, in many details it is not.

As my noble friend Lord Wei said, many letters are reaching us describing situations in which local authorities have been, frankly, abusive to home educators without any obvious good reason. I have pursued some of these matters with local authorities. I will not name the one I have talked to, but it is clear that they allow the difficulty that they have with some families to spill over into the way that they deal with those who are, on the face of it, doing a pretty good job—for instance, harassing a child who had a stroke aged six and saying that the child, rather than being cared for specially within their family, must be cast into school, not accepting independent reports about this child and saying that they must have more, different evidence. That is not in any way conducting their relationships in a supportive way. There have been cases where they have made really unpleasant remarks about home educators privately, and then, by mistake, copied others into emails. This shows that among a good number of local authorities there is a very unsatisfactory attitude to home education.

I am very keen that the Bill contain safeguards which put home educators, particularly good ones, in a position where they can reasonably hope to argue their case. We will come to some more details of that later. My noble friend Lord Wei espouses some true Conservative values of freedom and family which the Bill does not recognise sufficiently. One could also argue for efficiency, in that the best local authorities seem to do a very good job and, with the same money, go beyond what is achieved elsewhere by building up a pattern of trust which enables them not to spend time harassing people who are doing a good job.

[Lord Lucas]

The Bill as it is at the moment is not efficient, nor does it pay sufficient attention to all those occasions when the state is failing children. We have an amendment later, which I applaud, which says that children who have been excluded should not be placed in unregistered institutions. Oh, my golly—that is the state doing that. Why are we fussed about what good private educators are doing when there are things like that being done by the state?

There is a flavour in some of the remarks I have read from local authorities of a difficulty with difference which we should surely not allow. Local authorities have to deal with a lot of very different people, including Gypsies and others who choose to live a lifestyle which is not at all in accordance with the normal. Fear or dislike of difference should not be something one finds in a local authority. I entirely understand where the noble Lord, Lord Wei, is coming from, but my wish in the Bill is to find ways of improving it in its detail rather than attacking the principle of the register.

Amendment 65 looks at the

"means by which the child is being educated".

That is widely seen—I think correctly—as permitting the Government to inquire deeply into the exact way in which a child is being educated. That is one of the ways the worst local authorities have adopted to oppress home educators. They ask for more and more detail. They ask for things that home educators are not doing, like having a timetable. There is a whole structure of education which is necessary in school but does not apply to home education. Home education can be centred on the child and be very different. The question is: is it effective and sufficient? Is it doing what it should do to bring out the qualities of the child? The structure of what is being provided should not be open to question and attack if the outcome is sufficient.

Amendments 65 and 66A suggest alternative ways of dealing with that, and in Amendment 66 we will come to another, when the right reverend Prelate speaks to it. With Amendment 66A, we are looking at a limit to who is providing the education. The Government want to know what outside people are providing the education that a child is receiving. That seems to me to be a reasonable bit of information to ask for, and is well short of the worrying implications of the wording as it is.

In Amendment 85, I come back to a subject I raised in Committee. One of the justifications for the register is so that we know what is happening to children. I find that quite persuasive, but if we are going to do that, we ought to know what is happening to all children in this country; we should not leave bits unexamined. At the moment, your standard independent school does not return data to the Department for Education on the children in its charge. I do not think it takes legislation to change that; it just takes the Government to decide that they want that, and to ask for it—they have the power. But if the justification for a register on home educators is that the Government ought to know what is happening to children, that same thought ought to apply to independent education too.

The Lord Bishop of Carlisle: My Lords, I speak on behalf of my right reverend friend the Bishop of St. Albans, who has two amendments in his name, Amendments 66 and 94. His name is also listed on Amendments 65 and 66A, in the name of the noble Lord, Lord Lucas.

Amendments 65, 66 and 66A continue to take issue with the proposals for details of the means by which a child is being educated to be included on the register. Amendment 66 would replace this with a determination of suitability, and provide for visits by the local authority for determining that suitability to be recorded. However, further to communication with the Department for Education and the Minister, we understand that their interpretation of the word "means" does not relate to the educational content or methods of home educating but simply to the providers of the education, since separate rules for registration will pertain to out-of-school education. We have been informed that this framework will be set out in the future statutory guidance. This is a much more positive interpretation than had previously been supposed, but if this is the interpretation I am not sure why it could not have been contained within the primary legislation rather than prescribed at a later date. Amendment 66A, from the noble Lord, Lord Lucas, would naturally resolve that problem.

We are most grateful for the Minister's communications with the Bishops' Bench to clarify this matter. However, the terminology remains unhelpfully ambiguous. I hope that the Minister can alleviate the concerns of home-schoolers and state on the record that this simply means inquiring into who is providing the education and not the substance of the education or the methods of teaching.

I turn now to Amendment 94, which would insert a new clause after Clause 50 and seeks to provide protection for the institution of home schooling against any undue or unfair interference. The proposed new clause would ensure that any contact between the local authorities and home-schoolers respects protected characteristics, as well as Article 2 of Protocol No. 1 to the European Convention on Human Rights, as in the Human Rights Act, in making sure that

"the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The point is that the way in which this Bill is framed could be seen to cast a cloud of suspicion on all home educators. The noble Lords, Lord Lucas and Lord Wei, have already raised that point. Some parents are also worried that this register is the thin end of an invasive wedge that could lead to undue state prescription with regard to home schooling.

4.15 pm

That is not to say that home schooling itself is not sometimes prescriptive. Some individuals opt for home schooling precisely because they disagree with certain materials being taught in school, when it conflicts with their deeply held beliefs. However, there is a difference between the state being prescriptive in trying to mould individuals into a specific world view and the liberal principle of allowing parents the right to determine the values and beliefs with which they want their children to be brought up. Many Christians, Muslims, Jews and people of all faiths or none home-school on

account of this. What is important is the principle that the state does not have the right, under normal circumstances, to supersede the rights of the parents in determining how they ought to raise their child.

The misunderstanding that has occurred from the initial framing of this Bill has been unhelpful. I think it has harmed the prospective relationship between home educators and local authorities. Amendment 94 reassures home educators that their fears are unfounded. It would put into law where the Government place the limits of intervention in home education and ensure that there is sufficient accountability for local authorities and the Government in upholding the principle of home education.

I suspect the Minister may argue that these provisions are unnecessary, as they are already contained in the Equality Act and the Human Rights Act, or are responding to things that do not currently exist in law. Nevertheless, a positive statement clearly outlining on what grounds interference is not acceptable, alongside a further commitment from the Government to reaffirm the fundamental principles of home schooling, would counter many of the underlying concerns home educators have about the implications of this Bill.

I know that the communication the Minister has had with my right reverend friend the Bishop of St. Albans has been greatly appreciated. It would be tremendously useful if she could confirm on the record how home educators will be both consulted and reassured as we move towards the statutory guidance that will underpin many of the provisions on home education.

Baroness Fox of Buckley (Non-Afl): My Lords, I am very supportive of Amendment 64A. Amendments 65, 66, 66A and 94 are also ways of reassuring and protecting home-schoolers in the Bill.

The noble Lord, Lord Soley, made the point that, over his many years in politics, many have threatened to go to prison for their beliefs and rarely do. We all recognise that point. But it is also true that, over the many years that I have been involved in politics, I have been reassured that many a law is supportive and not a punishment or threat, and I have learned not to take much notice of that either. The notion that if you are a good actor you have nothing to fear is actually quite chilling, because then you have to ask who decides who the good actors are—who will define what a good parent is, in this instance. It is a little unfair that people who feel so strongly that they say they would go to prison are dismissed, because it speaks to the fact that this Bill has created uncertainty. The Minister has gone out of her way to be reassuring—I do not dismiss that; that is something to be taken seriously—but all that these amendments are trying to do is to codify that reassurance in a variety of ways, rather than just having it on word of mouth.

It is not helpful to say whether it is a minority of home-schoolers who are worried about the register or a majority. In a way, who cares whether it is a majority or a minority? It is the principle, and the noble Lord, Lord Lucas, has made that very clear. I emphasise that there is a principle of freedom here that we should not just throw out or dismiss as some sort of inconvenience to more pragmatic concerns.

The problem with the register is that it is not just a register; it ends up looking as though it requires far more on details of means, as the right reverend Prelate just explained—more than you need in a register. It does not just tick a box. That is why many home educators are very anxious about it. I am not a home educator and have never been home educated; to be frank, I am not interested in home educators per se, but I am interested more broadly in a situation where the state collects so much data and information—a database of children—and interferes in our freedom in a democratic society to home educate, if that is what we want. As the right reverend Prelate the Bishop of Carlisle explained, the cloud of suspicion being created that this is a potential assault on deeply held religious and philosophical freedoms is something we should all take seriously as democrats who support a free society.

The suspicion that some home educators have of the state and the way that education is conducted is what we should be discussing in relation to this Schools Bill—if it were not such a basket case of a Bill that we cannot get anywhere on what we ought to be discussing, which is irritating. We have a problem when many parents believe that the state cannot be trusted to educate their children. All sorts of controversial issues come up. I do not think it is a criticism of home educators that they do not trust the state or think that it does not provide the kind of education that their SEND child or bullied child needs, or that they do not want someone to be exposed to the kind of materials in sex and relationship education that we will probably discuss later, which have been all over the news. These are reasonable philosophical ideas to hold; they, and religious freedom, are things that we should be protecting in this House.

We should remember the Telford report, which I just finished reading over the weekend. We have to be careful when the state starts saying that the people acting suspiciously are the parents. I also read the Oldham report, in which state actors—councils, schools, the police and all sorts of people—ignored in plain sight the sexual grooming and abuse of thousands of young people. I am not prepared just to say that I trust the state. It is perfectly reasonable when people do not, but we at least have to reassure them about their freedoms to withdraw from state schooling. After all, it is not the law that you have to school your child, simply that you have to educate them. I trust those parents to educate them as much as I trust the state. Where there are bad actors, you act, but you do not treat everyone all the time as potential bad actors.

Lord Storey (LD): My Lords, I said at Second Reading, putting the register aside for a moment, that we as a society have a responsibility to ensure that all our children are safe, secure and educated. If that is not happening, we need to ask why and what we can simply do to make sure that every child is safe and educated.

Over the last seven or eight years, I have put down a whole series of Written Questions asking how many children are missing from our school rolls, such that we do not even know where they are. The answer is that we do not know. The best we can do currently—this

[Lord Storey]
goes back to 2018-19—is information from the National Crime Agency, which, by the way, identifies as missing anyone whose whereabouts cannot be established and who may be the subject of a crime or at risk of harm to themselves; examples include child trafficking, getting involved in drug pushing, et cetera. It concluded that there are 216,707 children missing whose whereabouts we do not know. That is a very low figure. I think it is considerably higher than that.

For me, that is what this debate is about: protecting children and making sure that they are safe, secure and educated. That is why I welcome these measures on home education and congratulate the Government on having the courage to pick up this political hot potato and try to do something about it—it is not perfect; I take it for granted that there are some concerns—and about unregistered schools.

Of course, the right reverend Prelate the Bishop of Carlisle was right about parents' rights and values, but society has to make sure that, when children are in schools which are not subject to any checks or inspections, they are not being taught the most appalling practices, which Ofsted highlights in its reports. There have been a couple of cases where it has taken those schools to court and managed to close them down—the right reverend Prelate would be horrified if he knew. One such school, which was not unregistered, was a Christian school as well; I am happy to talk to him privately about it.

Let us understand where we are coming from in this debate. We all have anecdotal evidence of home tuition and teaching. I listened with great interest to the concerns of the noble Lord, Lord Wei, and his worries about what might happen. I accept that the noble Lord, Lord Lucas, is absolutely right that there have been some appalling practices by local authorities; there have also been some fantastic practices by them, which should be the model for how we behave. That is why I will suggest in the next group that local authorities appoint home school co-ordinators.

I have been struck by the number of emails I have had—I think it was 82 at the last count—from home educators. They have concerns, of course, or they would not be emailing me, but I come away thinking, "Wow, what a tremendous job you're doing." I have met some of them. I met one last week, who told me about how she had ignited an interest in the Tudors in her daughter. I thought again, "What a tremendous job you're doing." However, those actually doing the work of home tuition are perhaps seeing problems that will not be there.

We need a simple register which collects some simple information. I did not know and was quite surprised to learn that independent schools do not provide any data—that is a new one on me. They should be doing so. As the noble Lord, Lord Lucas, rightly said, we should know where all our children are—whether they are in school, home educated, in an unregistered school or in the independent sector. Let that be the rallying call from these amendments.

Lord Hacking (Lab): My Lords, I am in a bit of a dilemma. My noble friend Lady Jones of Moulsecoomb, if I may so refer to her, has spoken to all the clauses she would like to have taken out of the Bill. When I was last in the House, during my 26 years, the issue of whether a clause remained in the Bill came up only in debates of clause stand part. At that stage only did the argument come forward, if someone wanted to make it, that a clause no longer stand part of the Bill.

4.30 pm

The logic of that was quite plain. It was only when the clause had been all the way through the House that a decision was taken, not on the state of the Bill as printed but on the state of the Bill as amended. In this particular case, even on Clause 49, there are a number of substantive amendments by the Minister, and so it is a bit of a dilemma.

I want to record that I support entirely the noble Baroness, Lady Jones, in deleting those clauses from the Bill. For my own part, I want every single clause in Parts 3 and 4 to be taken out of the Bill, but that must come later. So, what I propose to do is not speak until the second group of amendments where my amendments are identified, but I do not want it to go past this House that I am not supporting the noble Baroness, Lady Jones, my friend, in her amendments; she is asking for all the clauses in this Bill, from 49 to 52, to be removed. So, if I may, I will speak on the substantive issue in the next group of amendments.

Baroness Chapman of Darlington (Lab): My Lords, on the amendments tabled by the noble Lord, Lord Wei, we disagree in principle on this. Of course we respect the ability of parents to educate their own children, but nothing in this Bill prevents parents from educating their children at home. The sad truth is that home education is being used, sometimes, as a front for neglect, or even abuse. This is happening, and many of us here have seen too many examples of this, but there are multiple examples of great practice too—of course there are—and examples, as the noble Lord, Lord Storey, quite rightly said, of local authorities playing a supportive role. Clearly, there are situations where this relationship has not been successful, and I would be interested in what the Minister has to say about what she is planning to do to make sure that that is prevented wherever possible.

But registration does not mean that children will be forced to attend school. The reference of the noble Lord, Lord Wei, to the sex offender register was unfortunate and inflammatory, and the noble Lord's Amendment 72A, on the obligation to provide information, raises great concern for me, where it says that

> "A local authority may only require parents to provide the information under this section if the local authority suspects that the parents are educating the child in such a way that it may lead to the child conducting violence or sexual or physical abuse against others."

There is nothing about the protection of that child. I could never vote for that, and if the noble Lord chooses to divide the House on his amendments, we will be voting to make sure that they are not included in the Bill.

My noble friend Lord Soley has told us previously that he has been waiting for these measures to be brought into law for some time. He has done sensitive

and sterling work for very many years on this issue, and I pay tribute to him for the kind way that he handled responding to the noble Lord opposite, and for the work that he has done over some time.

The noble Baroness, Lady Jones, made important points about the capacity of local authorities, but I note that many local authorities, when asked, have welcomed the approach being taken. Obviously, the proof is going to be in the implementation, and we do not dismiss the concerns about how this Bill will work in practice. But, as the noble Lord, Lord Storey, said, the balance here between the freedom of home educators, which we recognise, and the safeguarding of children, has not been where it needs to be previously.

We welcome the Government's amendments in this clause. We agree very much regarding our obligations to support and protect children, and with the reassuring words of the noble Lord, Lord Storey, on this issue. We should be celebrating home education; too often, it has been viewed—and I think home educators themselves have picked up on this—with some suspicion, or even ridicule, not just by local authorities but in society generally. There is no need for that, and having this clearer framework may actually support the recognition of home education as a valid way of educating children.

It would, though, having said all that, be very helpful to alleviate some of the fears of home educators if the Minister could explain to the House what she intends to do ahead of, and after, implementation, to take home educators with her, so that the threat and fear can be reduced, and home educators can be properly reassured.

Baroness Barran (Con): My Lords, I rise to speak to the first group of amendments which relate to the proposals for children not in school registers. If I may, I would like to start by thanking the noble Baroness, Lady Chapman, and the noble Lord, Lord Storey, for their very constructive remarks in setting the context in which these measures are being introduced. I would also like to echo the noble Baroness opposite's remarks regarding the noble Lord, Lord Storey, and his, as she said, very sensitive and kind work on this. Obviously, sensitivity and kindness are really important, because we are talking about parents who care desperately that their children get the right education, and all of us as parents can recognise how important that is.

Amendments 64B and 72A, from my noble friend Lord Wei, seek to narrow the eligibility criteria for the registers. Local authorities would still need to make inquiries and hold certain information to ascertain a child's eligibility to be on the register, and indeed to check whether a child is at risk of harm. This is not materially different to local authorities recording this information in a register, except that the effect of these amendments would hinder local authorities from discharging their existing duties. The House has already heard reflections from the noble Baronesses, Lady Jones and Lady Chapman, about the pressures that local authorities are under.

It is vital that the registers contain information on all children not in school. The registers are there not just for safeguarding reasons but also to aid local authorities to undertake existing responsibilities to ensure education being provided is suitable, to help them identify children who are truly missing education, which will become easier once we know where all children not in school are, and, critically, to help them to discharge their new duty to provide support to home-educating families. As other noble Lords have said, this in no way diminishes the rights of any parent to decide to educate their child at home.

My noble friend talked about the lack of opportunities for appeal and complaints. There are a number of routes for complaints available for parents in relation to school attendance orders. First, they can ask the local authority to revoke the order, and the local authority must act reasonably in deciding whether or not to agree to this. If the local authority refuses, the parents can appeal to the Secretary of State to give direction; the Secretary of State will consider each case individually and will make a balanced judgment on the information available, and has the power to direct the local authority to revoke a school attendance order. The Education Act 1996 also gives the Secretary of State powers to intervene when a local authority exercises its functions unreasonably or fails to comply with duties under that Act. We are also looking at how we can strengthen independent oversight of local authorities and considering alternative routes of complaint for home-educating parents.

I will also write to my noble friend, and to the House, to clarify once again the fact that the failure to provide information to a local authority is not criminal. Rather it starts the whole process for a school attendance order, but in the interests of time I will set that out in a letter.

I also thank my noble friend Lord Lucas and the right reverend Prelate the Bishop of St Albans, and, on his behalf, the right reverend Prelate the Bishop of Carlisle, for their Amendments 65 to 66A. The measures in the Bill do not give local authorities any new powers to monitor, assess or dictate the content of education. The right reverend Prelate talked about a "cloud of suspicion", and I think it would be unfortunate if he was right about that. We have striven to be clear about the scope of the powers and when any new powers are required. We are of the view that local authorities' existing powers are already sufficient to assess the suitability of the education being provided. Therefore, I would like to be clear that the phrase in the Bill

"the means by which the child is being educated"

does not include the content of the education itself. I am happy to put that on the record. It is limited to matters such as whether the child is taught entirely at home or also attends education settings, which settings they are, and how much of their time the child spends there.

It is important to keep this existing drafting to ensure that local authority registers not only include information on where a child is being educated other than at school, such as entirely at home or at out-of-school education providers, but what proportion of their education they are receiving at those settings. Capturing this information will help local authorities identify those children who may be receiving most, if not all, of their education in unsuitable settings, such as illegal schools.

[Baroness Barran]
Regulations will set out the details of the child's education provision to be included in registers, as well as whether or not a child is assessed to be receiving a suitable education. I have tabled Amendment 86 to enable these, and other regulations concerning the collection and sharing of data, to be subject to increased parliamentary scrutiny.

Turning to Amendment 67, I reassure the noble Baroness, Lady Brinton, that it is already the Government's intention, through regulations, to require local authorities to record the reasons why a child is eligible for registration, and Amendments 68, 69 and 73 in my name make provision for this. We believe that this information will be invaluable for understanding why parents may be home educating, including identifying systemic issues such as insufficient SEN support or off-rolling—all concerns that your Lordships have raised, rightly, during the passage of the Bill.

It was always our intention that the power in new Section 436C(1)(d) should be used to prescribe the inclusion of information, such as this, aimed at promoting the education, welfare and safety of children, but we recognise the concerns raised about its breadth. We have therefore proposed its removal and replacement with a targeted list of matters, which would allow for the inclusion of information such as reasons for eligibility, the child's protected characteristics, or whether they are a looked-after child, on a child protection plan or a child in need.

Amendments 85A, 94 and 118C concern the important issue of safeguarding data. It is our intention that data protection be a key area of focus during implementation, but to provide more reassurance we have sought to introduce additional protections for families. Amendment 70, in my name, will place in the Bill our existing commitment that no data that could identify a child or parent be published or made publicly available.

4.45 pm

Amendments 71 and 72, also in my name, will also ensure that the information parents are required to provide is limited to information that is essential for the operation of the registers, which I hope will reassure parents of our commitment to processing sensitive data only where it is necessary. Disclosure of any additional information prescribed for inclusion in the registers under new Section 436(1)(a), such as protected characteristics, which may be more sensitive, will be voluntary. The amendments also remove any possibility for the school attendance order process to be triggered on the basis that a parent has failed to provide information for a local authority's register that they do not have or know. While the power in new Section 436C(1)(a) would still allow for some additional information to be prescribed, not detailed in the matters listed, noble Lords should be reassured that this is limited, allowing only for information of a similar kind to be prescribed where the Secretary of State considers it appropriate for promoting the education, welfare or safety of children.

It is important that there be flexibility in this power should other types of information come to light as beneficial for inclusion, such as whether a child is subject to a supervision order or is a young carer. However, parents would still have the option not to disclose this, should they wish. The noble Baroness, Lady Chapman, invited me to elaborate on how we plan to work with parents. I have said previously, and am happy to do so again, that we will be working with parents, local authorities and safeguarding experts to create the implementation guidance for the register. We hope very much that local areas will watch what is happening with that national panel, and encourage them to do so, and, if they feel it is appropriate, perhaps to consider mirroring it in their local area. The hopes and fears we have heard expressed in the debate will be felt by parents, children, local authorities and safeguarding experts. It is only by bringing all those groups together that we can come to proposals that will, I hope, work in practice but also be trusted and understood by those who are affected by them.

On Amendment 85 from my noble friend Lord Lucas, we will give further consideration to whether it is appropriate to require independent schools to complete the pupil-level school census that state-funded schools complete. But there is no need for any legislation in order to be able to do this. The aim of my noble friend Lord Wei's Amendment 86A would be counterproductive to the changes to the school attendance order process to minimise the time a child spends in unsuitable education. It would significantly hamper a local authority's ability to establish the facts of a child's education and leave it unable to take further action to remedy a lack of education. This is surely an unacceptable outcome. Finally, I hope that the statements I have made today provide the noble Baroness, Lady Jones, with sufficient reassurances on her Amendment 86B.

I ask my noble friend Lord Wei to withdraw his Amendment 64B and other noble Lords not to press their amendments.

Lord Wei (Con): My Lords, I thank all noble Lords who have participated in discussing these amendments and thank the Minister, who I pay tribute to, as many others have done, for her long-suffering forbearance with all our discussions on various aspects of the Bill.

I accept that the Government are taking, and are planning to take, account of some of the concerns that have been raised today. My main issue, and the reason I have shifted from my earlier position on the Bill, is that my concerns have been raised by existing bad practice that we are seeing in the interaction between local authorities, the department and home-educating families. If that were not the case, and there were many more local authorities—which I applaud as well—doing a great job, I would not be standing before your Lordships today. However, sadly, if the current situation is that sufficient protection is not in place for home-educating families, what confidence do we have, until we actually see the detail later on, that these abuses by local authorities will not happen later?

My Amendment 72A, which would provide a warrant, is designed to allow us to pursue bad actors. We also have through the Children Act ways to pursue people who neglect their children, so we can protect the children. However, the problem is that we do not always use properly those rules and laws—or the data that we can collect, in a co-ordinated way, together, to pursue those bad actors. I genuinely still believe that this register will cause bad actors to go under the radar.

Therefore, I would like to test the opinion of the House. I am not saying that we should not have a register but it should be there for parents who do not believe that they are providing the level of education that the law requires them to provide. Those who are uncertain can seek advice and support from the local authority, but those who just want to get on with the job should be given the right not to be interfered with in doing so.

Lord Soley (Lab): The noble Lord would give a right not to go on the register to those who he would say are educating their children okay. How on earth are you going to define that without giving the state even more powers? It is contradictory.

Lord Wei (Con): The law already places a requirement on parents to educate their children to the standards that the law requires; therefore, I would just refer to the law. It is not for me or for us here to specify in detail in the Bill what that looks like, and the moment we do so, we will have overstepped the mark.

I am more satisfied by the Minister's response on Amendment 85A, that greater care is being taken on the use of the information in this register, and I look forward to hearing about that.

Finally, on Amendment 86A, again, existing practice evidences to me that local authorities are not necessarily respecting parents' rights not to be interpreted as not providing a good education by not providing information. That misunderstanding is dangerous, and I have not heard anything yet that satisfies me that the plans that will be put forward will solve that problem. If you refuse to provide information, you should not have a school attendance order put on to you. That may create problems, but it should be a principle. We have that in law: when you are arrested, you have the right to remain silent. Why, then, if you do not provide information in this instance, are you forced to send your child to school on the pretext that you are not providing a good education? There are many ways in which local authorities can get information. Forcing parents to do so by saying, "If you don't do so, your child will be forced to go to school" is the wrong way to go about this. Therefore, I wish to test the opinion of the House.

4.53 pm

Division on Amendment 64B called. Division called off after six minutes due to lack of support for the Contents when the Question was put a third time.

Amendment 64B disagreed.

5.03 pm

Amendments 65 to 67 not moved.

Amendments 68 to 72

Moved by ***Baroness Penn***

68: Clause 49, page 42, leave out line 30

Member's explanatory statement

This amendment removes the broad power to prescribe information that must be contained in the register of children not in school. It is replaced with a more targeted power: see the new subsection (1A) inserted by the amendment in Baroness Barran's name at clause 49, page 42, line 30.

69: Clause 49, page 42, line 30, at end insert—

"(1A) A register under section 436B must also contain such information about, or in connection with, the following matters in respect of a child registered in it as may be prescribed, to the extent that the local authority have the information or can reasonably obtain it—

(a) the child's protected characteristics (within the meaning of the Equality Act 2010);

(b) whether the child has any special educational needs, including whether the local authority maintain an EHC plan for the child;

(c) any actions that have been taken by a local authority following, or in connection with, enquiries made by a local authority under section 47 of the Children Act 1989 (local authority's duty to investigate);

(d) whether the child is a child in need for the purposes of Part 3 of the Children Act 1989 (see section 17(10) of that Act) and, if so, any actions that a local authority have taken in relation to the child under that Part and any services that a local authority have provided to the child in the exercise of functions conferred on them by section 17 of that Act;

(e) whether the child is looked after by a local authority (within the meaning of section 22 of the Children Act 1989);

(f) the reasons why the child meets Condition C in section 436B, including any information provided by a parent of the child as to those reasons or, in a case where a parent has not provided that information, the fact that they have not done so;

(g) whether, under arrangements made under section 436A, the child has been identified as a child who is of compulsory school age but who is not a registered pupil at a school and is not receiving suitable education otherwise than at a school;

(h) the school or type of school (if any) that the child attends or has attended in the past;

(i) whether support is being provided in relation to the child under section 436G and, if so, the nature of the support being provided;

(j) any actions that have been taken by a local authority in relation to the child under sections 436I to 436P (school attendance orders);

(k) any other information about the child's characteristics, circumstances, needs or interactions with a local authority or educational institutions that the Secretary of State thinks should be included in the register for the purposes of promoting or safeguarding the education, safety or welfare of children."

Member's explanatory statement

This amendment replaces the broad power currently in section 436C(1)(d) to make regulations detailing information to be included in the register of children not in school with a more targeted power which sets out the matters which regulations may cover.

70: Clause 49, page 43, line 2, at end insert—

"(4) No information from a register under section 436B may be published, or made accessible to the public, in a form—

(a) which includes the name or address of a child who is eligible to be registered under that section or of a parent of such a child, or

(b) from which the identity of such a child or parent can be deduced, whether from the information itself or from that information taken together with any other published information."

Member's explanatory statement

This amendment would prohibit publication of any information from a register under section 436B which identifies a child who is eligible for registration or a parent of such a child, or allows such a child or parent to be identified.

71: Clause 49, page 43, line 8, leave out from "with" to end of line 11 and insert "any of the information referred to in section 436C(1)(a) and (b) that the parent has."

Member's explanatory statement

This amendment reduces the obligation on parents to provide information to the local authority when their child becomes eligible to be registered on the children not in school register: it would mean that they would only need to provide information that they have about their child and themselves and the other parent, and not the information prescribed by regulations.

72: Clause 49, page 43, line 14, leave out from "with" to end of line 17 and insert "any of the information referred to in section 436C(1)(a) to (c) that the parent has,"

Member's explanatory statement

This amendment reduces the obligation on parents to provide information, on request from a local authority, in cases where the child is on the children not in school register: it would mean that they would only need to provide the information mentioned in section 436C(1)(a) to (c), and not any information prescribed in regulations under the new subsection (1A) (inserted by the amendment in Baroness Barran's name at clause 49, page 42, line 30).

Amendments 68 to 72 agreed.

Amendment 72A not moved.

Amendment 73

Moved by ***Baroness Penn***

73: Clause 49, page 45, line 21, at end insert—

"(aa) must provide the other local authority with any information relating to the child that is prescribed under section 436C(1A) that they have,"

Member's explanatory statement

This amendment is consequential on the amendment in Baroness Barran's name at clause 49, page 42, line 30.

Amendment 73 agreed.

Amendment 74

Moved by ***Lord Lucas***

74: Clause 49, page 45, line 24, at end insert—

"(A1) Local authorities must—

(a) recognise that the first responsibility for educating a child lies with its parents,

(b) be supportive of those who elect to educate their children at home,

(c) recognise that home education is of itself not a safeguarding issue, and

(d) acknowledge that in many instance the decision to home educate reflects failures by other institutions of the state."

Lord Lucas (Con): My Lords, in moving Amendment 74 I will speak also to Amendments 75 and 78. It is important in the context of the relationship between local authorities and home educators that there is a very clear statement of that relationship. I have set out a couple of versions of that in Amendments 74 and 75. I would be content if this was to find its way to the top of the guidance, which is a document that both local authorities and home educators will need to be able to refer to and get clear guidance from. Amendment 74 contains a statement of the fundamentals of the relationship which seem important to me.

On Amendment 78, I will defer to the noble Baroness, Lady Garden, when she speaks to Amendment 77. I am thoroughly in support of what she is proposing. That home-educated children should be enabled to take exams has been a long-running problem and ought to be one of the things that we and local authorities are doing to support them.

I am also very much in favour of the amendments in the names of the noble Lords, Lord Hunt of Kings Heath and Lord Storey, and look forward to hearing from them. If we happen to have the noble Baroness, Lady Brinton, on the line, which I hope we do, I think her direction of asking local authorities to take account of expert advice is important. I know of several occasions when local authorities have said, "It doesn't count. It doesn't matter. We're interested only in what we hear directly from the parent. Expert advice is not something we listen to." I do not think that is the right attitude; the attitude described by the noble Baroness, Lady Brinton, is right. I beg to move.

Baroness Garden of Frognal (LD): My Lords, Amendment 77 is in my name, and I am delighted to have the support of the noble Lord, Lord Lucas. This is a very modest amendment so I hope the Minister can agree it without too much difficulty—one always lives in hope in this place.

Home educators save the country thousands of pounds because they are not using state-funded education systems, but they often have difficulty finding a test centre for their children when they want to take public examinations, and when they do find one they have to pay exam fees, which can amount to hundreds of pounds, for the privilege of doing so. Of course, many home educators are not wealthy and struggle to find the money for the fees, but surely home-educated children are as entitled as other children to have public recognition of their learning in the form of examinations. This amendment would guarantee that home-educated pupils had a place at which to sit their national exams and financial assistance to ensure that no child is denied recognition of achievement because their parents cannot afford the fees.

As I say, it is a very modest amendment and I hope the Minister will look on it favourably.

Lord Knight of Weymouth (Lab): My Lords, in the absence of my noble friend Lord Hunt, who is in the Moses Room grappling with procurement, I will speak to his Amendment 79, to which I also put my name. It would require a local authority to have regard to the case of a SEND child and to listen to the wishes of the child and the parent around provision decisions; the information and support necessary to enable participation in those decisions should be present.

It is an important amendment, given that in so many of the cases that we have heard about where parents are anxious about the Bill's measures in respect of home education, they are parents of children with some form of special educational need or disability.

They have felt that their child's needs are not being properly addressed in the maintained sector and have therefore chosen to home educate their children. It is important that there is some safeguard for that group in particular, so that the parents' and child's wishes are properly considered in the context of what we are trying to do in the Bill.

I also support Amendment 74, moved by the noble Lord, Lord Lucas. The amendment of the noble Baroness, Lady Garden, which I supported in Committee, makes an important case for support for sitting national examinations and the cost of doing so. By consequence, I support Amendment 78.

Finally, having listened carefully to the noble Lord, Lord Wei, on the previous grouping, and given the problem that the Local Government Ombudsman does not apply in the cases of parents of home-educated children, I think it is important that there is some kind of independent complaints service or ombudsman service. I shall be interested in the Minister's response on how that independent voice to handle complaints about local authorities, with the diverse range of services that they might provide to support home-educating parents, might be provided.

Lord Addington (LD): My Lords, it might be appropriate if I speak first to Amendment 76, which stands in my name and that of my noble friend. As the noble Lord, Lord Knight, just mentioned—and I thank him for his support—and as I think we have heard from around the Chamber, if you are dealing with a very rare condition, a teacher or the school cannot be expected to know everything about it.

What we expect teachers to deal with now has expanded. Special educational needs have been spoken about already, and we have a better understanding of them: it is not some fad or anything that is made up about various conditions. I refer the House to my declared interest in dyslexia; that is just one. All these conditions will be present in the classroom, and we now expect schools to deal with them. Expecting them to deal with every medical condition that might affect the way children should be taught is beyond the pale. Commonly occurring ones? Yes. The rest of them? No. There should be a duty on the school and the education authority to communicate and to take it on board when something else arises. That is quite straightforward.

Indeed, many of the amendments in this group are about establishing that supportive relationship between such bodies and home educators. I hope that we hear some supportive words from the Government on that, and on Amendment 84, in the name of my noble friend Lord Storey, which makes provision for some sort of co-ordination of support for those who are home educating, and a relationship. I am hopeful that the Minister will have something positive to say in this area. We need to support those who are, let us face it, at the most basic level, saving the public purse some money. If they are doing it properly, let us help them.

Lord Wei (Con): My Lords, I will speak to my Amendment 118 and in support of Amendment 74. As I said before, I have real concerns. I accept the intentions of the Government as stated by my noble friend, and I hope that this summer will provide an opportunity to come up with independent appeals processes which are not operated just by local authorities or the Government. The current regime, where something like that is already in place, is clearly insufficient. Families are being left in the lurch—often, as I said, for a very long time.

I shall not speak for long. I have already spoken about my amendment in the previous debate, so others can refer to *Hansard* on that, but the principle is that we would have a voluntary, independent person who would serve as an adviser to local authorities where they want to investigate what is going on in home education, but also provide a mediation resource for families so that they do not have to resort to expensive and lengthy processes such as judicial reviews. I was speaking to some judges over lunch last week who said that there is a massive waiting list in the courts. Why should we add to that through the Bill? Instead, we should provide an independent means by which issues can be resolved, such as the one I described here in London and elsewhere.

That is why I tabled Amendment 118, but I support the idea captured in Amendment 74 that there should be recognition that home education itself is not a crime or anything negative; in fact, it is positive for society. I think the noble Lord, Lord Soley, would agree on that point, so let us make sure that those hard-working, hard-pressed officials who are trying to work with home educators truly understand that in law.

5.15 pm

Baroness Jones of Moulsecoomb (GP): My Lords, in the debate on the last group, I completely forgot to say thank you to the Minister, who is not in her place at the moment, for meeting me not once but twice. She also met two home educators, and I like to think that that influenced the amendments. I have never had as many emails and contacts as I have had on home education, so it would be very good if the Bill's changes could be expanded to include the concerns of those people.

Baroness Penn (Con): Did the noble Lord, Lord Hacking, want to speak to his amendments in this group?

Lord Hacking (Lab): I thank the noble Baroness very much. The noble Lord, Lord Lucas, was giving me a signal from the other side of the Chamber, and I was wondering what it was, but now I know, and I am very grateful for knowing.

I must start with an apology to the whole House for the massive number of manuscript amendments tabled by me to remove, one by one, all the clauses in Parts 3 and 4. This was a mistake by me. When I went to the Legislation Office this morning, I said, "Can I table a simple amendment that runs on the lines 'leave out Parts 3 and 4'?" I was told it could not be done that way, but only by individually asking for each clause to be left out of the Bill. I should have realised that I needed only to give one example of my proposal, and then your Lordships would not have received this massive number of manuscript amendments. For that, I again apologise.

[Lord Hacking]

I should also say that I have not, save for one occasion, which I will come to in a moment, spoken so far on the Bill. I sat through parts of Second Reading and many of the sittings in Committee, but I did not intervene. The one exception was in Committee, when the Clock of our House was stuck at 10 minutes to 3 pm. I thought a literary comment could be brought into the Bill's proceedings and I reminded the Committee of Rupert Brooke's poem, "The Old Vicarage, Grantchester", which ends with a reference to whether the village church clock in Grantchester was still standing "at ten to three" and was there "honey still for tea". That was my little contribution as a matter of literature on a Bill which, after all, is to do with education.

I have thought very carefully, particularly last weekend, and concluded that, in the interests of the whole House, Parts 3 and 4 should be removed, not as a wrecking amendment but as a constructive one, so that the provisions in Parts 3 and 4 can properly be looked through and thought about. I am supported in that view by my noble friend Lord Grocott, who said at the beginning of the debate that the Bill is beyond repair. The Opposition Chief Whip, the noble Lord, Lord Kennedy, said that the Bill is in a very bad state. That supports my general proposition, that the entirety of Parts 3 and 4 should be removed.

In making this proposal to the House, I am not denying that the many improvements that noble Lords have added should be considered. As part of a reconsideration of this Bill, those improvements might well find themselves in it. I recognised at the weekend that a new broom needs to be taken to the whole of Parts 3 and 4.

Coming back to this House after an absence of 22 years, one is struck by the increasing disease in all our Bills of what I would call particularisation. If I have invented that word, I apologise, particularly to the editors of *Hansard*. I refer to the ever-increasing perceived need to place everything in the Bill, to the point where our Bills are becoming more detailed and more complicated—and pretty incomprehensible. We seem to think that our job is done when the Bill passes and have insufficient thought for the users of our Bills. Look, for example, in the previous Session, at the police Act, the health Act, or the Nationality and Borders Act, and think of those who must enforce them—police officers for the police Act, health workers for the health Act, and customs officers for the Nationality and Borders Act, to say nothing of the tasks that are thrown up to judges and lawyers who interpret the terms of our Bills.

This Bill, in its present form, has no fewer than 40 pages of obligations on home schooling and local authorities. This is a vast section of the Bill, and it is those 40 pages that I ask your Lordships to reconsider. It is as though someone in the Department for Education has been thinking of everything under the sun—and, I must add, the moon—which can be put into this Bill, the result being these 40 pages. This must come to an end.

I now come to a problem that was entirely new to me. I met the five home-schooling mothers, several of whom are listening to this debate. As the Minister may remember, I introduced three of them to the Ministers when we were in Committee, the noble Baronesses, Lady Barran and Lady Penn, who kindly had a word with them about their concerns, although it was only brief. I am not denying that a lot of noble Lords have expressed a concern and I am not at all deriding all the work that has been put into the Bill by noble Lords.

When you come back to this House after a long time, you also have a freshness when looking at the issues. In this case, I looked at the Education Act 1944, a very important social Act brought in under Rab Butler, later to become Lord Butler of Saffron Walden. I also looked at the more recent Education Act 1996. I have several cited cases, one in 1980, when Lord Donaldson presided, and one in 1985, when the noble and learned Lord, Lord Woolf, presided, for which they each provided further help and guidance over the application of the then provisions. As recently as 2019, the Department for Education issued statutory guidance. I am not going to read the terms of those two Acts or the statutory guidance. Suffice it to say that for both Acts, the recent statutory guidance gave clear support for home schooling, and little interference.

What then has gone wrong? It appears—I emphasise that word—that education officers in a few powerful local authorities have set their face against home schooling, believing that pupils should be at the school with which they were provided. The noble Lord, Lord Lucas, spoke of abusive behaviour by certain local authorities. I emphasise "appears" because the Minister, when I spoke to her, was strongly of the view that this was not the right interpretation. However, we have heard a different view from the noble Lord, Lord Lucas. Therefore, why have these provisions gone into the Bill? This is quite different from the stance taken in 1944 and 1996. It appears that the views of those education officers in a limited number of boroughs—I will not name the boroughs here but will in a meeting with the Minister—have wrongly persuaded the Government to bring in the Bill in the way that we find it.

I have already told the Minister that I will not divide the House and that remains my position. The Minister has kindly agreed to see me and some of the concerned home-schooling mothers and their advisers.

Finally, I ask the Minister not to forget the World War I poets. I could name them, as I did just now in a conversation with the noble Baroness, Lady Barran, but I just leave that as a final thought among the Ministers. I hope that she will not neglect those poets, and the literature that they produced, when she sums up.

Baroness Penn (Con): My Lords, I will start with Amendments 74 and 75, tabled by my noble friend Lord Lucas. The law is clear that parents have a right to educate their children at home, and local authorities should already be working collaboratively with parents to ensure the best outcome for the child. We are keen to ensure that home-educating parents, and local authorities, are fully supported in ensuring that the education received at home is suitable. Therefore, as my noble friend Lady Barran said, as part of the implementation of the Bill we will be reviewing our existing guidance and publishing new statutory guidance for local authorities on their "children not in school" responsibilities, which will include advice on how they should discharge their new support duty.

5.30 pm

As my noble friend said, we will develop this collaboratively, prior to public consultation, with the new implementation forum we are establishing of local authorities, home educators and safeguarding partners to support the introduction of the registers, ensure the system works for everyone and that parents have the support that they need. As I think my noble friend acknowledged, statutory guidance is the appropriate medium to outline best-practice examples of how local authorities and home-educating parents can engage positively to achieve the best outcome for the child, while also encouraging local authorities to maintain a consistent approach.

In addition, the registers will help local authorities and the Department for Education to identify where decisions to home educate are in response to failures by particular institutions, perhaps in relation to special educational needs provision or bullying, and where those issues are common or recurring. That would allow for targeted action to be taken to resolve the underlying issues and improve education provision overall.

I think that is also relevant as I turn to Amendments 76 and 79 from the noble Baroness, Lady Brinton, and the noble Lord, Lord Hunt of Kings Heath. I reassure noble Lords that local authorities are already legally required to take into account all relevant factors, including the views of the child or their parent, where known, when making decisions and are able to consult experts, such as a child's doctor or social worker, when they consider it appropriate to do so in the context of the individual case.

Similarly, on Amendment 84 from the noble Lord Storey, all local authorities should already have the in-house expertise to provide suitable support to children not in school. In most cases they will have an elective home education lead in place but if they do not, they can and should appoint a suitably qualified person.

As I have referred to previously, the new statutory guidance will set out clearly what factors local authorities should take into account when discharging their new support duty. This may include the types of experts it may be appropriate for local authorities to consult and factors they should consider when determining how best to respond to a request for support.

Turning to Amendments 77 and 78, we of course want home-educated children to be able to access exams like their counterparts in schools. For many home-educated children, finding an exam centre is not a problem. Candidates use private exam centres or approach schools and colleges to arrange to sit exams with them. A new database run by the Joint Council for Qualifications now enables candidates to locate the nearest centre available to sit their GCSE, AS or A-level exams. Where parents or children are not able to make their own arrangements, local authorities would already be able to provide support with this as a way of discharging their duty. However, the Government do not believe that setting out in law exactly how the support duty should be discharged, as proposed by my noble friend Lord Lucas, would be the best outcome for home-educated children. Decisions are best made locally, reflecting both what the parents want in terms of support and the local authority's assessment of the needs of the child and the wider needs of families in the area.

On the issue of cost, as my noble friend the Minister has said before, parents electing to home educate accept full responsibility for their child's education and its cost. Under the duty, local authorities will consider requests for different types of support, again taking into account individual and wider circumstances. Support with exam fees would already be a valid way of discharging the duty, and we could outline it as an example in the new statutory guidance depending on the outcome of the collaboration and the public consultation.

Lord Knight of Weymouth (Lab): I am grateful to the noble Baroness for giving way. If she has any kind of assessment of the cost of requiring local authorities to cover that cost for parents, it would be really useful to share that with noble Lords taking part in the debate.

Baroness Penn (Con): I am not sure whether that assessment has been made. If it has, I will be happy to share it. As we have said several times, there are at least two more stages to go on the guidance. One is a collaborative process to produce the draft guidance, and then a consultation process. There are plenty of opportunities as we go along to look at it—for example, whether exam costs would be included in the statutory guidance. I will find out whether we have that assessment and, if we do, I will share it.

I turn to Amendment 118 from my noble friend Lord Wei. As we have already discussed, several routes for complaint already exist for home-educating parents. But, as my noble friend said in response to the previous group, we have heard concerns raised by noble Lords about whether the different current routes of complaint are sufficient. We are also continuing to consider what more we can do to support home-educating parents and strengthen independent oversight of local authorities, such as exploring alternative routes of complaint.

Finally, I turn to Amendments 97ZZA to 100F from the noble Lord, Lord Hacking, which would remove Clauses 53 to 66 from the Bill. The overarching purpose of Clauses 53 to 56 is to improve the consistency of attendance support pupils and families receive to help pupils attend their school regularly. These clauses are an important part of the Government's overall approach to providing more consistent support for pupils and families in order to help children attend school before legal intervention is considered. Clauses 57 to 66 concern the regulation of independent educational institutions and help us to ensure that all children receive a safe and suitably broad education. Extending the registration requirement and improving investigatory powers will ensure that full-time settings serving children of compulsory school age are regulated. Other measures improve the regulatory regime for independent schools, including by creating a power to suspend the registration of a school because pupils are at risk of harm.

I heard the noble Lord's request for a meeting and my noble friend is very happy to do that because, as I think she has been at been at pains to stress throughout

[Baroness Penn]
the passage of the Bill, we want to make sure that we engage with a broad range of voices from the home-education community to be clear about what we are aiming to do with the Bill. It is not at all about reducing or interfering with the right to home education, but just ensuring that we have the proper processes in place to make sure that the best interests of all children are protected while doing so.

Lord Storey (LD): Before the Minister finishes, will she respond to Amendment 77 from my noble friend Lady Garden, about examination costs? Maybe she will have that in mind that when she meets these home educators, as it might be an issue to talk to them about.

Baroness Penn (Con): I believe I responded about examination costs. In fact, I had an intervention from the noble Lord, Lord Knight, on it. One of the things I said to him was that in the statutory guidance we are seeking to create, we will look at the support duty. We are looking to work collaboratively with local authorities and home educators to hear all those different views in order to help us co-create that guidance. Then we will also consult on it. We are keen to ensure that we hear those views as part of that process.

I hope that my noble friend Lord Lucas will feel able to withdraw his amendment and other noble Lords will not press theirs.

Lord Hacking (Lab): Before the Minister sits down, will she receive from me great gratitude for her willingness and that of her fellow Minister to see home schoolers, several of whom are in the House this evening, and those advising them? They have helped a lot and I hope they will help the Ministers a lot too.

Baroness Penn (Con): That is very much appreciated. I also pass on to my noble friend the Minister the thanks of the noble Baroness, Lady Jones, for engaging with home educators. I emphasise that we see that as a very important part of the process for the Bill.

Lord Lucas (Con): My Lords, I am glad to hear that the Government continue to give thought to the question of an independent appeal. The current system, where the first appeal goes to the local authority, is obviously right; you want to resolve as much as you can without going outside. But, beyond that, the idea that the Secretary of State provides a satisfactory route of appeal really does not stand up. First, there are far too many relationships between the Department for Education and local authorities to allow independence. Secondly, I believe I am right—although the Minister may contradict me if she wishes—that, in the entire history of this right of appeal, the Secretary of State has not granted any, but he has come down in favour of the local authority on every single occasion. That may or may not be true—as I say, I hope the Box will be able to confirm it when we return to this issue in two groups' time—but that there should be an independent appeal is important.

My noble friend Lord Wei's proposal for an ombudsman is one that should be considered, although there are others. One way or another, there should be a point where someone truly independent casts their eye over what the home educator is doing and how the local authority has handled it and says either, "Yes, come on: get into line," or "No, I can see here that the local authority has pushed things too far and ought to take a step or two back." That would make a big contribution to keeping the relationship straight between home educators and local authorities.

I think it was the noble Lord, Lord Storey—I apologise if it was not—who said earlier that this bit of the Bill meant that local authorities had to give support. I can see nothing that makes it compulsory. I hope we will get the Government to give this a budget so there is an indication that support ought to be given, but at the moment I do not believe there is anything compulsory about it.

My noble friend Lady Penn said local authorities could consult a doctor when they consider it appropriate. I think the right balance is that the home educators ought to be able to able to evince that evidence when they consider it appropriate too, and the local authority ought then to pay attention to it. From cases that I have seen, I rather doubt that that is the arrangement at the moment. However, as my noble friend asked, I beg leave to withdraw the amendment.

Amendment 74 withdrawn.

Amendments 75 to 79 not moved.

Amendment 80

Moved by ***Lord Hunt of Kings Heath***

80: Clause 49, page 46, line 5, after "may" insert "by regulations"

Member's explanatory statement

This amendment, together with the amendment in Clause 49, page 46, line 7, is aimed at ensuring that guidance given to local authorities in relation to school attendance under sections 436B and 436G of the Education Act 1996 must be subject to the affirmative regulation making process.

Lord Hunt of Kings Heath (Lab): My Lords, I also have Amendments 81 and 83 in this group. I am very pleased that the noble Lord, Lucas, is supporting Amendment 80 and my noble friend Lord Knight is supporting Amendments 80, 81 and 83. I have just been in the Procurement Bill debate in Grand Committee, so if I repeat points that have already been made then I apologise to noble Lords. These amendments are concerned with Part 3, the provisions in relation to school attendance and the duty to register children not in school. The Minister will know of the concerns; in fact she has just reflected in her wind-up speech on some of those that have been expressed by noble Lords.

My particular interest is the special needs of children being educated at home with special educational needs and mental health issues. It is fair to say that many parents already find that the current attendance policy and enforcement system can have a negative impact on mental health and well-being. They are concerned about the ramifications of the Bill: the register, the live attendance tracker, the tighter lacing of attendance enforcement and the fast track to fines and prosecutions.

It is clear that Ministers have listened to the debate, and I am very grateful for the amendments that have been tabled, which are aimed at providing assurance to families over the information to be prescribed, its intended use and what can be published, and to give Parliament increased scrutiny of the use of delegated powers concerning those matters. My three amendments encourage the Government to go a little further in terms of reassurance.

5.45 pm

My Amendment 79 would ensure that local authorities, in the case of a child or young person with special educational needs, must have regard to a number of matters that I set out in the amendment: first,

"the views, wishes and feelings of the child and his or her parent, or of the young person";

secondly,

"the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned";

thirdly,

"the information and support necessary to enable participation"

by the parents or child in those decisions; and, finally,

"the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes."

The amendment seeks to emphasise to local authorities that, in the duties they are given under this part, they should take into account the special circumstances particularly of young people with special educational needs and the reason why they may have been taken out of school for home education, which is often that they have felt that the school has failed to give those young people the support that they need. I know my noble friend is sympathetic to the issues here.

My other amendments relate to the guidance to be issued by the Secretary of State to local authorities in the exercise of their functions. Helpfully, the Minister has said that that guidance will be informed by working with local authorities, home educators and other stakeholders and will be subject to public consultation, which is very helpful, but special consideration needs to be given to children with special educational needs. I am proposing that, accompanying the guidance, there should be a code of practice clearly establishing how local authorities should take a holistic approach to school attendance issues, particularly embracing the mental health of the child affected.

I also think the guidance should not simply be Secretary of State guidance; it needs the backing of being introduced as a regulation through the affirmative process. It is right and proper that Parliament should at least have some kind of scrutiny, because the guidance will be so important to making these measures operate effectively.

At heart, what is needed—and I very much approach what Square Peg and Not Fine in School have said—is a compassion-based response from local authorities and schools that recognises that mental health is a legitimate reason for authorised absence in some cases. Many of these young people have very special needs. They may have a disability, chronic illness or medical needs or experience mental ill health.

I have spent most of my life in and around the health service, and we know that current mental health services for young people are, frankly, grossly inadequate. The long waits and the scandal of in-patient care hundreds of miles from home are indications of the issue that we face. I know the Government have put money in and are anxious to see improvements, but the fact is that on the ground helping young people to get access to mental health services can be very challenging. All I am asking is that in the guidance, and in the code that I am suggesting, there is a clear indication to local authorities that in those circumstances they have to be sympathetic to the needs of a child and their parents if they are receiving health treatment and there are issues about attendance. I beg to move.

Lord Lucas (Con): My Lords, I have Amendment 82 in this group, asking that local authorities give reasons when they choose to deviate from guidance. I hope this will be dealt with in guidance rather than in the Bill, but it is important that both local authorities and home educators come to regard the guidance as something to which they can resort for support. Therefore, when local authorities need to go outside the guidance, as they may, that should be clearly explained.

I very much support the amendments that the noble Lord, Lord Hunt of Kings Heath, has proposed, in particular Amendment 81. It is important that there is a strong set of guidance around attendance. This is a change of structure for local authorities. They are taking on much more of a responsibility that was formerly shared with schools. We will need them to reach deeper into the reasons for non-attendance and to deploy other strengths that local authorities have to deal with those reasons, going well beyond the usual educational provision. To have a set of guidance that enables them to do that well and to have ways of sharing good experience will be really helpful. In the next group we come to the punitive side of this. We really ought to be strong in making sure that as few families as possible get tipped into that, and guidance seems to be a clear part of that.

I have one question on government Amendment 99, which applies to regulations passed

"before the end of the session of Parliament in which the Schools Act 2022 is passed."

I wonder whether it should refer just to the first passing of the guidance. Given the extended timescale on this Bill and the consultations we hope to have, it may run beyond that. The Government are really saying that they do not want this to last for ever. It should cover the first issuing of regulations, whenever that may happen to occur, and we should not have to rush things just because we have this in the Bill. If it is passed next year, will it still be the Schools Act 2022 or will it be the Schools Act 2023?

Lord Addington (LD): My Lords, I support the thrust of these amendments. They follow on from my noble friend Lady Brinton's amendment on the fact that specialist guidance and help will be needed. The education sector is going into an area where it does not expect to have the expertise readily at hand. It may have to go and find it, and the parents are often the

[Lord Addington]
people who have done the finding. I hope that, when the Minister comes to answer, the Government will give us a little insight into how they expect to handle this process. We are talking about often very seldom-occurring incidents, which means that we cannot expect there to be group memory. These are incidents occurring not only infrequently but over long periods of time; certain combinations of events come through. Stress tends to trigger mental health incidents. If a child happens to have been failing at school, they and their parents will have more stress. It does not take a genius to take it to the next step. I hope the Minister will give us an idea of the Government's thinking and how they are proposing to address these very real concerns.

Lord Wei (Con): My Lords, I will speak to Amendment 119, and am generally supportive of a lot of the other amendments relating to mental health. Amendment 119 is conceived as a means to cut through what I believe will be quite a lot of court cases and judicial reviews. As we have discussed on this grouping, there will be instances in which local authorities make a judgment about home education, whether in the case of mental health or involving families with a particular faith or philosophy around education. My concern is that, even if the Government in their own impact report feel that they have satisfied all human rights obligations—bear in mind that concerns are raised in that report that Articles 8 and 9 will be intruded or infringed upon to some degree—how can we be so sure that the local official in the local authority has the expertise to make a judgment? In some cases, given the context or circumstances, they may go beyond what is right in terms of human rights. This may lead in turn to many judicial reviews. I believe that in the home education community there are already attempts to start raising the funds for such action. That will be costly for all concerned. It may delay for many years the implementation of what the Government are trying to do here, so I ask the Minister to look at this whole area.

A lot hinges on the composition of this consultation committee, review committee or implementation committee. In the interests of transparency, I would love to know the criteria for inviting those to join such a group and to have reassurance as to whether they will be preselected to be favourable towards the Government's current views or will be genuinely independent members with genuine expertise in some of the really sensitive matters that will be dealt with as the Government seek to implement this.

I can tell from the House's view that, from my point of view, this part of this campaign must come to an end. I will not seek to divide the House any further today, but I know that there will be many discussions in my party over the summer, whoever the two candidates for the Conservative Party leadership are. With all due respect, I believe this is not a Conservative Bill. Our party is about many things but really it is about letting people get on with their lives, and many aspects of the Bill currently do not make me feel that it is following that principle. I think many home educators will write to their MPs and come along to various hustings around the country to make that view known to those candidates. We should probably ask them what they think of this Bill so that we can get an early view as to what will happen to it in the autumn.

I would be pleased to know more from my noble friend the Minister how the guidance provided will be consulted on, including with those of us who have spoken in this debate. Clearly, a lot hinges and rides on that.

I will stop there, but I think my noble friend the Minister and the Government have heard strongly the views of many in this Chamber, including those such as me who do not believe the Bill is a great idea. It is now up to them to see if they can get it through the Commons and into statute and, in so doing, make sure they look after the welfare—as I believe they claim to do—of home educators up and down this country.

Baroness Chapman of Darlington (Lab): I will not speak to the Tory leadership election.

We support the approach suggested in many of the amendments in this group. To pluck one out of the air at random, Amendment 81 tabled by my noble friends Lord Hunt and Lord Knight, suggesting a code of practice—which is really just another way of sharing best practice—is a positive suggestion. We recognise completely that poor attendance can be a symptom of a much deeper problem and that schools often take a holistic approach already. The amendment suggests that families and organisations with experience of overcoming barriers to attendance be included in the Government's thinking. It is a very good idea and seems to be the right approach. Even if we do not divide the House on this today, it is a good suggestion for the Government to consider this code of practice further.

Baroness Penn (Con): I thank the noble Lord, Lord Hunt of Kings Heath, for hotfooting it over here from the Grand Committee. I also thank him and my noble friend Lord Lucas for their Amendments 80, 82 and 83, which I will speak to together.

I mentioned earlier that the Government are already seeking the power for the Secretary of State to give local authorities in England statutory guidance that they must have regard to. Local authorities will not be able to diverge from it unless there is a coherent reason to do so.

6 pm

It is expected that the statutory guidance will be used to set out operational and day-to-day processes for how local authorities should implement their new duties under new Sections 436B to 436G. There is a risk that placing this level of detailed guidance in legislation could result in guidance for local authorities becoming more rigid and less able to be adjusted to better support operational need. For example, we intend to outline in the guidance how local authorities should work with home educating families, but it may be that there are circumstances where a local authority needs to diverge from these guidelines, such as where a home educating family expresses particular preferences on how they should be engaged with based on their specific circumstances. We think that level of flexibility

is important, but I assure noble Lords that if the department received reports that local authorities were not following the guidance, that would be followed up as a matter of urgency.

As mentioned, the guidance will be developed in close collaboration with local authorities, home educators and safeguarding partners. I reassure my noble friend Lord Wei that we will ensure that we engage a wide range of people in that process. We think that is the appropriate level of scrutiny, given the likely operational and technical nature of the content.

I thank the noble Lord, Lord Hunt, for Amendment 81. The department has recently published new attendance guidance, *Working Together to Improve School Attendance*, which we will make statutory through this Bill. This guidance is clear that local authorities and schools should work together, and with pupils and families, to understand the barriers to attendance and to put measures in place to support regular attendance. As the noble Baroness, Lady Chapman, said, there is already really good practice in schools, taking a holistic look at this. To elaborate slightly further, under the new guidance schools are expected to support pupils with health conditions by developing a whole-school culture that promotes the benefits of attendance. While recognising the interplay between wider school strategies on health and well-being, schools are also expected to have sensitive conversations with pupils and families with health conditions. These conversations should avoid stigmatising pupils and parents and instead work with them to understand how they feel and what they think would help improve their attendance.

Additionally, schools are expected to ensure that pastoral care is in place for pupils who need it and refer pupils to support from other services and partners, such as the local authority and health services, in a timely manner. We heard from the noble Lord about the availability of those wider support services. We have discussed previously the need to improve the availability of those, and steps are under way to do so. We acknowledge that there is much more to do in that space.

The guidance also sets out that, for local authorities, this means working with schools to identify pupils with barriers to attendance at an earlier stage, putting in place appropriate supportive interventions in collaboration with other services and partners, including mental health services. I hope that gives noble Lords some reassurance.

On Amendment 119 from my noble friend Lord Wei on the human rights implications of the children not in school measures, I reassure him that a full and thorough assessment on the compatibility of the measures in the Bill with the European Convention on Human Rights has been undertaken and published by the Government. This assessment was considered by the Joint Committee on Human Rights, which did not raise any concerns about the Bill's compatibility with the convention. Parliamentary process already affords adequate opportunity for scrutiny, and it is right that scrutiny on whether the provisions strike the right balance of individual rights takes place here in Parliament before the Bill receives Royal Assent rather than afterwards, as this amendment seeks to achieve.

On the question about Royal Assent, we understand that if the Bill ends up not getting Royal Assent until 2023 then references to the "Schools Act 2022" will automatically be updated to the "Schools Act 2023". I will double check that that is the case, but I am sure that, if any tidying up needs to take place, we will do so. My noble friend is right that the intention of the government amendments, which I am about to come to, is to have that procedure in place for the first set of these regulations.

I move on to those amendments and the importance of scrutiny, which is a common thread through all the government amendments. I and my noble friend Lady Barran have listened to concerns, and I hope that through Amendment 86, in the name of my noble friend, I can offer some reassurance that Parliament will be afforded ample opportunity to scrutinise the regulations to be made in relation to the registers ahead of their implementation. This amendment would ensure that the regulations prescribing information to be recorded, how registers are maintained and what information is shared with the Secretary of State are subject to the affirmative procedure the first time they are made, and the regulations prescribing those with whom information can be shared subject to the affirmative procedure each time. This will provide for greater parliamentary scrutiny at the points at which there will be the most impact, while avoiding disproportionate checks and balances on technical details that could, in turn, delay or disrupt the running of the registers.

Amendments 98 and 99, in the name of my noble friend, make corrections to Clause 60. Amendment 99 would permit the Secretary of State to apply legislation that was made before or in the same Session as the Schools Act 2022—or 2023—rather than, as in the clause as currently drafted, before or in the same Session as the Education and Skills Act 2008. This supports the Government's objective of ensuring that all children receive a safe and suitable education by ensuring that independent educational institutions can be brought fully into the purview of other legislation which applies to independent schools in England.

With that, I ask that the noble Lord, Lord Hunt, withdraw his amendment and that other noble Lords do not to move theirs.

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the noble Baroness. The noble Lord, Lord Lucas, has been in this House even longer than I have, and it is amazing what we have learned today about what happens to the date on a Bill—though 2023 maybe optimistic, who knows?

The noble Baroness has reflected on the importance of the guidance to be given to local authorities to approach this new role in a sensitive way. I support the general principles here. Whatever our views, that brings us together, because it will be essential that local authorities do the job properly, and they need support to do so. The statutory guidance and consultation she referred to are very welcome indeed.

Then noble Baroness felt that my suggestion that the guidance should be brought in through a regulation would be rigid. However, in our debates, today and previously, we have recognised the importance of this guidance. It is in some ways as important as what is set

[Lord Hunt of Kings Heath]
out in statute. I would have thought at least on the first occasion, when the guidance is brought in, it should have the benefit of parliamentary scrutiny. I think it is something we ought to come back to on Report. If she accepted my code of practice, that would be a way of getting the flexibility that I understand she needs, alongside statutory provisions. It has been a very useful and constructive debate,

Baroness Penn (Con): Just briefly, I should make it clear to the noble Lord that we are at Report stage and I do not think we will be returning with amendments from the Government at Third Reading.

Lord Hunt of Kings Heath (Lab): The noble Baroness almost tempts me to push this to a vote, but I would not be allowed to. I have come straight from Committee to Report—I apologise. I beg leave to withdraw my amendment.

Amendment 80 withdrawn.

Amendments 81 to 85A not moved.

Amendment 86

Moved by ***Baroness Barran***

86: Clause 49, page 46, line 8, leave out subsection (3) and insert—(3)"(3) In section 569(2A) (regulations subject to affirmative procedure), for "regulations under section 550ZA(3)(f) or 550ZC(7) may" substitute "—(a)(a) the first regulations under(a), (a) or (a), 436C(1)(c)(1A)(3)(b)(b) the first regulations under(b), section 436F(1)(c)(c) regulations under section(c), 436F(2)(d)(d) regulations under section 550ZA(3)(f), or(e)(e) regulations under section 550ZC(7), may.

"(3) In section 569(2A) (regulations subject to affirmative procedure), for "regulations under section 550ZA(3)(f) or 550ZC(7) may" substitute "—

(a) the first regulations under 436C(1)(c), (1A) or (3),

(b) the first regulations under section 436F(1),

(c) regulations under section 436F(2),

(d) regulations under section 550ZA(3)(f), or

(e) regulations under section 550ZC(7),

may"."

Member's explanatory statement

This amendment would make the first regulations made under section 436C(1)(c), (1A) (as inserted by the amendment in Baroness Barran's name at clause 49, page 42, line 30) and (3), the first regulations made under section 436F(1) and any regulations under section 436F(2) subject to the affirmative rather than the negative procedure.

Amendment 86 agreed.

Amendments 86A and 86B not moved.

Clause 50: School attendance orders

Amendment 87

Moved by ***Lord Lucas***

87: Clause 50, page 48, line 39, leave out from beginning to end of line 1 on page 49 and insert "has repeatedly and without good reason failed to provide the information or substantially all of the information despite clear evidence that they have received the requests."

Member's explanatory statement

This amendment is to reserve penalties under this Clause for substantial misbehaviour.

Lord Lucas (Con): My Lords, in moving this amendment I will also speak to my other amendments in this group. This group is looking at the stage of the process at which penalties start to come in. I feel that the wording of the Bill is at the moment far too hair-trigger. The words that Amendment 87 seeks to replace mean that a local authority must tip a home-educating parent, or a parent, into the school attendance order process if they have failed to provide any scintilla of information. That could be anything; it could just be that they have spelt something wrong or have not got the date right, or whatever, and does not seem appropriate.

I am not sure that the Government will find my wording appropriate either, but we ought to look to soften this to make it clear that for these hard-pressed parents, an ordinary error of forgetfulness or a failure which does not find its roots in opposition or deliberate obfuscation should not be punished immediately. It should be something the local authority should seek to engage with.

I came across one example where the local authority had been corresponding with a good home-educating parent and had decided that it really wanted to see examples of the child's work. It is one of those arguable questions you come across as to whether the experts' report that had been provided should have been sufficient. It did not then e-mail the parent to say, "If you continue in this, we will tip you into school attendance orders". It wrote by snail mail, to an address which was wrong, and made no other reference to it until six months later when the school attendance order appeared. There needs to be a much more active relationship and there should not be things in the Bill which make a lazy relationship between the local authority and parents acceptable. The local authority ought to be working with the parent to get things right.

Amendment 88 seeks to restore the current timescale of 15 days, rather than the 10 days in the Bill. This is the crucial step; it is the point when things get serious. Parents ought to be given a reasonable length of time and 15 days is what is accepted. The Government have argued us out of all sorts of other extensions of timescales, but this one is crucial.

Amendments 90 and 92 come back to the subject of a tribunal, which we have covered. It is really important that the Government do something. I am with the noble Baroness, Lady Brinton, on Amendment 95 in wanting to reduce the maximum prison sentence to three months.

In Amendment 97, I am urging the Government to provide proper funding to local authorities as they take on these additional duties on school attendance. Particularly post Covid, this is clearly a complicated problem with its roots in all sorts of aspects of society. Local authorities ought to be properly supported to get it right and become really effective at helping children to get into school.

I also look forward to the noble Lord, Lord Storey, speaking to Amendment 100. He has put his finger on a really serious thing there.

My Amendment 110 suggests that Ofsted should be able to inspect local authorities on their performance with elective home education and absence. I do not

want all these things we have suggested to come into force—it would just be ridiculous to have everything—but we need some structure for oversight of local authorities, so that they feel motivated to improve. Ofsted might be one of the options, so I hope that the Government will keep that under consideration.

I look forward to what other people will have to say on this group and beg to move my Amendment 87.

6.15 pm

The Deputy Speaker (The Earl of Kinnoull) (CB): My Lords, the noble Baroness, Lady Brinton, is participating remotely and I invite her to speak now.

Baroness Brinton (LD) [V]: My Lords, I declare my interest as a vice-president of the Local Government Association and it is a pleasure to follow the noble Lord, Lord Lucas. He talked about hair-trigger actions for the school attendance order process. He is right that we need clarity and common sense, an active relationship with parents and a way of holding local authorities to account where things have gone wrong.

Amendments 89, 95 and 96 in this group are in my name. Amendments 89 and 96 echo my amendment in the first group, which my noble friend Lord Storey spoke to. Many Peers have reported specific cases where, despite the Minister saying that this is meant to be about schools and local authorities working together with parents, that is just not happening in practice. Parents are definitely made to feel that they are always in the wrong, so I thank my noble friends Lord Storey and Lord Addington, and the noble Lord, Lord Lucas, and others, for their comments in that group that despite some schools and LAs having very good practice, unfortunately there are some which do not.

Noble Lords know that I have focused on pupils with medical conditions because some of the most concerning incidents relate to schools and local authorities making decisions that fly in the face of the pupil's doctor. It should not be possible for education people to countermand expert advice. There are other categories, too: a looked-after child, a young carer or even a young offender may all have—in the eyes of the expert, such as their social worker or youth offending officer—a good reason why they should not be in school. Schools should not be able to countermand that.

Other noble Lords have given examples of some of that poor practice, and I cite one example I have heard about: of a paediatric oncology specialist telling a school with cases of an infectious disease—that could be Covid but could also be measles—that a pupil with cancer on strong chemotherapy should not be in school as they were severely immunosuppressed and that if this pupil caught the infectious disease, there was a high risk that it would be fatal. At present, the guidance says that there must be a partnership between parents, schools and health professionals in determining the best route forward. Unfortunately, the school can still choose to ignore that advice.

I thank the Minister for saying on the first day of Report that a headteacher disregarding specific advice would be acting unreasonably and would therefore be in breach of their duty. The problem is that no one knows that—certainly not headteachers or health professionals, and especially not parents or the pupils themselves. I am afraid that the same is true for some local authorities too, which is why these amendments are laid, to ensure that a poor process that starts in a school does not just continue on a conveyor belt. I repeat the point I made at earlier stages of the Bill: the current arrangements do not work. If we especially want to protect children with medical conditions and ensure that they have the same experience as other children, frankly, the arrangements need to be more explicit.

Amendment 95 is a probing amendment about parents who have repeatedly failed to comply with school attendance orders and not paid fines, and who can now—under the Bill—be sentenced to a prison term of up to 51 weeks. The previous maximum level was three months; that is a very large difference and, if used, is likely to lead to the local authority having to provide foster carers or, even more drastically, putting the children in care if a parent or both parents were imprisoned for 51 weeks. Surely, that is the exact opposite of what should be happening. The whole point of this part of the Bill is to encourage children into the stability of education and learning, in which their parents should have a role, and if things have gone wrong then this is a step too far.

I am grateful to the Minister for the meeting last week at which, in light of the debate we had in Committee, we discussed this. She also said in a letter that there was no intention ever to use 51 weeks and that it was a technical provision, solely because that would be the maximum sentence a magistrates' court can give. This seems extremely strange to me, and slightly worrying. It is wonderful that the current Government say that they would never use it, but what of a future Government? I look forward to hearing the Minister confirm at the Dispatch Box exactly what she said in her letter, so that, should the 51-week term be used, the ministerial intentions when the Bill went through your Lordships' House could be prayed in aid.

Above all, we need clarity. We need to ensure that this part of the Bill does not act solely as a form of prosecution. Surely, all the good intentions regarding parents who wish to educate their children at home should be understood. Schools and local authorities should really understand when there are genuine reasons why a child may not be in school.

Lord Hunt of Kings Heath (Lab): My Lords, I am going to speak to Amendment 97ZA, in the name of the noble Baroness, Lady Hollins. Unfortunately, because of today's conditions, she is not able to travel to your Lordships' House.

If the noble Baroness were here, I think she would first say that a lot of progress has been made in how we support those with learning disabilities and autistic people in the last parliamentary Session. The Health and Care Act saw the introduction of mandatory training for all health and social care staff to ensure they are better able to work with people who can otherwise struggle to find a voice within the complex system designed to support them. She would also refer to the Down Syndrome Act, which acknowledges the gaps between the intent of existing legislation such as

[Lord Hunt of Kings Heath]
the Equality Act and the Care Act and its implementation in practice. That is a rationale which underpins the amendment I have signed.

We know that many autistic people and those with learning disabilities can have complex needs across the breadth of the public sector and experience so many barriers to accessing support. What happens in childhood can determine their lifelong trajectory, whether this be in a positive or negative way. For example, for some children and young people this may be the beginning of a downward spiral of school exclusions and admissions to mental health facilities. That is how the journey to long-term segregation in an ATU begins—journeys that the Department of Health and Social Care's oversight panel chaired by the noble Baroness, Lady Hollins, is currently trying to reverse.

Clause 54, "School attendance policies", gives little regard to the way that neurodiversity and chronic health conditions can affect a young person's development and how their educational needs may differ from their peers. This is important because people with learning disabilities and autistic people have higher rates of physical health and mental health comorbidities. This is particularly so for autistic children in mainstream schools.

I am very grateful that the noble Baroness, Lady Barran, wrote to Peers following Second Reading to try to address the concerns of the noble Baroness, Lady McIntosh of Hudnall, that the attendance clauses in the Bill would penalise pupils with SEND and those with autism. In the letter she said:

> "We are clear that schools should authorise absence due to both physical and mental illness. Schools should only request parents to provide medical evidence to support absence where they have genuine and reasonable doubt about the authenticity of the illness. We are also clear that schools pressuring a parent to remove their child from the school is a form of off-rolling, which is never acceptable."

That was very welcome indeed, but as she knows, the words of Ministers do not always turn out to be adopted in practice everywhere throughout the school system.

The importance of this is in the statistics. In 2022, her department stated that persistent absence—defined as missing over 10% of available sessions—involved 12.1% of students; hence the legitimate concern about this, which I understand. However, the rate is nearly three times higher among autistic pupils, at over 30%. Exclusions of autistic children have more than doubled from 2,282 in 2010 to over 5,000 in 2020. There is a big question here: why is it so much higher?

In 2020, Totsika et al published what I think is the only peer-reviewed study into school non-attendance for autistic students in the UK. They found that non-attendance occurred in 43% of their sample of just under 500 students and that autistic children miss 22% of school. Some 32% of absences were attributable to illness and medical appointments, and:

> "Truancy was almost non-existent."

This study found that going to a mainstream school, as opposed to a specialist school, increased the chances of missing school by nearly 100%.

Autistic people experience higher rates of physical and mental health difficulties compared to their neurotypical peers. Anxiety is a predictor of school non-attendance for all children, but we also know that anxiety is more common in autistic children, with approximately 40% having a clinical diagnosis of an anxiety disorder and another 40% experiencing subclinical anxiety symptoms.

The DfE has guidelines around managing non-attendance and support for students with SEND or medical conditions. This includes a duty to ensure suitable education, including alternative provisions or reasonable adjustments and that the local council should

> "make sure your child is not without access to education for more than 15 school days".

However, we know from experience with the Autism Act 2009 and the Down Syndrome Act that, just because it is written in guidance, it does not mean it happens in practice.

The noble Baroness, Lady Hollins, shared with me the example of one parent who wrote:

> "My local authority has not accepted medical evidence that my daughter can't attend school due to severe anxiety... Now we won't get tuition help and all her further absences will be unauthorised!"

This is despite supporting evidence by a chartered psychologist. She goes on to say:

> "Imagine forcing someone with a physical illness to come to school when a doctor says they can't?"

Another parent has written to us saying that

> "Fining parents for school absence due to school-based anxiety is … counterproductive".

The amendment tabled by the noble Baroness, Lady Hollins, is based not on a few cases but many. It seeks to confirm the Government's commitment to ensuring that SEND students are not disproportionately penalised by the Bill. There is a duty to implement existing guidance in day-to-day practice. I hope the Government will be sympathetic to the intent of the noble Baroness's amendment.

Lord Shipley (LD): My Lords, I would like to speak briefly to Amendment 91, in my name in this group, which aims to clarify the provisions on school attendance orders to ensure that they should only be issued when, in the opinion of the local authority, this course of action is in the best interest of the child in addition to being expedient.

The Minister may remember that we debated this in Committee. The Bill says clearly that school attendance orders can be issued where "it is expedient" to do so. I had an amendment which said that it should be in the best interests of the child, not that it could be "expedient" to issue a school attendance order. In reply, the Minister said that the word "expedient" was in the 1996 Act anyway and that the test would be the same.

For avoidance of doubt on this matter and to have a clear record, it seems that the best way to proceed is to take my amendment, in which I have not deleted the word "expedient" but have added that it is

> "in the best interest of the child"

to have a school attendance order. The benefit would be much greater clarity, and I hope the Minister can agree to my suggestion.

Lord Storey (LD): My Lords, I rise to speak to Amendment 100, in my name and the name of my noble friend Lord Shipley. I hoped that we could have spent the same amount of time talking about the most disadvantaged children in our society as we have on home education. These are young people, mainly with special educational needs, from the most deprived communities and from ethnic minorities, who are permanently excluded from school. What we do with some of these children reminds me of Victorian education, to be honest.

6.30 pm

If they are lucky, they are put into a pupil referral unit attached to the school, and that is where you get some very high standards. If they are unlucky, they go into an unregistered provider. The horror stories of those unregistered providers are not worth considering, because we as a society would be ashamed of what we were doing to these young people. It is an educational disgrace. I declare an interest as a vice-president of the Local Government Association. I cannot understand why local government is putting these vulnerable children into unregistered provision. This amendment seeks to prevent that.

Having said that, some very good practice goes on, and we need to learn from that. Liverpool Hope University has a wonderful scheme for these young people, working with schools in the Everton area, and there are other examples up and down the country of very good practice. I hope that the Government will give an undertaking to learn from this good practice and ensure that every young person is in that position.

When all these home educators attend the Conservative hustings to choose the leader, what a pity they will not be joined by all the parents of those in alternative provision to try to ensure that changes are made.

I want to briefly comment on some of the other amendments in this group, because they are equally important, particularly Amendment 91 from my noble friend Lord Shipley, Amendment 95 from my noble friend Lady Brinton, Amendment 96 from my noble friend Lord Addington, and Amendment 97ZA from the noble Lord, Lord Hunt. These all, in some ways, look to make school attendance orders more workable and more acceptable for particular groups of children in particular circumstances.

I want to make the point that the most important thing for a child is to attend school, because every day they miss is a day less of education. The way we ensure that children are in school is by the school taking a register so that we know children are in school or we know why they are not. But a very small minority of parents do not comply, for whatever reason. Often it is because they need help and support as well; they are often in the most deprived communities. We need some mechanism to make them realise that attending school is very important, and if we do not have attendance orders, there is precious little else we can do. I do not want us to think that attendance orders are something we should disparage. They are something we should support. But quite rightly the movers of these various amendments are looking at ways that we can make them more effective and more compatible with individual circumstances.

I take the point about knowing about medical conditions—this amendment is hugely important—and whether a child needs to be supported in school. If we do not do that, again, it creates a circle in which the child might suffer, which we do not want to see.

I hope the Minister will reply supportively to my Amendment 100, and also take on board some of these very important amendments to make school attendance orders reflective of the situation that people find themselves in.

Lord Mendelsohn (Lab): My Lords, I will speak to Amendments 97A, 118J and 118K.

We have to remind ourselves that the issue of unregistered school settings and the claim that some people are home schooling in order to send children to such settings is a problem that we have long had. Many people here will remember that Section 96 of the Education and Skills Act 2008 was established specifically to make sure that such settings were deemed unlawful. Unfortunately, we found that the law was so difficult to enforce that we have had a massive increase in the number of unregistered school settings, creating much more of the problem that we have had to deal with. Indeed, there have been only three prosecutions, and the first one took 10 years to take place. The number of schools that have been reported to Ofsted exceeds, I believe, a thousand. Hundreds have been identified by Ofsted but have been very difficult to deal with. Enforcement has been so poor that many schools deregistered to unregistered schools to avoid any form of regulation because they felt that they could operate in that way.

The position has been very clear. Departmental advice for collaborative working between the Department for Education, Ofsted and local authorities in March 2018 stated:

> "Over recent times, we have seen a rise in the number of institutions operating outside the regulatory regime as unregistered independent schools; this involves a criminal offence and conduct that may be putting children at risk of harm, denying them a suitable education, and limiting their life chances. Tackling unregistered independent schools is a priority—and one that involves joint working and collaboration."

Unfortunately, even in those times it was very clear that the provisions available to Ofsted, local authorities and the Government were very weak. That is why these measures in the Bill have been so warmly welcomed.

However, there are issues on which I am still trying to probe the Government and encourage them to think of creative ways in which to draft measures. It would be a tragedy that, 15 years after we thought we had solved a problem that had existed for decades beforehand, we were in the same position, in that the provisions were insufficiently flexible and strong to make sure that the law is properly enforced and that that which is meant to be outlawed is so done; and that if it were seen to be unable to be enforced effectively, we would have to wait another 15 years in order to do that.

Amendment 97A tries to deal with those who are enablers of the use of unregistered educational settings and who do not take a formal role in the structure of that educational setting. Such people may provide a facility or other forms of support, be that a location or funding that goes towards individuals who are providing

[Lord Mendelsohn]
these skills, but they structure it in a way that does not make them culpable in any way as an educational institution. I believe that the Government are missing a trick if they do not deal with those people who help these things continue.

Amendment 118J seeks to give Ofsted a more general, anti-avoidance power. This would allow it to join the dots in situations where its intelligence and information, in matters raised by a parent or parents in this situation, make it clear that it can take a broader view of how these institutions may well be operating or trying to operate once their structure has been changed to try to find loopholes in the law.

Lastly, Amendment 118K would establish a process to review the Act and its operation and to encourage reporting to the House, particularly on this measure—I suspect there may well be a clumsy error in the drafting, for which I apologise in advance. The intent is to try to focus on this area so that the expertise and views of local authorities and others involved in education, especially Ofsted, can be collated by the department so that we can review whether or not these measures are being successfully enforced and we are achieving the outcomes that we so desperately want for the safeguarding of children.

Obviously, I will not push these amendments to a vote. They are there to try to encourage the Government to think again as the Bill goes through its passage in another place on how additional measures could be introduced to make sure that we make this the final time we have to legislate on these issues.

Baroness Wilcox of Newport (Lab): The amendments in this group have attendance at their core, and nothing is more important. In addition to being directly related to physical health, the attendance of learners in school is affected by well-being and mental health, and by attitudes towards learning and schooling. My noble friend Lord Hunt and the noble Lord, Lord Storey, made some important points regarding children with medical conditions. The interrelationship between attendance and general well-being is considered so strong that attendance has often been taken as a measure for well-being in previous data collection. We know that attendance has a strong impact on learner outcomes, standards and progression. I can tell you from first-hand experience that examination outcomes strongly correlate to attendance rates.

Amendments 118J and 118K, proposed by my noble friend Lord Mendelsohn, seek to deal with the current gaps in legislation, addressing important issues surrounding attendance and its promotion by educational institutions, and would require a review of any avoidance of the legislation as it develops, which we support.

Baroness Barran (Con): My Lords, the fourth group of amendments relates to school attendance orders and independent educational institutions. I thank my noble friend Lord Lucas and the noble Baroness, Lady Brinton, for Amendments 87 and 89. However, we are concerned that these could work directly against the child's best interests by increasing the time that a child could spend in potentially unsuitable education. We do not regard the issuing of a preliminary notice as an extreme penalty that warrants such justifications for issuance. We believe that a local authority should be able and required to take steps to determine the suitability of education being provided where there has been insufficient or inaccurate information given.

The local authority is already legally required to consider all relevant factors in determining whether it is expedient for a child to attend school, including whether it is in the child's best interests. I hope that reassures the noble Lord, Lord Shipley, who tabled Amendment 91. To reiterate, "expedient" in this context means that it must be

"advantageous; fit, proper, or suitable to the circumstances of the case"

for the child to attend school. Of course, as the noble Baroness, Lady Wilcox, said, it will almost always be in the child's best interests to attend school if they are not receiving suitable education, but there may be cases in which it could be argued that another solution would be better for the child—for example, if the child is physically or mentally too unwell to attend school.

On Amendment 96, tabled by the noble Baroness, Lady Brinton, we have been clear through our recently published school attendance guidance that local authorities are expected to work closely with other services and partners, such as health services. Paragraph 79 of the guidance—I am worried that the noble Baroness is at home saying to her screen, "But who gets to paragraph 79?", but I know that she will get to it—says that local authorities are expected to

"Build strong relationships with a range of services and partners that can help with specific barriers to attendance and how to access them."

It then lists services that local authorities are expected to work with, which include health, children's social care and youth justice services, to which the noble Baroness referred. I know she is concerned about what happens in cases where the guidance is not followed, and I am happy to write to her to set out our response to those situations in more detail.

As already mentioned, government Amendments 71 and 72 would prevent the school attendance order process being triggered where parents simply do not know the information required.

With regard to Amendment 88, tabled by my noble friend Lord Lucas, I must reiterate the importance of local authorities remedying the situation for any child who is not receiving a suitable education, in the shortest time possible. The introduction and reduction of timeframes in the school attendance order process will help achieve this. However, I remind the House that, as my noble friend mentioned in earlier debates, even with the timeframes set out in the Bill, a child could still potentially be without suitable education for a period of at least 51 days, without extending this any further.

6.45 pm

In relation to Amendment 90, in the names of my noble friend Lord Lucas and the right reverend Prelate the Bishop of St Albans, and Amendment 92 in the name of my noble friend Lord Lucas, the preliminary notice provides parents with the opportunity to evidence that their child is in receipt of a suitable education.

Where they have the evidence, they should provide it to the local authority. If parents could appeal to the First-tier Tribunal at this stage, they would still need to provide evidence that their child is in receipt of a suitable education to enable the tribunal to come to a view. This would result in duplication or additional burdens.

There are existing options for parents who want to challenge a school attendance order, and we will outline them in our updated guidance for parents, and make them clear in the new statutory guidance for local authorities, including that they should follow the recommendations of the Local Government Ombudsman. As I mentioned earlier, we are also exploring how we might further strengthen independent oversight of local authorities.

On Amendment 95, I want to reassure the noble Baroness, Lady Brinton, that the reference to a maximum custodial penalty of 51 weeks is standard drafting practice. Where the Bill refers to a maximum custodial penalty of 51 weeks, this will be read as three months' imprisonment until the commencement of Section 281 of the Criminal Justice Act 2003, for which there are no present plans—obviously, I cannot speak for future Governments. This aligns the offence with that of knowingly allowing a school pupil to fail to attend school.

On Amendments 93A, 95A and 95B, tabled by the noble Baroness, Lady Jones, I hope that the government amendments and the points raised today sufficiently address her concerns regarding Clauses 50, 51 and 52.

I again thank my noble friend Lord Lucas for Amendment 97. In developing the new local authority responsibilities on attendance we published a full new burdens assessment, and we expect the running costs of attendance services to remain affordable within existing budgets. The Secretary of State intends to remove the current restriction on the use of money collected through penalty notices to ensure that it can be used for better support to remove the underlying barriers to attendance. We developed local authority obligations under Clause 53 in collaboration with local authority stakeholders, and 94% of local authority staff supported the measures when publicly consulted on them.

In response to Amendment 97ZA, tabled by the noble Lord, Lord Hunt, and the noble Baroness, Lady Hollins—I thank her for contacting me today about the amendment—schools are already required to record an absence as authorised where pupils cannot attend school due to sickness, both physical and mental health-related. The department's *Working Together to Improve School Attendance* guidance, which the Bill would make statutory, sets out that medical evidence should be requested before recording an absence as authorised only when a school has a genuine and reasonable doubt, as the noble Lord quoted, about the authenticity of the illness.

The noble Lord made powerful points—as would have the noble Baroness, had she been here—particularly in relation in children with autism. The Government are committed to continuing to work to support those children to receive a suitable education, ideally within either mainstream or special schools. Like the noble Lord, I am sure, I have been to visit special schools dedicated to supporting children with autism and know that they are remarkable places. I pay tribute to the staff working in them.

I turn to Amendment 100 in the name of the noble Lord, Lord Storey. The alternative provision statutory guidance is clear that local authorities should not commission alternative provision in settings that meet the criteria of an independent school, but have failed to register, as that is clearly a criminal offence. But I think the point he makes is a wider one.

Lord Storey (LD): That is the statutory guidance, but what is the Minister's department doing in relation to those many local authorities which take no notice?

Baroness Barran (Con): That was in relation to illegal settings, and we hope that is straightforward. Alternative provision education is delivered in other settings—as the noble Lord has rightly drawn attention to—which do not receive state funding, are not required to register as an independent school, and do not meet, currently, the requirements for registration. The noble Lord is aware, I think, that in the special educational needs and disabilities and alternative provision Green Paper, we made a commitment to strengthening protections for children and young people in unregistered alternative provision settings, so that every placement is safe, offers good-quality education and has clear oversight. If I understand correctly, that is exactly what the noble Lord also aspires to.

I am pleased to report that on 11 July the department issued a call for evidence on the use of unregistered alternative provision settings. Again, I place on record my thanks to the noble Lord for his insistence and persistence on this very important issue, which is important, as he pointed out, for children whose parents may not have the confidence to challenge the system. The information collected will help us find the right solution that addresses these concerns effectively and proportionately.

I thank the noble Lord, Lord Mendelsohn, for his Amendments 97A, 118J and 118K, and for the very constructive way that we have been able to work together. I hope we can continue to work together to address the points that he has raised. We have worked with Ofsted to develop the package of measures to investigate illegal schools, to ensure that we can take effective action against unlawful behaviour. Since Ofsted started investigating unregistered schools in 2016, we have gained a much better understanding of how to tackle this sector. There have been six successful prosecutions. The number of cases investigated reflects an increase in efforts to investigate. The actual number of unregistered schools, as the noble Lord knows, is unknown, sadly, but the measures in this Bill have been developed—working together with Ofsted—to address the key issues in the sector, which the noble Lord has rightly drawn attention to.

We believe that Amendment 97A is not necessary as we can already prosecute companies and charities which are operating schools unlawfully. We already inform the Charity Commission when charities are prosecuted. Education and childcare behaviour orders will allow courts to prevent individuals from continuing

[Baroness Barran]
to operate from buildings that have been used for illegal schools. When we were developing the measures, we also looked at whether it would be appropriate to create measures which would allow action against landlords, in the way that the noble Lord's amendment has set out. This is a very complex area, and we concluded that education and childcare behaviour orders, which could prevent those convicted of an offence from continuing to operate from a given site, were the more appropriate mechanism.

Amendment 118J replicates powers that Ofsted already has. Genuine part-time settings are not under a statutory obligation to register, so would not be caught by the proposed amendment. There is ongoing engagement between the department, Ofsted and other stakeholders on the effectiveness of measures to tackle unregistered schools. The effectiveness of the legislation will be kept under review. The need for accountability suggested by Amendment 118K is, we believe, best secured through the annual report that Ofsted presents to Parliament.

Finally, I turn to Amendment 110, in the name of my noble friend Lord Lucas. We believe that this amendment is unnecessary as existing provisions—specifically in Section 136 of the Education and Inspections Act 2006 and in Clause 65 of the Bill—already ensure that new local authority education functions under the Bill will be within scope of Ofsted's inspection powers. I therefore ask my noble friend Lord Lucas to withdraw Amendment 87 and hope that other noble Lords will not move theirs.

Lord Lucas (Con): My Lords, I am grateful to my noble friend for that extensive explanation and her many good answers. I am delighted, too, that she is being so supportive of the campaign of the noble Lord, Lord Storey.

With regard to her last answer in relation to Amendment 110, I look forward to sharing with her the correspondence I have had with the chief inspector, who takes a different view, but this can be remedied later in the passage of the Bill if the chief inspector is right. I beg leave to withdraw my amendment.

Amendment 87 withdrawn.

Amendments 88 to 92 not moved.

Amendment 93

Moved by ***Baroness Barran***

93: Clause 50, page 52, line 22, leave out ", Academy standard"

Member's explanatory statement

This amendment is consequential on the removal of clause 1.

Amendment 93 agreed.

Amendment 93A not moved.

Amendment 94 not moved.

Clause 51: Failure to comply with school attendance order

Amendments 95 and 95A not moved.

Clause 52: School attendance orders: consequential amendments

Amendment 95B not moved.

Clause 53: School attendance: general duties on local authorities

Amendments 96 to 97ZZA not moved.

Clause 54: School attendance policies

Amendments 97ZA and 97ZB not moved.

Clause 55: Penalty notices: regulations

Amendment 97ZC not moved.

Clause 56: Academies: regulations as to granting of leave of absence

Amendment 97ZD not moved.

Clause 57: Expanding the scope of regulation

Amendment 97A and 97B not moved.

Clause 58: Section 57: consequential and related amendments

Amendment 97C not moved.

Clause 59: Education and childcare behaviour orders

Amendment 97D not moved.

Clause 60: Application of provisions applying to schools to independent educational institutions

Amendments 98 and 99

Moved by ***Baroness Barran***

98: Clause 60, page 64, line 17, leave out "enactment" and insert "provision"

Member's explanatory statement

This is a technical drafting amendment to match the terminology used in clause 60 with that used elsewhere in the Bill and in the Education and Skills Act 2008.

99: Clause 60, page 64, line 22, leave out from ""relevant" to end of line 23 and insert "provision" means—

(a) provision made by an Act passed before, or later in the same session of Parliament as, the Schools Act 2022,

(b) provision made by Part 3 of the Schools Act 2022 (school attendance), and

(c) provision made by subordinate legislation (within the meaning of the Interpretation Act 1978) before the end of the session of Parliament in which the Schools Act 2022 is passed."

Member's explanatory statement

This amendment corrects a drafting error: subsection (2) should have referred to "the Schools Act" rather than "this Act". The amendment would also allow the application to independent educational institutions of provisions made by or under Part 3 of the Bill itself, as those are closely linked to other provisions that may be applied under the power.

Amendments 98 and 99 agreed.

Amendment 99A not moved.

Amendment 100 not moved.

Clause 61: Independent educational institution standards

Amendment 100A not moved.

Clause 62: Failure to meet standards: suspension of registration

Amendment 100B not moved.

Clause 63: Deregistration decisions on grounds of standards: appeals

Amendment 100C not moved.

Clause 64: Material changes to registered details

Amendment 100D not moved.

Clause 65: Powers of entry and investigation etc

Amendment 100E not moved.

Clause 66: Independent inspectorates: reports and information sharing

Amendment 100F not moved.

Amendment 101

Moved by ***Lord Harries of Pentregarth***

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

"British values

(1) In any statement relating to British values for education purposes at primary and secondary level in England and Wales, the Secretary of State, OFSTED and any other public authority must include—

(a) democracy,

(b) the rule of law,

(c) freedom,

(d) equal respect for every person, and

(e) respect for the environment.

(2) Any statement under subsection (1) must refer to British values as "values of British citizenship".

(3) The values listed under subsection (1)(a) to (e) must be taught as part of citizenship, at the first to fourth key stages.

(4) In subsection (1)(a) "democracy" includes—

(a) an independent judiciary,

(b) in a Parliamentary system, a Government that is accountable to Parliament,

(c) regular elections, and

(d) decentralised decision-making, accountable at an appropriate level to the electorate.

(5) In subsection (1)(c) "freedom" includes—

(a) freedom of thought, conscience and religion,

(b) freedom of expression, and

(c) freedom of assembly and association.

(6) In subsection (1)(e) "respect for the environment" means taking into account the systemic effect of human actions on the health and sustainability of the environment both within the United Kingdom and over the planet as a whole, for present and future generations."

Lord Harries of Pentregarth (CB): I beg to move Amendment 101 on British standards, which stands in my name and those of the noble Lords, Lord Blunkett and Lord Norton of Louth, and the noble Baroness, Lady Meacher.

The Ofsted chief inspector, Amanda Spielman, has said:

"When it comes to British values, we often see an oddly piecemeal approach, which too seldom builds the teaching into a strong context … we see a lot of wall displays and motivational assemblies, but not much coherent thinking about how a real depth of understanding can be built through the academic curriculum".

British values have to be taught in schools, but there is a fundamental problem at the moment about them being taught.

7 pm

The Minister has been kind enough to see me twice and I thank her very much for that. The last time I saw her, she said that she thought that any problems—I think it fair to say that she would recognise that there are problems—could be addressed through changing the guidance given to schools. However, the problem goes much deeper than that.

When teaching British values was first introduced in 2015, some people here will remember that it met with quite a lot of opposition. That opposition may have been totally unfounded, but the fact is that it met opposition from those who objected to the whole concept of British values, as though it implied that British values were superior to other values, as well as from certain sections of the Muslim community. Whether or not that opposition was justified, it was there and, sadly, it has persisted to this day. That is one of the main reasons why I am bringing this amendment forward. We need to try to overcome that opposition and dissipate it. I believe passionately that the teaching of British values is absolutely fundamental to our education system, and it is not being done well at the moment.

I will give your Lordships an example. A friend of mine is from a left-wing political family and feels very committed to helping teachers teach British values in schools. However, when he mentions this to some of his teacher friends, they, as it were, back away from him in suspicion: "What are you doing, being involved in something so chauvinistic like this?" So, there is a suspicion and a hostility that needs to be overcome by many teachers and many pupils.

[Lord Harries of Pentregarth]

My amendment seeks to address this, first, by a very simple change. Instead of simply talking about British values, it talks about the "values of British citizenship." There can be all sorts of interesting arguments about British values. Like Jeremy Paxman, you might think that one British value is a sense of humour or irony; no doubt Chinese and Russians have their own sense of their own values. However, when it comes to citizenship, that is a very clear legal concept. If you sign up to be a British citizen or you are born in this country and are a citizen by birth, there are quite specific values—or there ought to be—associated with being a citizen. They may be better or worse than being a citizen of China or whatever, but they belong to our society, and it should be quite clear in schools what these are.

That is the first change. There is a second change that my amendment would make compared with what is taught already. The present system of values concentrates on the fact that people should be respected whatever their beliefs or lack of beliefs. That, of course, reflects the worry in 2015 about religiously-based terrorism, which is why that was put in in that form. However, that resulted in something rather less rounded than it ought to be and rather skewed, and one fundamental value was left out: that there should be equal respect for every person. As I said when I introduced this in Committee, in our society, one counts for one. You get just one vote, not more than one. The law has to treat people equally whether they are wealthy or poor. Every government department has to treat people equally. That is an absolutely fundamental value, and it should be clear in the teaching of British values, as it is in my amendment.

Secondly, in the present set of values we have this rather loose phrase "individual liberty". We need something much more precise than that, and which is clearly defined in both national and international law. It is a simple word: freedom, which goes alongside democracy, the rule of law and the equal worth of every single person.

There is an addition to my list which is not in a usual list: respect for the environment. This is partly because people feel very strongly about that these days, and it would also help to gather the interest and support of young people who are being taught British values in schools. One fundamental failure of the present system is that it is not at all clear who should be teaching British political values in schools, and my amendment makes it clear that it should be taught as part of citizenship education. As a result, citizenship education, which at the moment is not at all well done, would have much more substance to it and there would be a mutually reinforcing relationship between citizenship education and the teaching of British values.

My amendment is a simple one. There are 12 words in the present list of values that have to be taught, and my amendment would increase that by four words, to 16. Admittedly, I do include definitions, because it is very important that it should be clear in schools that children are being taught about liberal democracy, not the kind of democracy they have in Russia or that they might claim to have in China, where of course they do have elections. There are certain characteristics of liberal democracy which I have put in those definitions.

I very much hope that the Minister, even at this late stage, will have second thoughts about this and see the compelling force of the argument. I believe that there is good support for the amendment—at least, I hope there will be—from all around the House. I beg to move.

Lord Blunkett (Lab): I support the noble and right reverend Lord, Lord Harries, and declare my interest as the honorary president of the Association for Citizenship Teaching—and I put on record that I will adhere to normal sartorial values on Wednesday.

I will speak very briefly, because there is still a long way to go this evening, in support of the amendment. It follows on from the *Ties that Bind* recommendations of the Select Committee chaired by the noble Lord, Lord Hodgson, back in 2018; the Justice and Home Affairs Committee's investigation into the "life in the UK test", published just a few weeks ago; and the ongoing desire to align the Department for Education—sadly now without the guidance of Robin Walker, who was deeply committed to citizenship and who was actually shifting the templates a little—and Ofsted, which is not aligned at all with what the DfE says or what we thought Ofsted had understood four years ago. It is a very strange juxtaposition.

I just want to put on record that we need to understand and be clear about the difference between personal development and citizenship education, which incorporates an understanding of the broad values of being a citizen in the United Kingdom, as well as the practical measures that make it possible for our democracy to function properly.

At this moment in time, given the clear need for respect from one politician to another, whether it is on ITV or Channel 4, we need to reinforce with our young people one simple message. We may, as your forbears, have got into a terrible mess and our democracy may well be extremely fragile—as I was saying last week, quoting the noble Lord, Lord Hennessey—but the future is in your hands, as the next generation, and beyond. Unless we guide and provide a framework and a landscape by which those young people understand what is happening in our democratic process, we will have let them down, because they will think that what they see on their televisions and what they read in their newspapers at the moment constitute the values that we espouse. They do not.

Baroness Whitaker (Lab): My Lords, I offer very strong support for Amendment 101, so eloquently moved by the noble and right reverend Lord, Lord Harries of Pentregarth, and spoken to by my noble friend Lord Blunkett. It offers a coherent system we can unite around. Other countries have their written constitutions; we do not. The Americans also have the Gettysburg Address—easy to teach, easy to understand. In this amendment, we have a coherent system of basic principles of democracy, human rights and equality and the modern imperative of care for the environment. This whole subject, taught as a unity, is particularly important for non-faith schools also, which have a less coherent framework than the faith schools. We are a diverse society. We have several faiths and beliefs and we need a framework that we can cohere around, such

as the values of British citizenship in this amendment. The Minister would be doing the children of this country a great service if she were to accept it.

Lord Knight of Weymouth (Lab): My Lords, I will briefly add to the chorus of approval for this amendment moved by the noble and right reverend Lord, Lord Harries. He talked about the problems attached to British values and how they have appeared to exclude some people. What he is trying to achieve is truly inclusive.

I add my voice in particular on sustainability. All of us in this and the other House have been circulated Sir Patrick Vallance's briefing to MPs on the challenge of climate change. Looking at that, and at the scale and urgency of the challenge from those presenting, it was clear to me that what is missing is public behaviour change. I am absolutely convinced that the key to unlocking that lies in our schools and with our young people, as the demographic which is most enthusiastic about this and can reach into everyone's home and start to shift our behaviours.

The education company Pearson recently published its *School Report*, which showed that 50% of school leaders want to teach this—a glass-half-full/glass-half-empty figure. We have had a strategy from the Government which said they wanted schools to do this. Only half of school leaders are planning to do so. We need to do more, including this.

Lord Sandhurst (Con): My Lords, I will speak to Amendment 105, the purpose of which is to ensure that parents can discover what their children are being taught in school. They must have access, we say, to the materials deployed in class.

It arises because some commercial providers of materials in the sensitive field of RSE and health have tried to stop parents getting access to materials which they have provided for use in class. Requests to see material have been met with the assertion that it is protected and exempt from disclosure under the Freedom of Information Act by reason of commercial confidentiality. In other cases, copyright has been raised. In some instances, schools have simply refused point blank. That is what the amendment is aimed at.

The noble Lord, Lord Macdonald of River Glaven, who put his name to this amendment, regrets that he cannot speak because he is elsewhere on a prior engagement. On our side, we are grateful for the two meetings we have had with my noble friend the Minister and officials. They have been constructive; we have made progress and received an encouraging letter on Friday.

7.15 pm

I remind the House that in the foreword to the 2019 statutory guidance for RSE and health education, the Secretary of State wrote:

"We are clear that parents and carers are the prime educators for children for many of these matters."

Later, the same guidance says:

"Schools should also ensure that, when they consult with parents, they provide examples of the resources that they plan to use as this can be reassuring for parents and enables them to continue the conversations started in class at home."

That is where we start, but we need it to be met and we need to go further.

In some schools, I am sorry to say, ideological beliefs are being asserted in these lessons as though they were fact. Biological facts about sex are consciously confused. Novel ideological beliefs are asserted as fact when they plainly are not. We have provided my noble friend the Minister with alarming examples of this. Parents must be confident that what their children are taught in this area and others is factually correct, evidence-based and not misleading propaganda.

I understand that my noble friend will write a public letter to schools to explain that matters of copyright and confidentiality should not be raised as barriers to parents. We understand that the ministry is working on guidance on the specific topic of transgender issues. On our side, we are grateful for this, and for the indication that my noble friend will consult stakeholders to take this forward. As she knows, my concerns are not limited to the specific issue of RSE and health; the problem spreads wider—hence the terms of the amendment. On our side, we appreciate that schools are in a sensitive position on the front line of what are now called culture wars. There will be practical issues to address, but a way forward must be found. Parents must have access to and confidence in what their children are taught across the curriculum. Our amendment raises an important point of principle.

That said, I look forward to hearing in due course what my noble friend has to say.

Baroness Morris of Yardley (Lab): My Lords, I speak in support of the amendment just spoken to by the noble Lord, Lord Sandhurst, to which my name has been added. I thank the Minister for the meetings we have had; I think we have made real progress. She completely understands the issue and is doing what she can within the constraints she has to try to move this forward, and progress has been made, but there are still things to do. That is why it is worth this debate and worth hearing further words from her from the Dispatch Box.

I was first drawn to this issue because I thought it was merely an issue of copyright. The example that had been brought to my attention was materials not shown to a parent because of copyright; the education curriculum was being delivered by a third party which had copyrighted the materials. I thought it was as simple as that. The Minister has now made sure that, legally, you can do that, and all heads will be told—and a lot of work will have to be done to make sure that all heads realise that and act on it. But the more I look at the issue, the more difficult it appears.

Where we have curriculum content over which there is very little disagreement, the issue almost never arises because parents do not particularly want to see curriculum content all the time. It is in these tricky areas, particularly in PSHE, where there is no national curriculum content, that the real problems arise. There is no doubt that some of the issues which have since been brought to my attention and I have had the opportunity to look at have arisen from real differences of opinion and breakdown of relationships between the head teacher and the parent.

That is the problem at the core of this. If it gets to the point where there is an argument between the parent and the head teacher, and the head teacher is

[Baroness Morris of Yardley]
saying that the parents cannot look at the materials, that relationship stands little chance of being mended. That is the real risk. It happens only where content is contested, which makes the problem even worse. That is why it is important to sort this out.

I hope the Minister will agree that the contention has to be taken out of some of the curriculum content. The issue that I was interested in, as was the noble Lord, Lord Sandhurst, is the teaching of sex, which I believe is biologically based. Some of the materials that I saw that were being withheld from parents were hugely contentious, and many parents—quite reasonably, to my mind—would not have wanted them to be taught to their children. It is a complicated issue, and there are three main issues. First, parents should have the right to see the materials; secondly, copyright is irrelevant as a barrier to them doing so; and, thirdly, we are looking to the Government to offer some very clear guidance on subject content as far as these contentious issues are concerned.

I completely understand that we do not want to get to a position where parents demand to have the right to see every note that a teacher is going to use in a lesson. When I was a teacher, I would have been horrified if I had had to show my lesson notes to the parents. That is not where we want to be. We are talking about a broad understanding of the curriculum content so that parents and teachers can be the joint educators of children, especially in these important areas. I reassure the Minister that I completely understand the need to draw professional boundaries, but at the moment parents are being pushed into challenging those professional boundaries because they cannot have access to the materials at the first ask. I am grateful to the Minister for what she has said so far in the letters to us, and I hope she can go further.

I support the amendment by the noble and right reverend Lord, Lord Harries. The argument has been forcefully made today, and I think it is unanswerable. We are all in favour of the values of British citizenship being taught. We know it is not being done well, and I genuinely think that the way forward that he points to would offer a better chance of getting everyone on the same side for a common goal.

Baroness Fox of Buckley (Non-Afl): My Lords, I have also put my name to Amendment 105. I commend the noble Lord, Lord Sandhurst, and the noble Baroness, Lady Morris of Yardley, on their work on this issue, which has been very important, and the Minister on listening and moving forward.

I start off with a bit of a caveat, because a lot of good things have been said: as an ex-teacher, I too am only too aware of the dread of pushy parents intervening in the minutiae of school, turning up and demanding to see this, that or the other. More seriously, we know what happened when a group of activist parents gathered outside Batley Grammar School and demanded to dictate what the curriculum was. That is not what this is about at all.

The context for the Government, which is very important, is that at the moment, because parents cannot see this material, it has been left in an informal morass of people hearing stories and getting particularly worried. Parents have had to resort to freedom of information requests to see third-party materials, and that really is not helpful. There is a rather excellent exposé by Milli Hill entitled "Worrying truth of what children are REALLY learning in Sex Education". We are leaving it up to journalists to do these exposés. That just worries parents, so we have to grab this back.

Most parents think that, when their children are being taught about pronouns, that is helping with their English grammar, but then, when they read in the newspaper that it has something to do with policing language and gender ideology, they understandably worry. They worry when they hear about the affirmation of radical medical interventions, such as the amputation of sexual organs. These things are really scary. I urge the Government to grab hold of these horror stories and deal with them. I would like to see them acting on this very important issue.

There are matters that go beyond the scope of Amendment 105. The issue of parental access and teaching materials talks to a problem of parents feeling that the curriculum on contentious issues is being politicised. There is an excellent new report from Don't Divide Us called *Who's in Charge? A Report on Councils' Anti-racist Policies for Schools*, which I will pass on to the Minister and I hope she will even meet the authors. The reason why I refer to it is that I do not want people to think this is just about the gender ideology issue. It is a sort of broader feeling that many parents have that there are third-party providers creating a political atmosphere in school, and that even schools themselves are doing the same. That raises problems of parents' trust in what is being taught to their children.

I therefore query Amendment 101, on British values, despite the brilliant speeches we have heard in support of it. I was initially attracted to this amendment. After all, it mentions

"freedom of thought, conscience and religion … freedom of expression, and … freedom of assembly and association."

These are my passions; I go on about them all the time. I thought, "Great—can we get them into schools?". But when I talk about freedom of expression, freedom of conscience and freedom of religion, these days I am often written off as some sort of alt-right lunatic who—

Lord Blunkett (Lab): Surely not.

Baroness Fox of Buckley (Non-Afl): There we go. I am written off as someone who wants free speech only in order to come out with hate speech. I say this because even something such as free speech is contentious. I do not think that trying to use an amendment such as this, including the word "citizenship" to get around the fact that there are contentious arguments about values, will resolve the problem. I wonder whether I can be consoled by those who tabled this amendment that it is not about avoiding a political argument via using the law. It could end up politicising the curriculum.

For example, I disagree with the proposed new paragraph on "respect for the environment". We have to take into account that Section 406 of the Education Act and schools' legal obligation to remain impartial can be compromised by things that people in this House are passionate about politically but that maybe should not be in schools.

That finally gets me to my concerns about Amendments 118B and 118H, which call for

"a review into teaching about diversity in school curriculums".

I am concerned about their emphasis on British history including

"Black British history … colonialism, and … Britain's role in the transatlantic slave trade"—

not because I do not think those things should be taught, but we have to ask whether this is being promoted for historical or political reasons. The recent controversy over the OCR syllabus on English literature being changed, when we had the works of Keats, Thomas Hardy, Wilfred Owen and Larkin removed, was justified not on literary merits but on the basis of an emphasis on ethnicity, diversity and identity. That kind of politicising of the curriculum does not do any service for the pupils we are teaching and is making parents rather suspicious about what is going on in schools.

Lord Woolley of Woodford (CB): My Lords, I rise to speak to Amendment 118A in my name. Before I make any substantive remarks, I say on the record that, on perhaps the hottest day ever recorded in this country, this Chamber is cooler than the Central line; I was on it this morning. I never thought I could put the House of Lords and being cool in the same sentence. I want to thank a few people who have helped me put these remarks together: L'Myah Sherae, Alfiaz Vaiya and Simon Dixon in Stella Creasy's office.

Only through a freedom of information request by the *Guardian* newspaper do we know that UK schools recorded more than 60,000 racist incidents in the last five years. Many people, including black community and education leaders, accuse the Government of failing to meet basic safeguarding measures by hiding the true scale of the problem. For example, the data from the *Guardian* excluded 80% of England's multi-academy trusts. The scale of racial incidents in schools is therefore probably much worse, causing one academic working in this area, Professor David Gillborn from the University of Birmingham, to conclude that we have a racism epidemic in our schools.

7.30 pm

What does racial discrimination look like in our schools? It might be plain old racial abuse or, worse still, racial bullying. The overwhelming majority of this would be student to student. But there are other types too that can easily be characterised as institutional. Take what occurred to Child Q in east London, for example, whom I am led to believe was taken out of her exam by teachers to be handed over to the police and strip-searched, including the removal of a sanitary towel, while they looked for drugs. What type of empathetic educational culture allows that to occur? Imagine for a second a school culture that would allow your daughter, your granddaughter, your niece or your friend to be treated in such a way.

Yes, this might be an extreme example, but it can happen only in the culture of that environment. There are many other examples too. A parent came to me and said that her son was distressed after being at school and the dinner lady saying to him when he was being animated, playing with his friends, "Why are you behaving like animals? Why can't you behave like those?", "those" being a group of white children. The parent went to the school to meet the headmaster and told them the story. The headmaster said, "It was nothing serious, just a misuse of language. Oh, and by the way, your son was late for school yesterday." Nothing occurred.

Another example was when a parent came to me and said: "Simon, the headmaster said to my face that my child has the word 'trouble' written on the top of his head when he walks into a class. That is what the teachers think of him." She said that surely that was not fair. How could he be perceived that way when he goes into a new class? The head teacher said that her son had to change so people would think differently of him.

How does this culture play out to black children? We know, because questions have been asked, such as those asked by the YMCA. Some 50% of young black kids asked said that racism, including teacher perception, is the biggest barrier to their educational success. The data somewhat proves them right unless we feel that black children are predisposed to bad behaviour. How do we adequately explain that they are six times more likely to be permanently expelled? Other groups, such as Gypsy, Roma and Traveller children, are nine times more likely to be expelled.

I was struck by what was said by a very talented young author, Jeffrey Boakye, a black English teacher and broadcaster, who argued that some schools are unsafe for students marginalised by race. There is a prevalence of black children who are subject to adultification or demonisation.

My amendment is not a silver bullet but it helps focus people's attention on—the first rule of thumb—acknowledging that there is a problem and having a plan to deal with it effectively. My amendment would require Ofsted to monitor school compliance with the equality legislation, ensuring that schools which fail to tackle the tens of thousands of instances of racial discrimination are identified and changes are made. I know that the Minister might come back and say that there is scope for equality in Ofsted inspections. Clearly it is not working otherwise we would not have, as one academic said, an "epidemic of racism" in our schools.

This is not just about safeguarding children in our schools, important as that is. Surely this is about giving children an opportunity to flourish; to be the best they can be and have a sense of belonging. This amendment gives us that opportunity and the framework for that to happen.

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to follow the noble Lord in what I thought was a very moving and profound contribution. My Amendment 118M takes us back to the role of regional schools commissioners, which we touched on in Committee. Commissioners have enormous power but they are civil servants and act on behalf of the Secretary of State, who remains accountable for their decisions. Each regional schools commissioner is supported by an advisory board, and they have a wide range of responsibilities including intervening in academies that Ofsted has judged inadequate, intervening in

[LORD HUNT OF KINGS HEATH]
academies where government is inadequate, and deciding on applications from local authority maintained schools to convert to academy status.

In the schools White Paper earlier in the year, the Government stated that they would be changing the name of the regional schools commissioners to regional directors. A new regions group has been established within the noble Baroness's department, which is bringing together functions currently distributed across the department and the Education and Skills Funding Agency. In Committee my noble friend Lord Knight raised a question about regional directors, as part of his thinking on what an all-academy schools system might look like in practice, particularly relating to the accountability of multi-academy trusts. He referred to the fact that many think academies insufficiently accountable. He felt that the advisory boards that regional schools commissioners have might be one way of strengthening accountability, particularly if they had a majority of local authority people on those advisory boards. The Minister was not very encouraging, I have to say, at that point.

I want to come back to this, because it seems to me that the review the Minister is now undertaking must take account of the relationship between academies, multi-academy trusts and regional directors. The direction of travel is that, by 2030, all schools will be academies. In essence, the Secretary of State is taking direct responsibility for each school in the English school system. In reality, the regional directors will take on that responsibility on behalf of the Secretary of State. Those regional directors are nominally civil servants, although they are not really civil servants in the way we think of them because they are external appointments. The sort of people who are appointed are not career civil servants; they are people who have come mainly from outside the system, as far as I understand it, so to call them civil servants is misleading in many ways, because it suggests they are functionaries directly accountable to the Secretary of State. The reality is that they take on huge powers. My argument is that they need to be more accountable to the system. I think the Minister should spell out in more detail the role of these regional directors. Recent research on Twitter—this is where we get information about them—shows that five of them have announced themselves on Twitter setting out their responsibilities. Each of them says that they are now responsible for children's social care. I would be grateful if the Minister could confirm if that is so or not. Does it mean, for instance, that these regional directors will be taking a lead on the regional adoption agencies? If there is an inadequate judgment under the Ofsted inspection of local authority children's services framework, what is their role there? Do they have intervention powers?

What are the transitional arrangements between the regional schools commissioners and the regional directors? Will the regional directors be responsible for maintained schools that are not going through the academisation process as yet? I agree with my noble friend Lord Knight: there should be much greater transparency about what regional directors do, with the role of the advisory boards beefed up. There is actually a strong case for them becoming statutory agencies in the end, given that so much power is going to be given to them.

My substantive question to the Minister is: given the review she is now undertaking, will she assure me that the relationship of the regional directors and their accountability will be part of that review? She may argue that this has all been settled in the White Paper following Sir David Bell's review but, given the scale of the change in many schools, which are going to be forced to become academies, I do not think that is the answer. We need to see much more accountability about how the system is going to operate. I hope that the Minister will be able to respond on that.

Lord Storey (LD): My Lords, before speaking to the amendments, I want to quickly say how much I agree with Amendment 101 on British values from the noble and right reverend Lord, Lord Harries, and Amendment 105 from the noble Lord, Lord Sandhurst. I do not see it as an issue of culture wars or whatever—parents should see the material that their children are being taught. I am quite surprised that we cannot do that. When we had parents' evenings, the textbooks and the material that we were using were freely available for parents to look at. It was quite an important aspect of those meetings, as well as children's work being on display. I hope the Minister can answer this issue about copyright because that seems to be a red herring.

On Amendment 118H, the noble Baroness, Lady Chapman, is absolutely right: there should be a review of diversity in the curriculum. When you ask about black studies or black history in school, you get a list and you might find a black author or an Asian poet on it, but there is no guarantee that that is actually taught in schools; invariably, it is not. I want that audit on diversity to be carried out so that we know exactly how our curriculum should be developed.

I will come to the amendment in the name of the noble Lord, Lord Woolley, at the end, if I may.

I have a slight reservation with the amendment in the name of the noble Baroness, Lady Chapman. We do not have a national curriculum: it is not taught in Wales, Scotland or Northern Ireland, so it is not national. It is not taught in academies or free schools. It is taught only in maintained schools, so it is not a national curriculum.

I like the fact that academies and free schools have the freedom to devise their curriculum and I wish that freedom were given to maintained schools as well so that schools can devise their curriculum to suit their particular circumstances or issues. I gave an example to the Minister only today: Liverpool was the centre of the slave trade and I know that in academies in Liverpool they will do a unit on the slave trade, but it is not part of the maintained school curriculum. Maintained schools should be free to develop their curriculum.

The noble Baroness's amendment lists the things that should definitely be part of this mandatory curriculum. They are probably the right ones. Financial management should be taught. Certainly, some personal, social and health education issues should be taught. I have a Private Member's Bill on water safety, because I believe passionately that that should be taught in

schools. Yes, there are things that should be taught, but let us not be prescriptive now. What we need is a review of our curriculum. It has not been reviewed for 10 years and we need to do that—for all the reasons we have heard from the noble Lord, Lord Woolley, and the noble Baroness, Lady Chapman. So this is an important amendment but it is perhaps too prescriptive.

7.45 pm

The amendment in the name of the noble Lord, Lord Hunt, is interesting. It will probably happen—it has to, does it not, in the future?

The amendment in the name of the noble Lord, Lord Woolley, is very important. If I may say so, I am quite emotional about it. He is absolutely right: we have to be sure that black, Asian, Jewish and other minorities in schools are completely part of the school community and that they do not in any way face some of the issues that the noble Lord told us about. I add only that there is light at the end of the tunnel. There are some wonderful examples of lots of schools where the school community is made up of a whole range of pupils from different ethnic groups who work, play and respond together. I do not want to think that some of the schools that we know about are what our English education system is really like. However, it is right that we do what the noble Lord suggested, and that would make us feel more comfortable and relaxed about what is happening in our schools.

I will be very cheeky and ask the noble Lord to use "head teacher" rather than "headmaster". To my mind, the former is not gender-specific.

That is my party's view on those amendments.

Baroness Lawrence of Clarendon (Lab): My Lords, I will speak very briefly on Amendment 118B.

For generations, there have been interventions that have looked at education, but what needs to change is to make schooling applicable to everyone. What is always missing is where the black child fits in. We have only to look at the scandal around the Windrush generation and the lessons that have not been learned, and the injustices that occurred back in 1948 and still do in the present day.

Back in the 1960s, Bernard Coard wrote a book called *How the West Indian Child is Made Educationally Sub-normal in the British School System*. The British school system has failed children in schools following the immigration of their parents into this country, and the racism they suffered in education in some cases continues to this day.

In my opinion, the majority of children in pupil referral units are from the black community. Children are sent there for many reasons, and racism is high on the agenda. Once children are placed there, you could say that is the end of their education, life chances and prospects. We can see this in the Prison Service and with employment opportunities.

The Schools Bill needs to look at education for all. Education is supposed to equip you for the future, and for you to understand who you are and that your background matters.

Racism was laid bare during the pandemic. We saw that the first casualties to have died of Covid-19 were from the black and Asian community. This was highlighted as part of my review.

Unless the Government look seriously at the impact of racism in our schools on education and wider society, we will back discussing the same agenda in years to come.

To touch on black history, it does not address the curriculum in education. I believe that decolonisation is the way forward. The Stephen Lawrence foundation will be working on this moving forward.

Wales is looking at education and the changes that are needed to the system. This is a start. What are the Government looking to do in the other devolved nations? Following on from the comments of the noble Lord, Lord Woolley, I wish that we would take the racism that happens in schools a lot more seriously.

Lord Agnew of Oulton (Con): My Lords, I reassure the noble Lord, Lord Hunt, that regional schools directors are civil servants. I am sure my noble friend the Minister will confirm that there are no proposed changes to that. During my tenure they were all directly answerable to me on behalf of our Secretary of State. I tried very hard to ensure that we had a mixture of skills in that group.

When I was the academies Minister, the national schools commissioner had been a teacher, then a headteacher, then the chief executive of an academy trust, so he had a very good understanding of the whole culture. We had another very good regional schools commissioner who had been the head of local authority social services and so on, but we also had permanent civil servants. My mission was to bring them all together. They all reported to me, and we met as a group regularly so that there could be a transfer of ideas between them. I do not think there are any plans for that to change.

Baroness Wilcox of Newport (Lab): My Lords, I am speaking to the two amendments we have in this group: Amendments 118G and 118H. I thank my noble friend Lady Lawrence for making some extremely salient points which I will refer to subsequently.

To the noble Lord, Lord Storey, I would like to explain that Amendment 118G will require every academy to follow the national curriculum. We have the list of things we would like to talk about because of the inherent contradictions we have found in this Bill. We have been trying to work around them and are attempting to fill the gaps as best we can. As the Government were clearly intent on a sweeping approach, we felt it was imperative that those issues be included in the national curriculum.

Amendment 118H would compel the Secretary of State to

"work with the devolved administrations",

as noted by my noble friend Lady Lawrence, to launch and publish a review into teaching about diversity in the curriculum and

"to ensure that teaching of British history includes but is not limited to … Black British history … colonialism, and … Britain's role in the transatlantic slave trade."

[Baroness Wilcox of Newport]
The English education system could learn a great deal from Wales in this matter. Our new curriculum will be launched this September. The new mandatory elements of the curriculum, in particular the teaching of the experiences and contributions of people from minority backgrounds, will broaden the education of every child in Wales so it better reflects the experiences of the whole population of Wales. Educating young people about the experiences and contributions of minority ethnic peoples in Wales, past and present, will promote lasting change aimed at tackling broader inequalities within society. I urge the Minister to support this aspect of our range of amendment suggestions.

In conclusion, we also support Amendment 101 proposed by the noble and right reverend Lord, Lord Harries of Pentregarth, and other noble Lords. The values of British citizenship should include important elements, not least democracy and the rule of law—an important lesson learned by some Members of the other place in recent weeks.

Lord Lucas (Con): My Lords, I am grateful to the noble Baroness, Lady Wilcox, for explaining her amendment to us. I am liberal rather than post-modern; I believe in the objective being one united society where we are all equal, rather than in the fractured values which her amendment proposes. It is really important that what we teach in schools covers all our experiences and all the threads that make up the UK. The English ought to learn a great deal more about the Welsh and Scots, for a start.

One of the fundamental problems, illustrated in the dispute with OCR over its poetry curriculum, is that we have allowed our examination system to become far too narrow. Yes, a thread of the undisputed greats in literature ought to run through things, as well as the thread of our history that used to consist of learning the names and dates of kings but is actually rather more interesting. Within them are the stories of us all—and that really ought to be us all.

To manage that within a school curriculum, you need a lot more freedom than we allow people at the moment, not less. We should not have a national curriculum that says, "These are the five things that you must teach", but one with the ability to stretch broadly, bring things in and illustrate them and, as the noble Lord, Lord Storey, said, enrich people's local experience with things that mean something to them. I support the noble and right reverend Lord, Lord Harries, in his endeavours.

My noble friend Lord Sandhurst will know that I am very much with him on his amendments, and I am delighted to find myself with the noble Lord, Lord Woolley, in what he is asking for. The noble Lord says that he is surprised to discover that the Lords is cool. For those of us who come from the west, we walk in every day past a notice that says, "Peers entrance". Indeed they do. The problems he outlines remind me a lot of what goes on with sexual abuse in schools. The answer is to face it, look at it and really be interested in, not afraid of, what is going on. We should be confident that we do not want it to be that way. We should not expect quick solutions so that we can forget about it, but know that this will take us a good long while to sort out and that it has some deep roots. I would really like to see the Government take some steps in the sort of direction the noble Lord proposes.

Baroness Barran (Con): I thank the noble and right reverend Lord, Lord Harries, for Amendment 101. As he knows, we support the principles at the heart of this amendment and agree that teaching staff and leadership in schools need to understand the important role that fundamental British values play in our society and beyond.

I think he is making two points: one about curriculum content and one about the quality of the delivery of that curriculum. The Government believe our current arrangements provide a sound basis for this. As your Lordships know, schools have a duty, as part of providing a broad and balanced curriculum, to promote pupils' spiritual, moral, cultural, mental and physical development. Those principles are embedded in the *Independent School Standards*, teacher standards and Ofsted inspections.

As to the comments on the environment, our ambitious sustainability and climate change strategy publicly addresses the importance of teaching about the environment. This includes teaching topics related to climate change, covered within the citizenship, science and geography national curriculum.

We have prioritised helping schools to remain focused on recovery from the pandemic. This is why we undertook in the schools White Paper not to make any curriculum changes during this Parliament. The noble and right reverend Lord referred to the comments of the Chief Inspector of Schools about what she and her colleagues had seen in schools on the teaching of these subjects. We expect schools to take those comments very seriously and respond to them.

8 pm

As the House is aware, Ofsted is undertaking a review of personal development teaching in schools in England, which will include consideration of citizenship education, will involve an analysis of inspection evidence, and will end with the publication of a national report on this later in the year. As I indicated to the noble and right reverend Lord when we met, we are aware that there have been a number of curriculum changes since the current guidance on promoting fundamental British values in schools was issued, and we will consider whether and how to reflect those changes to improve and strengthen the guidance. I would be delighted to work with the noble and right reverend Lord, and those who agree with him, to ensure that we do so in the best way possible.

Turning to Amendment 118A, tabled by the noble Lord, Lord Woolley, I confirm that Ofsted, as a public body, is required to adhere to the public sector equality duty, including in exercising its inspection functions. Ofsted published an equality, diversity and inclusion statement in 2019 outlining the specific consideration that it had given to this duty in developing and finalising its inspection arrangements. As I said in response to the earlier amendment, inspectors are required to take account of pupils' spiritual, moral, social and cultural development, and how the needs of the range of pupils are met. Through the key judgment on quality of education, inspectors assess the extent to which the

curriculum meets the needs of all pupils, including those with special educational needs and disabilities, and those who are disadvantaged.

The personal development judgment highlights the importance of the role of schools in equipping pupils to be respectful citizens. It also takes account of the school's promotion of respect for different protected characteristics. Through the leadership judgment, inspectors consider how the school fulfils its legal duties, including those under the Equality Act. The noble Lord may be aware that in the national professional qualification for leadership there is an important section on leadership in relation to the culture and values within a school.

Turning to the second aspect of the amendment, I confirm that inspectors will take account of provision directly run by schools, provided that at least one child from those schools attends that provision. Inspectors do not, as part of a school inspection, assess the quality of the various clubs and activities that are delivered by third parties on a school's premises. Doing so could act as a disincentive for schools to offer such services, which parents value greatly and children benefit from.

I will now respond to Amendments 118B, 118G and 118H, in the names of the noble Baronesses, Lady Chapman, Lady Wilcox and Lady Lawrence. Turning first to the proposal to introduce a requirement for academies to follow the national curriculum, I have already emphasised that we value academy freedoms. The freedom for academies to set their own curriculum is fundamental.

The national curriculum exemplifies high-quality, good teaching practice that is well understood by teachers and provides baseline guidance from which academies can innovate. Our current model allows all state-funded schools to go above and beyond the national curriculum specifications. While maintained schools must ensure that they teach at least the content of the national curriculum, academies have more freedom to innovate across the curriculum and focus on the specific needs of their pupils. It is paramount that the Bill does not restrict curriculum freedoms, to enable schools to adapt their curricula carefully, based on the specific characteristics of their pupils, to ensure that the education delivered will be more equitable for all.

The Government feel that a review of the English curriculum of the nature suggested by the noble Baronesses is unnecessary. We are already clear that teaching subject-related diversity can be and is being achieved. The national curriculum theme at key stage 3 entitled "Ideas, political power, industry and empire: Britain, 1745-1901", covers these topics; further, all key stages can include teaching on these topics. Black history can be taught across the curriculum. It can include the role of the countries of the former British Empire in both world wars, and the part that black, Asian and minority ethnic people played in shaping the UK in the 20th century.

In the most recent survey of history teachers by the Historical Association, the vast majority of schools—around 87%—reported having made substantial changes to their key stage 3 curriculum in recent years to address issues of diversity. These also include other dimensions of diversity, such as the inclusion of women's, disabled people's and LGBTQ+ histories and working-class histories, as well as wider world history and the inclusion of black and Asian British history.

In relation to Amendments 118B and 118G, we outlined in our schools White Paper that our priority for this decade is to increase standards in literacy and numeracy across the country. This is vital for children to be able to access a broad and balanced curriculum. Changes to the national curriculum would create an instability that would detract teachers' time from these priorities, at a moment following the pandemic when they have never been more important.

I turn to Amendment 105 in the name of my noble friend Lord Sandhurst and the noble Baroness, Lady Morris. It is right that parents are able to engage with their children's curriculum. We want to make sure that happens in all cases, but we need to take sufficient time to consider whether we might go beyond the requirements we already have in place without unintended consequences, especially for the majority of schools, which we believe have good relationships with parents. We are concerned that there could be a risk that schools will be burdened by excessive requests or will avoid teaching legitimate topics to avoid confrontation.

I was pleased to meet my noble friend Lord Sandhurst and other noble Lords recently and have set out the current legal position in a letter, which I placed in the House Library. I will not repeat the detail but we are clear that schools should engage with parents when drawing up the curriculum. More specifically, copyright does not prevent schools showing teaching materials to parents. There are also detailed requirements in relation to schools making parents aware of what is being taught in relationships and sex education. Schools should not enter into contracts with providers of teaching materials that may restrict their ability to meet those requirements.

I believe that clarifying the current position will help drive down the number of instances where schools refuse to share materials, such as those shared with me by my noble friend. We will write to all schools in the autumn, once they have reopened, to set out a clear expectation that schools respond positively to any reasonable requests from parents to view curriculum materials. We will ensure that the content of the letter is available publicly to help inform parents' conversations with schools.

We will also consider over the summer whether further action is needed. The statutory guidance to schools on teaching relationships, sex and health education, and engaging parents in the development of curriculum materials, was published following a formal external consultation. There were over 11,000 responses, which shows the extent of public interest in the issue, so we need to give any further changes proper consideration. I plan to host a round table for parents and teachers early in the new term to ensure that we can start the conversation and get the balance right.

Beyond those early actions, we are working with the Equality and Human Rights Commission to make sure that we are giving the clearest possible guidance to schools on transgender issues and will be carrying out a full public consultation on that. Given the complexity of this subject, we need to get this right, but it will take

[Baroness Barran]
some time to develop. We hope to be able to publish new guidance in 2023, which will sit alongside the clear and comprehensive guidance we have already published to help schools better understand their duties in relation to political impartiality.

I turn now to Amendment 118M in the name of the noble Lord, Lord Hunt. We are committed to becoming a department that thinks, acts and partners much better locally. That is why we have established a new regions group which is aligned to the nine regions used elsewhere in government and will allow us to deliver a joined-up approach across departmental priorities. Regional directors already take key operational decisions delegated to them by the Secretary of State for Education, and are accountable to him for those. In doing so, they operate on the basis of a transparent decision-making framework, which is available on GOV.UK. Regional directors work closely with local authorities, including helping to facilitate school improvement support, on academy conversions and supporting and challenging them to fulfil their statutory duty to secure sufficient school places. In taking decisions, directors are advised by their advisory boards.

The noble Lord asked specifically about the role in relation to children's social care, so, just to be clear, I say that in creating the regions group we reflected feedback we had had from stakeholders that we had worked with, which was that they were often having to talk to three different teams within the department. The idea has been to bring those teams together in what we hope will provide a single point of contact, and be more efficient and effective for those that we work with.

With that, I ask the noble and right reverend Lord, Lord Harries, to withdraw his amendment, and other noble Lords not to move theirs.

Lord Harries of Pentregarth (CB): I thank all those who spoke in support of my amendment, and I listened with great interest to those who spoke so powerfully on a whole range of amendments. I thank the Minister for what she said, and for the offer to meet her to talk about guidance, but the problems are more deep-seated than just changing the guidance. One point that I want to correct is that I do not believe that my amendment involves a change of the curriculum; after all, fundamental British values have to be taught at the moment. This is not changing the curriculum; it is just exactly listing the values, to gain greater support from teachers and pupils.

I do not intend to divide the House tonight, although I know that there is very strong support all around it from all parties and I have not lost confidence in this amendment. A new Government are coming in in September, we have the Third Reading in September, the Bill still has to go to the Commons after us, and I believe that the reasons in favour of this small but significant change are so compelling that it eventually will be picked up by one Government sooner or later. With that, I beg leave to withdraw my amendment.

Amendment 101 withdrawn.

Amendments 102 and 103 not moved.

Consideration on Report adjourned.

Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022

Motion to Approve

8.15 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 27 June be approved.

Relevant documents: 7th and 9th Reports from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument).

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I will also speak to the Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022, which was laid before the House on 24 June 2022. The purpose of the regulations is to lift the current ban on employers bringing in agency staff to help them cope with industrial action. The other instrument makes long-overdue changes to the maximum levels of damages the courts can award against trade unions that take unlawful industrial action.

I will start by explaining why the Government are making these changes. Our trade union laws are designed to support an effective and collaborative approach to resolving industrial disputes. They rightly seek to balance the interests of trade unions and their members with the interests of employers and the wider public. While the Government continue to support the right to strike, this should always be a last resort. The rights of some workers to strike must also be balanced against the rights of the wider public to get on with their daily lives. Strikes can, and do, cause significant disruption. This is particularly the case when they take place in important public services such as transport or education.

It cannot be right that trade unions can, as we saw in the case of the recent rail strikes, seek to hold the country to ransom if their demands are not met. Some trade unions appear to us to be looking to create maximum disruption in a bid to stay relevant, rather than constructively seeking agreement with employers and avoiding conflict. In light of this, the Government have reviewed the current industrial relations framework and have come to the conclusion that change is needed.

The first change we are making is to remove the outdated blanket ban on employment businesses supplying agency workers to clients where they would be used to cover official industrial action. Of course, employers can at the moment already hire short-term staff directly to cover industrial action, but this change will give them the ability to work with specialist employment businesses to identify and bring in staff. This change does not in any way restrict the ability of workers to go on strike. However, it will give employers another tool they can use when trying to maintain the level of service they offer to the public.

This is a permissive change. It will not force employment businesses to supply agency staff to employers to cover strikes, agency workers will still be able to decline any assignments they are offered, and the right to strike is unaffected. This change is simply about

giving both employers and employees more freedom and flexibility to decide what works best for them—a freedom that the current outdated regulations deny them.

I have seen some, frankly, rather overblown reports that this will somehow put workers or the wider public at risk. This is absolutely not the case. Employers will still have to comply with broader health and safety rules, and employment businesses will still need to be satisfied that the workers they supply are suitably qualified and trained.

Alongside this change, we are increasing the levels of damages that a court can award in the case of unlawful strike action. It has long been the case that employers can bring a claim for damages against a trade union that has organised unlawful strike action. The upper limits to the damages that can be awarded are set out in the Trade Union and Labour Relations (Consolidation) Act 1992 and are based on the size of the union that organised the unlawful action, but this damages regime has not been reviewed since 1982, so these limits are significantly out of date. As a result, the deterrent effect that Parliament intended has now been significantly reduced.

The Secretary of State is using powers granted to him in Section 22 of the Trade Union and Labour Relations (Consolidation) Act 1992 to increase the existing caps in line with inflation. In practical terms, this means that the maximum award of damages that could be made against the smallest unions will increase from £10,000 to £40,000, and for the largest unions it will increase from £250,000 to £1 million. This is a proportionate change because we are simply increasing these amounts to the levels that they would have been at had they been regularly updated since 1982. We are increasing the limits in line with the retail prices index, which is of course a well-understood measure of inflation.

By increasing the limits on damages in line with inflation, we are sending a clear message to trade unions that they must comply with the law when taking industrial action. Strikes should be called only as a last resort and as the result of a clear, positive and democratic decision of union members. The key point is that unions that continue to comply with trade union law will be completely unaffected by this change.

I am grateful to the members of the Secondary Legislation Scrutiny Committee for the time and care that they have taken in reviewing these regulations. I note their comments about the impact assessment for the changes to Regulation 7. This has now been published in line with our commitments to Parliament. As the committee noted, because this is a permissive change there is some legitimate uncertainty about the extent to which employment businesses will want to take advantage of their newly found freedoms. However, as the impact assessment shows, this change needs to lead to only a small reduction in the number of working days lost for it to make an extremely positive difference to the economy and society.

I have also noted the committee's concerns in relation to Wales, specifically our commitment to repeal the Trade Union (Wales) Act 2017. In response, I simply say that there is nothing new about this commitment. The Government's position on this issue has been consistent since the relevant Act was passed in 2017. Although we will of course engage further with the Welsh Government on this issue, it is very clear that labour markets and industrial relations are reserved matters.

The changes we are making will ensure that our trade union and agency laws remain fit for purpose. We are giving businesses the freedom to manage their workforce and we are empowering workers by giving them more choices about the kinds of assignments they can accept. We will continue to protect an individual's right to strike, where proper procedures are followed, while ensuring that trade unions are deterred from taking unlawful industrial action. I therefore beg to move that both instruments are considered by this House.

Amendment to the Motion

Moved by ***Lord Collins of Highbury***

At the end insert "but that this House regrets that the Regulations have been introduced without required or sufficient consultation, are opposed by employer and employee organisations, will do little to address the trained workforce shortfalls, could put workers' safety at risk, will harm industrial relations, and may breach international law; further regrets that the associated Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022 is unnecessary, as there are few if any occasions on which damages have been claimed, and an increase on the cap by 400 per cent is a threat that may inhibit the legitimate exercise of the right to strike; and concludes that the two instruments are simply a political exercise to deflect from the failure of Her Majesty's Government to engage meaningfully with the organisations affected to resolve the disputes".

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for introducing this debate, but what I heard was a lot of gesture politics and nothing about how we improve industrial relations in this country. In moving this amendment, I will focus on the failure to consult, the lack of an impact assessment when the statutory instrument was laid, and whether the instrument will meet the Government's policy objectives.

The Employment Agencies Act 1973 requires consultation before changes are made. Rather than consult on the new regulations, the Government are relying on a consultation conducted in 2015, when Ministers previously considered similar changes. I do not see how it can be justified for a seven-year old consultation to apply to legislation being laid in 2022. Things have changed considerably in those seven years, both industrially and politically. Even the department itself acknowledged that

"circumstances have altered in some ways".

However, it did not think that these were

"particularly relevant to the changes"

proposed. Tell that to the employees of P&O Ferries, where agency workers were used to undermine a collective agreement and replace unionised jobs. P&O's actions were met with condemnation from all political parties—including the Minister's—unions and employer organisations alike.

[Lord Collins of Highbury]

Turning to the 2015 consultation, let us not forget that 70% of the respondents were of the view that the changes would impact negatively on employees, yet the Government still believe that they have got the balance right between the interests of individuals—by protecting their right to engage in industrial action—and the interests of the general public.

Despite what the noble Lord says, I think it has the completely opposite effect. They are not defending individuals' rights. Rather than focus on supporting negotiations to resolve disputes, we have a Government determined to undermine workers and damage good industrial relations. The use of agency workers during a strike would increase tensions between workers and their employers. This is bound to make disputes more difficult to resolve amicably.

Let us not forget: strikes are a last resort, as the noble Lord says, and most negotiations resolve in an agreement. Even where a strike takes place, the resolution requires agreement and this Government are doing nothing to support negotiations and reach settlements and agreements. It will make it far harder for working people to organise collectively to defend their jobs, their livelihoods and the quality of their working lives. This would be a shameful outcome for a Government which only a few years ago promised to protect and enhance workers' rights.

The Explanatory Memorandum to the draft regulations stated:

"The Impact Assessment will be published in good time before any parliamentary debates".

That did not happen. The explanation for the delay, given to the SLSC by the department, was that an impact assessment had been produced but needed "final quality assurance checks". As the SLSC reminded us, every time an instrument is laid without the supporting impact assessment, it undermines the ability of Parliament to scrutinise legislation effectively.

Last week, the Government belatedly published an impact assessment. This featured, as the noble Lord said, vastly reduced costs and benefits from 2015, suggesting that any net benefit for businesses is expected to be below £5 million per year. The impact assessment published in 2015 was declared not fit for purpose by the Regulatory Policy Committee because it did not provide sufficient evidence of the likely impact of the proposals.

Of course, the SLSC rightly drew attention to the Secretary of State's statement that it is not possible to robustly estimate the impact of the policy due to the lack of evidence. That is where we are: no evidence. This is purely a political gimmick without any consultation with those most affected, including employment agencies and workers. How can we believe the assumptions in this latest assessment?

The lack of robust evidence and the expected limited net benefit must raise questions as to the practical effectiveness and the benefit of the proposed repeal of Regulation 7. I repeat that this change is opposed by employment agency businesses, trade unions and employee organisations alike.

In his letter to noble Lords, the Minister stated that:

"We believe the changes we are making will help mitigate the impact of future strikes, such as those seen on our railways this week, by allowing—

—and these are his words—

"trained, temporary workers to carry out crucial roles to keep trains moving."

What is clear is that there is not a large pool of sufficiently trained and qualified agency workers able to replace most roles on the railway and in most other sectors. They are simply not there, so what is the purpose of this change?

Neil Carberry, chief executive of the Recruitment and Employment Confederation, says:

"The government's proposal will not work. Agency staff have a choice of roles and are highly unlikely to choose to cross picket lines."

In addition to the damage to constructive employment relations, agency workers could also face a terrible choice between crossing a picket line or turning down an assignment and risk not being offered future employment.

8.30 pm

Agency workers recruited at short notice are unlikely to have received relevant health and safety training. Despite what the Minister says, this could lead to accidents and injuries in the workplace, with the safety of other workers or indeed the public being put at risk. Absolutely no one wants undertrained staff in food factories or working on track maintenance.

I have previously asked the Minister what assessment the Government have made of the compatibility of these regulations with the Human Rights Act, with the EU-UK Trade and Cooperation agreement, and with the UK's commitment to the ILO's fundamental conventions, including article 3 of convention 87. In response, he stated that the Government were confident that they were meeting all their international obligations —so what assessment has he made of the assertion by the International Labour Organization's Committee on Freedom of Association that:

"The hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term … constitutes a serious violation of freedom of association"?

That is something that the Minister has repeatedly said that the Government are determined to defend—it does not look like it to me.

On the SI relating to tort and increasing the damages, I would like to hear what the Minister would say to trade unionists who demanded a 400% increase in salary if they had not had an increase in the previous five years. Are we going to apply that principle to wage negotiations? Will it apply to the employees of BA who have suffered cuts, or to other employees who throughout the pandemic had their salaries and conditions lowered? Are we going to see the Minister defend that? Of course not. The Government want this increase but there is little rationale for the change.

This element of the legislation is barely used; in fact, the department's own evidence shows that the last time there was a case under it was in 2003. What justification is there for doing this apart from having a

chilling effect on industrial action? A £1 million fine would seriously damage the finances of a trade union and indeed could cause some to collapse. That is not because unions deliberately break the law, as the Minister well knows. It is easy for even the most careful trade union to fall foul of the many requirements on issues such as timescale and giving notice. On top of that, they may face huge legal bills to protect that right which the Minister considers fundamental. What consultation has been conducted on this increase? What impact assessment has been made in respect of the trade unions?

From the report of the SLSC and the evidence of both employer and employee organisations, it is difficult not to believe that the two instruments we are considering are simply a political exercise to deflect from the failure of this Government to engage meaningfully with the organisations affected to resolve disputes. It is political gimmickry that does nothing to support our workers and good industrial relations.

Lord Balfe (Con): My Lords, there is not a lot of competition on these Benches to speak, so I hope I shall be forgiven. We normally begin by making a declaration of interest. Mine is quite simple: I left school at 16 and I joined a trade union straight away. I have been in a TUC trade union ever since, and I am currently the president of BALPA, the pilots' union. I have been the president of the British Dietetic Association. From being a branch official at the age of 16, I have in some way or other been an active trade unionist for longer than I have been an active politician.

I say that because I just cannot see the purpose of the regulations. They deal with an Act passed by a Conservative Government, the Employment Agencies Act 1973. They do not appear to have had the requisite consultation. I would not be surprised if, at judicial review, they did not manage to stand up. There could be a judicial review that the Government had not fulfilled what the regulations were meant to do. I have had briefings from UNISON, the TUC and the British Medical Association. When you get those three in one pot, you really have trouble, I will tell you—with the BMA, particularly.

My first question for the Minister is this. What has changed since 2015, other than that we have a different Prime Minister and that Prime Minister's trade union envoy no longer seems to have much resonance around the Conservative Party? In 2015, this was dropped; it was not proceeded with. We have the impact assessment and the report of the scrutiny committee. I should like to read just a little into the record. The fact that the impact assessment of the department was

"unable to 'robustly estimate the size' of the policy's impact because of a lack of evidence raises questions as to the effectiveness of the change proposed by the draft Regulations … The lack of robust evidence and the expected limited net benefit raise questions as to the practical effectiveness and benefit of the proposed"

repeal of Regulation 7. That is fairly clear; there is not much room for disagreement there.

I also ask a question about the Liability of Trade Unions in Proceedings in Tort (Increase of Limits in Damages) Order. When was the last case? It is fine to update it, but when I asked someone, they could not find anything in the past 10 years in the way of a case. My experience of attending TU governing bodies is that they spend a hell of a long time looking at complying with the law. If you were to be privileged to sit in on a BALPA meeting, you would find that before even the mildest industrial action is undertaken there is absolutely rigorous scrutiny of whether it fully complies with the law—there is no attempt to get round it. What are HMG trying to achieve, other than to annoy people? I do not think this legislation is draconian; I think it is pretty useless.

Where will you find signalmen to be recruited by, I do not know, Reed, to send them down to Cambridge station to work the signals? I do not think they are there. You will find plenty of doctors. Indeed, one of Addenbrooke's biggest problems is that the doctors prefer to work through an agency because they get more money. Will you have the doctors all working for the agency? Of course not. The fact is that there is no great skill pool on the railways. If you go to my local station in Cambridge, you will see that there are signs in all the shop windows for baristas and people to work in the shops. There is no unemployment there to be mopped up by such people, even if they wanted to do it.

The average working person gets no pleasure out of crossing picket lines; it is not a natural thing to do. So I ask the Minister: does he really need this? What does he achieve? One-third of trade unionists vote for the Conservative Party. Why go around sticking unnecessary pins into them? We do not have a crisis. We do not have a major problem. We have a minor problem, and even that minor problem needs addressing in negotiation between the railway unions and the people who run the railways. There is a lot that could be improved there, but it is not going to be improved—sorry, Minister—by little bits of legislation such as this. This, I am afraid, is nearer to a dead letter than a live proposition.

Lord Woodley (Lab): My Lords, the critique by the noble Lord, Lord Collins, was absolutely stunning. Last month, the Minister told this House that it was "outdated" to talk about workers and bosses because apparently:

"We are all working together for the good of the country."—[*Official Report*, 29/6/22; col. 645.]

I say to the Minister: go and tell that to the 3.6 million kids in poverty. Go tell it to them.

The Minister even claimed that the trade unions were a "minority profession", which "do not represent anybody". So I ask him again whether this is now the Government's official position: that 6 million trade unionists do not count. Is this the justification for hobbling trade unions which are fighting for better pay to offset rampant inflation? We are still waiting for the mythical employment Bill—much talked about, but never seen. I remember the Government's crocodile tears at P&O's use of agency staff to undermine trade union rights and drive down pay and conditions, yet here they are now, proposing to enshrine such despicable practices into law. I asked the Minister who has been consulted over these changes, and he replied that there had been no consultation—as the noble Lord, Lord Collins, said—since 2015.

[Lord Woodley]

My noble friend is right. The economy has changed significantly over the past seven years: Brexit, Covid and now the cost of living crisis. It is "wholly inappropriate" to rely on a seven year-old consultation, especially given

"the wider economic and political context".

Those are not my words but those of the Recruitment and Employment Confederation, the REC, which represents agency firms—the employers—and of the TUC, representing trade unions. The REC even warned that these proposals leave employment agencies and their workers in an unfair moral position because of the pressure to break strikes. Let us stop pretending that this Government are on the side of working people, especially when they are slipping through major changes so underhandedly, with only a couple of hours of parliamentary debate.

Surely such a significant shift in workplace power deserves "proper parliamentary scrutiny"? Again, that is not just my opinion, but that of the REC and the TUC, which have both written to our Secondary Legislation Scrutiny Committee, as the Minister mentioned, warning against these inflammatory changes being rushed through both Houses. The committee also expressed its concerns with the way the Government have introduced these statutory instruments, especially with their impact assessment—again, as the noble Lord, Lord Collins, said—which was delivered late and recognised as being of very poor quality, with a "lack of robust evidence". Surely the Minister can see that these proposals deserve primary legislation, not sneaky SIs.

I ask the Minister: why this all-out war on trade unions, which risks breaching not just international conventions but even domestic law? Will he accept responsibility for poisoning industrial relations across this country as a result? I draw noble Lords' attention to a contribution from the debate in the other place. The Conservative MP—yes, that is right, the Conservative MP—Alec Shelbrooke said:

"This agency worker measure was not in our manifesto, and it seems to have been done very quickly in reaction to what is going on in the public sector."

After stating the obvious, that the private sector has

"quite a few unscrupulous employers"—

there is one for the record books—he hit the nail on the head:

"If people lose their ability to have an effect when they withdraw their labour, I am afraid they will effectively lose the ability to withdraw their labour."—[*Official Report*, Commons, 11/7/22; col. 93.]

8.45 pm

I applaud Mr Shelbrooke for saying this and for voting with his conscience against the Government. It is the very first time he has broken the Whip in his 12 years as a parliamentarian. At least one Tory has seen the light; I sincerely hope others follow in his place.

I finish on a closely related issue: fire and rehire is another grievous assault on employment rights. Noble Lords know that I intend to bring a Private Member's Bill later in the Session to outlaw the use of fire and rehire in all but the most extreme circumstances. I repeat that: in all but the most extreme circumstances. Let me be clear, my Bill bans fire and rehire both as a negotiating tactic, which many Ministers in the other place, including the Prime Minister, have called "unacceptable", and as a crude cost-cutting measure to protect profits. However, it will not ban it if a firm is about to go bust. This clarity should, I sincerely hope, put the Minister's mind at rest.

I very much hope that the Minister will respond to my questions and those of all noble Members in this House, and I hope everyone will vote against this disgraceful union-busting proposal before us tonight.

Lord Monks (Lab): My Lords, this SI is the latest in a long line of steps, taken by successive Conservative Governments, to wrap trade unions in ever-more complex and restrictive dollops of red tape. It is almost a rite of passage for each Conservative Administration to slap fresh restrictions on unions. This SI is the latest in a long line. As my noble friend Lord Woodley has said, the Government were supposed to be introducing an employment Bill with new rights for workers—a positive step forward—but where is it? We keep asking, and again I pose that question to the Minister.

The Government were going to tackle the abusive practices of P&O Ferries in sacking staff and replacing them with agency workers, but where has that gone? Instead, they are now encouraging, through this SI, employers in a dispute to replace workers with agency staff. That looks to me like a U-turn, and one that is unacceptable to many of us.

A wiser Government would learn from their own successful experience with the furlough scheme, where they worked closely with unions and the TUC to devise a scheme that did much to see our country through the pandemic in reasonable shape. That degree of wisdom is sadly missing in this exercise we are talking about tonight.

A wiser Government would recognise that the current inflation is not due to wages but to Covid, the war in Ukraine and Brexit-related matters. In fact, our country's experience is of stagnant wages and soaring profits, with real wages having been pretty flat since 2000, with the exception of executive pay, in the largest companies in particular, which grew during the pandemic alone by 29%. Is it any wonder that there could be an increase in labour unrest in the forthcoming period? Workers have got plenty to be restless about.

A wiser Government would seek to address this situation, not by playing to their own political gallery with this kind of gesture, but instead by seeking to work with unions, employers and all those concerned that might have some way of helping this country through a very difficult economic period ahead. Will the Minister, even at this stage, reflect on the request from many of us here tonight to put this SI in the recycling bin and tackle the real problems?

Lord Hendy (Lab): My Lords, I support the amendment moved by my noble friend Lord Collins. Wages are rising at 4% per annum and prices are increasing at 11% per annum. It is a sad thing that the Government's response is to take yet further measures to stop workers exercising the only leverage they have to maintain or

even improve their standard of living. The Minister frankly admitted this evening that the purpose of the statutory instrument in relation to damages was to deter unions from striking, and that would be achieved by increasing the cap on damages by 400%. The point that I wish to raise with the Minister is that this further regulation of trade union freedom may well put the United Kingdom in breach of its international legal obligations, and it is to that that I will restrict my remarks.

My noble friend Lord Collins mentioned Article 3 of Convention 87 of the ILO, which is the most fundamental of all the ILO conventions, the international standards of labour. Article 3 guarantees that unions and employers' associations can organise their activities

"free from any interference which would restrict this right or impede the lawful exercise thereof."

Among the activities that unions must be free to organise is, of course, industrial action. Consequently, the relevant supervisory committee of the ILO—the quasi-judicial Committee of Experts on the Application of Conventions and Recommendations—has said:

"Provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike."

My noble friend Lord Collins mentioned a decision of the Committee on Freedom of Association to similar effect. The authoritative interpretation of conventions by these committees is recognised not only by the European Court of Human Rights and other courts, such as the Supreme Court of Canada, but by our domestic courts. Those committees have held for some time that, among other non-conformities, British law currently does not comply with the requirements of Convention 87, Article 3 because workers taking industrial action are inadequately protected.

I hope that the Minister is not going to say that he disagrees with the rulings of those two ILO committees. They are the supervisory bodies of Convention 87, and it would sound like the first-year law student who writes an essay saying that he disagrees with a judgment of the Supreme Court. I am sure the Minister will not be saying anything like that.

I wish to make an additional point before I sit down. Breach of an ILO convention is bad enough, particularly one ratified by and binding on the United Kingdom, of which the United Kingdom was the very first signatory back in 1948. Secondly, the EU-UK Trade and Cooperation Agreement of 2021 involved the Government undertaking post Brexit to comply with various international treaties by which they were already bound. The effect is that non-compliance with these treaties is not only a breach of them but is unlawful on the additional ground that it is a breach of the Trade and Cooperation Agreement. Paragraph 2 of Article 399 states:

"each Party commits to respecting, promoting and effectively implementing the internationally recognised core labour standards, as defined in the fundamental ILO Conventions".

Paragraph 5 states:

"Each Party commits to implementing all the ILO Conventions that the United Kingdom and the Member States have respectively ratified and the different provisions of the European Social Charter that, as members of the Council of Europe, the Member States and the United Kingdom have respectively accepted."

The UK has the obligation not only to respect and promote Convention 87, but also to effectively implement it. Those obligations surely prevent the UK adding an additional obstacle to the effective exercise of the right to strike by allowing agency strike breakers.

Lord Paddick (LD): My Lords, we on these Benches are very concerned about the impact of strikes such as those planned to close down the rail network, preventing hard-working people, including emergency workers already suffering under the cost-of-living crisis, getting to work, but we do not believe these regulations are the answer.

This first statutory instrument appears to be a sham. It is another pretence at doing something instead of what the Government should actually be doing, which is enabling, empowering and facilitating employers to negotiate effectively with their employees and the trade unions that represent them to prevent the need for strikes in the first place. If the Government were taking effective action to mitigate the devastating further increases in the cost of gas and electricity this winter and the associated increases in the costs of essentials such as food and clothing, there would be less of a demand for large wage increases in the first place.

The report of the Secondary Legislation Scrutiny Committee not only casts doubt on the practical effectiveness of the change brought about by this SI, but also points out the weakness of the Government's own impact assessment, as the noble Lord, Lord Balfe, has said.

Using agency staff to backfill those on strike is likely to prolong disputes—that is, even if employers can get agency workers. As the Trades Union Congress and the Recruitment and Employment Confederation have said, with 1.3 million vacancies in the UK, the number of agency staff available is declining rapidly, the opportunities for them to be employed are increasing and they will choose employment that does not involve having to cross picket lines.

According to UNISON, research shows that, with the best will in the world, agency staff less familiar with the workplace and working practices are more likely to make mistakes, have or cause accidents and cause harm to themselves and others, mainly because of a lack of training, lack of access to protective equipment and lack of supervision. If the Government think there are sufficient agency train drivers, signallers and trained station staff, who, for example, have to assist disabled passengers on and off trains, they are deluding themselves.

Even the British Medical Association is opposed to these regulations. The Government are required to consult before making changes, and yet, as other noble Lords have said, the last consultation was seven years ago, when, as a result, similar proposals were abandoned. Surely, a seven-year-old consultation is not sufficient, as the BMA suggests, and as the noble Lord, Lord Collins of Highbury, has said.

Even in that consultation seven years ago, the majority of businesses supplying agency staff said that the changes would have a negative effect. Some 49% of the respondents said it would have a negative impact on agency workers. On the impact on employers, 40% said

[Lord Paddick]
it would have a negative impact. Only 24% said it would have a positive impact, as it would worsen the relationship between employers and employees if they backfilled with agency workers.

Despite all of that—despite the majority on all sides saying that this is a bad idea—the Explanatory Memorandum states:

"The Government has carefully considered all these points and remains of the view that removing regulation 7 is the right course of action."

If that is not the definition of pig-headedness, I do not know what is.

As the noble Lord, Lord Hendy, has set out in detail, doubt has also been cast on whether the change is compatible with international law, for which this Government have scant regard—be it genuine asylum seekers seeking sanctuary in the UK, or their proposed unilateral action on the Northern Ireland protocol. This Government are rapidly moving the UK towards being seen by others as a rogue state.

This statutory instrument is a poor and ineffective substitute for what the Government should be doing: being more effective in tackling the cost-of-living crisis and getting employees and employers around the table to prevent strike action in the first place.

With regard to the increase in the limit for damages for illegal strikes, rarely if ever is industrial action brought by trade unions if it is illegal. Other than intimidating trade unionists, we question the timing of such changes.

We support the amendment in the name of the noble Lord, Lord Collins of Highbury.

9 pm

Lord Callanan (Con): My Lords, I thank all noble Lords for their contributions to this debate—which, I have to say, was a bit shorter than I expected. I will start with the amendment tabled by the noble Lord, Lord Collins. I thank him for raising his concerns.

I repeat the point I made at the outset. This is very much a question of getting the right balance between, on the one hand, the right of individuals to strike, and on the other hand the rights of individuals to go about their daily lives, whether it be children taking an exam, people going to their hospital appointments or other workers wishing to go to work to do their jobs. These reforms will ensure that our laws strike the correct balance. In doing so, we are protecting the public from unwarranted disruption while, as I said, maintaining workers' ability to go on strike, which, I repeat, will remain unaffected by these changes.

The noble Lords, Lord Collins, Lord Woodley and Lord Paddick, all referred to the consultation not having been carried out on the agency regulations since 2015. In response to those concerns, I would say that the consultation that we carried out in 2015 was extremely thorough. Given that, I struggle to see what a further consultation will bring up. Are there any new issues or objections that we are not already aware of? I think the response to that is no. As we said in response to the Secondary Legislation Scrutiny Committee, some things have changed but the fundamental issues remain the same. I think that in their hearts, Opposition Peers know that that is the case. This is about finding that right balance between the rights of individuals to strike and the right of the public to go about their lawful daily business.

The noble Lord, Lord Collins, also referred to the impact assessment. As I said in my opening remarks, it has been published, as we committed to do in the Explanatory Memorandum. As the impact assessment makes clear, this is a permissive change: employers will hire agency workers only if it makes sense for them to do so. There is no compulsion on them; it is permissive and their choice. Our assessment also shows that this change needs to lead only to a small reduction in the number of working days lost for it to have a positive effect on the economy.

The noble Lord, Lord Collins, went on to question why it was necessary to raise the damages cap for unlawful strike action when damages are so rarely claimed—in which case, Opposition Peers' concerns are ill founded. We are simply restoring the deterrent effect that Parliament intended when the original amounts were set.

The noble Lord also suggested that the increase in the cap would inhibit the ability of unions to take legitimate strike action. He himself made the point that there have been no recent cases on this matter. I also respectfully disagree with the point he makes. As I said, this change applies only to action which a court determines to be unlawful. If, as he suggests, trade unions go to the maximum possible trouble to make sure that their action is lawful, they will have nothing to be concerned about. I am sure that no noble Lord would suggest that unlawful strike action is acceptable in this day and age.

Let me address some of the other points made in the debate. My noble friend Lord Balfe asked whether agency workers would be willing to cross picket lines given current labour shortages. Again, this is a permissive change; nobody is going to be forced to take an assignment that they do not want to take. The point is that the current regulatory framework actually prevents them having that choice, and that cannot be right. The noble Lord, Lord Woodley, raised concerns about the damage that this will do to the reputation of the recruitment sector, and the concerns of the employment businesses and others that have registered about this change. Nobody is being forced; nobody is being compelled; no employment businesses will have to supply workers to businesses facing industrial action. Again, it will be their choice to take part or not, as the case may be; no one is going to force them. We just do not see the point in having the blanket ban that we currently have.

The noble Lord, Lord Monks, drew some I think incorrect parallels with the P&O Ferries case earlier this year. This case is completely different. In the P&O Ferries case, the company has admitted deliberately choosing to ignore statutory consultation requirements when firing staff with no notice. All we are doing in the case of these changes is giving employers more flexibility to help them minimise the disruption that industrial action causes. Where proper procedures are followed, staff on strike should not lose their jobs; they will continue to have exactly the same legal protections that they already have.

The noble Lord, Lord Hendy, questioned whether these changes comply with our international legal obligations, including our commitments under trade and co-operation agreement. We have carefully considered all of these issues and we are confident that the changes are compliant with all of our international obligations—as, indeed, I told the noble Lord, Lord Collins, during Question Time last week. The ability of businesses to use agency staff does not affect individuals' right to strike, and the protections those striking workers have in law remain unaffected. The Government are adjusting the balance between the right of workers to strike, and the rights of the wider public to go about their lawful business, and this falls well within our margin of appreciation when implementing international conventions.

The noble Lord, Lord Paddick, raised concerns about health and safety. Again, these concerns are not well founded, simply because this change does not change the broader health and safety rules that businesses still have to comply with. Similarly, the obligation on employment businesses to supply suitably qualified workers also remains in place. The aim of our trade union laws is to support an effective and collaborative approach to resolving industrial disputes, one that balances the interests of trade unions and their members with the interests of employers and the wider public. The changes we are making will, in my view, support that balance, and I therefore commend these draft regulations to the House.

Lord Collins of Highbury (Lab): My Lords, simply asserting something does not make it true, and that is exactly what the Minister has done tonight. In fact, the reason why this debate was perhaps shorter than he expected is that not a single person supported his line of argument; that is the issue here. He talks about strikes as if there is somehow a desire on the part of workers to go on strike; there is no such desire. It is when they face intransigence; when they face Governments who are determined that negotiations cannot take place—that is what we have heard. I have not heard a single word tonight supporting the Minister's assertion that this Government are in favour of a collaborative approach. When we were collaborative, as my noble friend said, during the pandemic, the TUC worked hand in hand with this Government to make sure that the economy did not suffer long-term distress—and what is the payback? As the noble Lord, Lord Balfe, says, it is simply to have a pop, to have a go, but with no evidence provided that it will achieve anything that the Minister suggests. It will entrench opinions and it will delay settlements.

The employers, the temporary agency firms—and there are many of them—provide a very necessary service. They provide flexibility in very difficult, tight labour markets, as we have heard, and this action will undermine and discredit them and make it more difficult for them to do their job. It has been a very interesting debate. I hope we will be able to read in *Hansard* what this Government really are about, because they assert something and do something else. I beg leave to move the amendment and divide the House.

9.10 pm

Division on Lord Collins of Highbury's amendment to the Motion

Contents 80; Not-Contents 96.

Lord Collins of Highbury's amendment to the Motion disagreed.

Motion agreed.

Division No. 1

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Schools Bill [HL]

Report (2nd Day) (Continued)

Relevant documents: 2nd and 8th Reports from the Delegated Powers Committee

9.21 pm

Amendment 104

Moved by ***Lord Moynihan***

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

"Provision of defibrillators in schools and Academies

The Secretary of State must ensure that all schools and Academies are provided with sufficient numbers of defibrillators so that the defibrillators are easily accessible from each classroom and sports facility."

Lord Moynihan (Con): My Lords, Amendment 104 concerns the provision of defibrillators in schools and academies. My purpose in proposing this amendment requires me to declare my interest as chair of the board of governors of the Haberdashers' Monmouth Schools, where we educate over 1,100 children, and place the highest priority on safeguarding their interests in every activity in which they participate. In this we are led by an outstanding governor, Jo Booth.

I am grateful to the noble Lord, Lord Aberdare, who cannot be with us this evening, sadly; to the noble Baroness, Lady Grey-Thomson, and the noble Lord, Lord Addington, for putting their names to this amendment, for offering my apologies in Committee when I was hosting a key meeting at the Monmouth Schools that Monday evening, and for their subsequent support; and to my noble friend the Minister, who has been active and diligent in listening to our case and, I hope, will respond positively this evening.

The Monmouth case was particularly important to me. The schools form a close-knit society, and from governor to ground staff there is pride in our schools and a strong sense of community. So it was that one of our popular and talented students joined his friends in the cricket nets at the idyllic sports grounds in the Wye Valley, shortly before last term's half-term, for an evening's practice session. There he was taken ill and, realising the seriousness of his condition, the master in charge gave him CPR twice. After the second time, he regained consciousness, and by the time the ambulance took him to hospital, his mum and dad were with him. I pay tribute to the staff who cared for him throughout. Had it not been for their professional care and devotion to the well-being of the students, it is more than likely that he would not have been with his parents at the end. Later that evening, he passed away, leaving family, teaching staff and all who knew him reflecting with a heavy heart on the tragedy, which continues to be felt by us all.

Sudden arrhythmic death syndrome kills 12 young people under 35 every week. Callum Stonier, a remarkable cricket coach and committed teacher on duty that evening, had decided that if our young, outstanding student had not come round from CPR, we would have used one of the five defibrillators in the school—the nearest, rightly, being close to the cricket nets in the pavilion. A defibrillator at the sports centre nearby had previously saved a life at one of our school sporting events.

Many noble Lords on all sides of this Chamber have made the case for ensuring that defibrillators are not a voluntary addition to a school's first aid equipment and required just in new or refurbished schools, as is currently the policy, but a mandatory part of the first aid equipment in all our schools. In fact, if there is a strong enough argument that they should be a legal requirement for refurbished or new schools, there is an equally strong legal argument for the compulsory purchase of defibrillators in every school, as there should be. We should not and cannot differentiate between two groups of children; all their lives are equally important, and I am glad that the Government recognise that.

The announcement yesterday by the Government that they intend to do exactly what we have been campaigning for is exceptionally welcome. No doubt we will hear more detail in a moment. It is not just we in this House who have been campaigning. The Oliver King Foundation has for much longer been exceptionally active in this context. It has done outstanding and important work in lobbying to ensure that all schools have a defibrillator. It appears that the Government are now building on their current open-ended policy of engaging with civil society to ensure that there are defibrillators in all our 32,163 schools in the UK. A statutory duty will save lives, and the important relationships with civil society are the vehicle to ensure that this is done.

I hope my noble friend the Minister will confirm what we heard yesterday on the radio. I heard it at 6 am when I was driving to St Andrews for the final day of the golf, and I was absolutely delighted to hear the news that the Government intended to follow the spirit of the amendment before the House. No doubt it was because the Government were more than aware that there would be an overwhelming cross-party vote in favour of the legislation this evening, and I am delighted if that was the case. They acted first and

deserve the credit for doing so, because their being in favour of the objectives behind such a long-running campaign is critical.

We owe my noble friend the Minister a great debt of gratitude and our warmest thanks for her personal commitment to this subject, without which I really do not believe this would have happened. Maybe I am being too optimistic; we will need to hear from other noble Lords this evening, and whether the announcement on the radio and from the Government yesterday is accurate, and potentially receive more details from my noble friend the Minister. If it was accurate, we should celebrate this evening. As far as I was concerned, it was great news from the Government and made an outstanding day's golf all the more memorable, because it was even more important than the opportunity I had yesterday. It will allow us, particularly the noble Baroness, Lady Grey-Thompson, my noble friend in sport, the noble Lord, Lord Addington, and many others in this Chamber, to take this forward from schools and to really look at the importance of making sure that defibrillators are available in community sports fields and sports grounds and throughout the sporting world.

If this is true, I very much hope that it will be a first, important step in that direction. On that rather happier note than in many of the other debates in this House today, I beg to move.

Baroness Grey-Thompson (CB): My Lords, I declare an interest as the president of the Local Government Association, and I have a number of other interests in this area. I know that my noble friend Lord Aberdare is disappointed that he is not able to be in his place tonight; he is actively involved in the Procurement Bill. As I have previously talked about, 40% of sports facilities in England are behind school gates, so this is not only about protecting children, it is about all those people who use sports facilities.

I am disappointed that I was not going to St Andrews when I heard the news yesterday; I was merely out with a friend and we saw it on the television. I was absolutely delighted to read the social media post by the Department for Education, which said:

"We're making sure every school in the country has a defibrillator. These life-saving devices increase the chance of survival from a cardiac arrest, and will help keep children, staff and local communities as safe as possible."

I was even more delighted when I saw that it had been reposted by the Minister. I thank her for recognising the Oliver King Foundation, because its work in this space has been absolutely tireless.

The only question I have tonight is about the process and timescale for this announcement, because it is so incredibly important that we do this. I am sure that my noble friends will be coming back for more because, as the noble Lord, Lord Moynihan, said, we need to be looking at community centres and at widening this, but this is a really important step forward.

9.30 pm

Lord Addington (LD): My Lords, it is now my job to hang on to the coattails of the people who did the real work on this and say thank you to the Minister. I do not know whether the fact that this amendment to the Bill is not to be accepted says something about confidence in the future of the Bill or the timescale involved. I hope the Minister will be able to tell us roughly the timescale on which this part of the coverage will be brought in.

Schools are an important factor; they predominantly deal with most of the sporting activity of the very young. However, while the correct terminology totally escapes me—the noble Lord, Lord Moynihan, had it earlier—other heart problems will occur in middle-aged men running around trying to lose a few pounds; a group which I am probably waving goodbye to even now. We are setting down that other people will have heart conditions, which is helpful.

Getting this into other sports facilities is a fairly cheap, easy way of avoiding early death. If the Government could give us some idea of the plan for the future, after this provision—I am basically asking about the timescale, implementation and future development—that would be very helpful.

I say thank you to the Minister for this one, and to the Government, but hope it is just part of ensuring that we have universal coverage for those places where sport is usually played. It is a good start but is not the end of this story.

Baroness Berridge (Con): My Lords, I shall speak to Amendment 109 in my name. I look forward to hearing my noble friend's response to the amendment in the name of the noble Lord, Lord Moynihan. I am grateful to the Public Bill Office for its assistance in redrafting this amendment and for a meeting with the Minister and her officials. This is very much a last-resort power.

The amendment is not about compelling schools to open when there is a dispute about their safety, which is a welcome clarification since Committee. I will not rehearse the details of the scenario I outlined in Committee but I do not believe that noble Lords have had a clear answer from my noble friend the Minister as to how, in the scenario of a serious failure in the school estate, where the Department for Education says that a school building is safe but the responsible body says it has an expert report to say that it is not, that stalemate is resolved. In those circumstances, the building would be closed as the responsible body makes the decision.

In addition to this scenario, it could be that although the expert report tells the responsible body that a school building is safe, it is extremely risk averse and refuses to open it. My noble friend the Minister said in Committee:

"However, we expect schools, trusts and local authorities to make decisions proportionate to the level of risk, and to minimise disruption".—[*Official Report*, 27/6/22; col. 503.]

I think this is the nub of the issue. Some responsible bodies might not, in the Department for Education's view, be acting proportionately because they have come to a different decision about the level of risk of opening that building. Some responsible bodies are very small charitable trusts or may even, unfortunately, be a local authority in great difficulty, and those responsible might rightly fear becoming personally liable under health and safety law for anything that then occurs in the building.

[Baroness Berridge]

Such fear may be irrational, in the judicial review definition of that word. I have mused that without such a power to direct a responsible body to open, the Government are leaving themselves with only that remedy: they themselves would have to judicially review a responsible body and say that its decision was irrational or unreasonable in order to force that school to reopen. Would it really be irrational, in the ordinary view of that term, if there had been serious injuries caused by building materials in another part of the estate, for a responsible body to err on the side of caution—perhaps due to an ambiguous phrase in its own expert's report—causing it to make such a decision?

The amendment has highlighted that the Department for Education understandably assumes that responsible bodies will behave in this scenario as they have done in the past, with the current level of risk that we know about on the school estate. In the scenario, the department's excellent capital team comes alongside to give its additional expertise and a negotiated solution is reached—sometimes, sadly, including the temporary closure of buildings. However, if a serious incident has taken place, could it not be that some of the approximately 2,500 responsible bodies might justifiably now behave differently? What looks irrational now might not have then.

I am grateful to my noble friend the Minister for agreeing to reach out to the, for me, newly-discovered disaster relief experts whose profession has gained a higher profile since the pandemic, and since Professor Lucy Easthope's recent book *When the Dust Settles* was published. There may be other experts who can aid the department in assessing more accurately how responsible bodies might behave in this scenario.

One has only to look at the Grenfell tragedy to know that building managers and a whole host of other professionals are behaving very differently now. I am sure the department will be watching carefully the Health and Safety Executive inspections that are beginning, looking at schools' ability to manage the asbestos within the school estate. If those inspections lead to any of the scenarios that I have outlined, the Secretary of State is powerless to act.

Further, my noble friend the Minister stated in Committee:

> "The department taking on direct responsibility for school buildings, or compelling schools to open when they have safety concerns"—

the latter point has been dealt with—

> "could actually reduce safety overall as it could undermine the incentive to maintain buildings effectively and obscure the currently clear responsibilities for the safety of pupils and staff in our schools."—[*Official Report*, 27/6/22; col. 504.]

Again, that is quite an assumption by the Department for Education about responsible bodies' behaviour. I am not sure on what evidence it is based, especially since what is in the amendment is a last-resort power. I hope the experts that the DfE meets are able to help my noble friend assess whether this assumption of how responsible bodies would behave is correct, as I am afraid it strikes me as rather unfair on responsible bodies to make such an assumption.

I understand that the Minister will be taking steps to ensure that responsible bodies are rigorous in undertaking checks and more detailed surveys as necessary where they have buildings in which the specific material reinforced autoclaved aerated concrete, which we spoke about in Committee, could potentially be present. I am keen to hear more on that.

As I stated in Committee, in a Bill that attempts to take so many powers, I have managed to achieve that the Secretary of State has decided that they do not need this one. I sincerely hope, as I am sure other noble Lords do, that the scenario I have outlined never arises. I will not be asking for the opinion of your Lordships' House today; this is a case of wait and see. I am sure noble Lords are with me in saying that we hope it is not a case of saying, "We told you so".

Baroness Chapman of Darlington (Lab): Our Amendment 118F would require the Government to publish a report detailing the condition of school buildings by category of fault, whether it is boilers and pipe work, electrical services, lighting or IT. We would like to know their assessment of risk to children and staff, the geographical breakdown and the cost. We have not been able to glean all the information that we have been looking for from the *Condition of School Buildings Survey* from May 2021, and we think the problem is getting worse following years of neglect. We know that the total condition need is estimated to be £11.4 billion.

We have been alarmed, as have many others, at being made aware of leaked emails at the department describing school buildings as posing a "risk to life". Schools have been fined for failing to tackle issues from disturbed asbestos to heavy lockers not attached to walls falling on to children. We have not been able to find a record of the number of school days lost due to building failure, whether that is snow days or, as we are seeing today, closures due to excessive heat.

Bad school buildings risk lost education and physical harm to children. Will the condition data collection 2 programme enable local MPs, for example, or councillors and parents to know the condition of school buildings in their area, the estimated costs and the assessment of risk? Will the number of days of education lost due to problems with buildings be published?

This is an important amendment to try to get some additional information. We may not divide the House tonight, but it will be returned to as the Bill progresses. It really should not take an amendment to do this; perhaps one of the noble Lords opposite could ask the candidates for Prime Minister where they stand on this issue, because I predict it will become of greater and greater political interest in the coming months.

I also place on record our thanks to the noble Lord, Lord Moynihan, the noble Baroness, Lady Grey-Thompson, and others, especially the Oliver King Foundation, for their incredible work on defibrillators over many years. Let us hope the Minister can confirm what we think we know. This is such an important step and we all hope it will save lives.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): I thank my noble friend Lady Berridge for her Amendment 109

and for raising the important issue of building safety. I valued the opportunity to speak to her about her concerns last week. We absolutely agree with her about the importance of minimising disruption to education from closed buildings.

Our priority is the safety of pupils and staff. The most effective way of ensuring this is for those with day-to-day control of sites to be responsible. Only they have direct knowledge of the buildings, changes in their condition and how they are being used. As I set out in detail in Committee, the department provides significant capital funding, rebuilding programmes and guidance and support to help the sector deliver its responsibilities. I will say more shortly about how we provide more targeted programmes for specific risks across an estate of approximately 22,000 schools, with buildings of different ages and construction types.

We have carefully considered the scenario my noble friend set out. Our view remains that there are sufficient mechanisms in place to support the sector to keep buildings safe and open. Even if the department took on this role, a power as suggested in the amendment would not in practice speed up the decision-making process for buildings that closed on a precautionary basis. Decisions about whether it is appropriate to close school buildings on safety grounds should, as my noble friend stressed when we met, be based on advice from qualified surveyors. That would remain the case whether the department or a body responsible for school buildings was taking the decisions. We think it is very unlikely that schools would ignore professional advice that they have commissioned which says their buildings are safe; we think they would not want to disrupt education unnecessarily. Where surveys demonstrated issues, appropriate support would of course be available.

A power for the department to make directions about the safety of buildings could undermine incentives to maintain buildings effectively and to carry out appropriate checks, which could reduce safety for pupils and staff. Such a power could also risk some responsible bodies abdicating the decision on whether to keep schools open or reopen them, insisting that the department issue such directions. This could lead to an increased and avoidable loss in education, which I know all noble Lords are keen to prevent.

My noble friend has highlighted the issue of reinforced autoclaved aerated concrete, or RAAC, in some buildings. We published guidance on identifying and managing RAAC last year and continue to work across government to understand the issues relating to it better. We recently contacted responsible bodies to ask about their knowledge of RAAC, its presence in their buildings and how they are managing it. I reassure the House that we will follow up rigorously to ensure as complete a response as possible to help inform next steps.

9.45 pm

I can also make a commitment today to continue to engage with responsible bodies so that they are clear that carrying out checks on buildings and undertaking more detailed surveys where necessary are an essential part of fulfilling their broader duties. The department continues to consider carefully what support may be helpful, such as clarifying for responsible bodies the qualifications that surveyors who are undertaking these surveys should have. I am grateful to my noble friend for her suggestion that we engage with experts on managing serious incidents and disaster situations. We plan to do this, and it will inform our response on both a practical and, as my noble friend rightly points out, a human level.

I turn to Amendment 118F, tabled by the noble Baronesses, Lady Chapman and Lady Wilcox. As set out in Committee, the department already publishes data on the condition of the school estate and is committed to publishing detailed data at school level later this year. We are also collecting updated data through to 2026. I know that the Public Accounts Committee and the National Audit Office take a close interest in how we are improving the condition of the estate.

The condition data collection programme helps us understand the overall and relative condition of schools in order to inform capital funding policy and programmes. However, we recognise that it does not replace the need for local management of risk. To ensure safety, many aspects of school buildings need to be checked in greater detail at appropriate and differing intervals by qualified professionals, including condition, asbestos, fire safety, and structural surveys; as well as regular gas, electrical and water safety checks. These risks need to be assessed and managed on an ongoing basis at local level, taking into account how buildings are used. Therefore, any necessarily incomplete and time-limited assessment of risk carried out at national level would not only place significant burdens on the sector but could be misleading and reduce the focus on ensuring safety and carrying out checks locally, undermining its purpose.

However, we provide more targeted support when broader issues are identified; for example, we ran the asbestos management assurance process to understand its management across schools, and we ran checks to identify and replace cladding of concern on a small number of buildings following the tragedy at Grenfell Tower. More recently, we have prioritised for replacement all known Laingspan and Intergrid design buildings through the school rebuilding programme, as they are coming to the end of their life. Following a successful pilot, we plan to roll out a targeted capital advisers' programme to increase estate management capability by offering best practice recommendations, tools and improvement support from experienced technical advisers.

Turning to Amendment 104 in the names of my noble friend Lord Moynihan, the noble Baroness, Lady Grey-Thompson, and the noble Lords, Lord Aberdare and Lord Addington, I am delighted to confirm again that on 17 July we announced that defibrillators will be provided at state-funded schools in England over the next academic year. I hope that answers the question of the noble Baroness, Lady Grey-Thompson, about timing. I acknowledge the extraordinary work of the Oliver King Foundation and thank all noble Lords who put their names to the amendment for their tenacity in continuing to make the case for defibrillators so persuasively.

[Baroness Barran]

As I said, the first deliveries will take place before the end of this year and will boost the number of defibrillators accessible across England, helping to protect pupils, staff and visitors to schools, and local communities which use school facilities. We will set out further details of the programme later in the autumn term, which will ensure access to this life-saving equipment. I therefore ask my noble friend to withdraw his amendment.

Amendment 104 withdrawn.

Amendment 105 not moved.

Amendment 106

Tabled by ***Lord Shipley***

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

"Local authorities: strategic education functions

(1) The Secretary of State must, by regulations, provide that a local authority in England must perform the functions listed in subsection (2) on behalf of all state-funded schools in its authority area.

(2) The functions are—

(a) to ensure that every child of compulsory school age living in the local authority area has a school place;

(b) to coordinate the provision of education to children who are at risk of exclusion from school;

(c) to coordinate the provision of support to children with special educational needs or disabilities;

(d) to act as the admissions authority for all state-funded schools in the local authority area, including by managing in-year admissions;

(e) to manage the appeals process against individual admissions decisions;

(f) to prevent pupils from being removed from the pupil roll of a school unlawfully;

(g) to monitor the performance of schools; and

(h) to monitor how schools engage with their local community.

(3) The Secretary of State must, by regulations, provide that a local authority in England is given such powers as are reasonably necessary to perform the functions listed in subsection (2).

(4) The powers conferred by regulations under subsection (3) must include, but not be limited to—

(a) the power to request that the Secretary of State directs an Academy school to increase or reduce the number of pupils it admits; and

(b) the power to require the proprietor of an Academy school to appear before a committee of the local authority to answer questions about the performance of the school or about how the school engages with the local community.

(5) The Secretary of State must, by regulations, impose a duty on schools not maintained by the local authority to cooperate with the local authority in the performance of the functions listed in subsection (2).

(6) The duty under subsection (5) must include, but not be limited to—

(a) a requirement to inform the local authority of any plans that the school has to increase the number of pupils it admits; and

(b) a requirement to provide pupil attendance data to the local authority when requested.

(7) In this section—

"local authority in England" has the same meaning as in section 579 of the Education Act 1996 (general interpretation);

"state funded school" means a school in England funded wholly or mainly from public funds, including, but not limited to—

(a) an Academy school, an alternative provision Academy or a 16 to 19 Academy established under the Academies Act 2010;

(b) community, foundation and voluntary schools (within the meaning of the School Standards and Framework Act 1998)."

Member's explanatory statement

This amendment gives local authorities new strategic functions in relation to all schools in their area.

Lord Shipley (LD): My Lords, I spoke to this in Committee and on the first day on Report. I just want to say that I welcome the Minister's commitment on the first day on Report to developing a collaborative standard between trusts, local authorities and third sector organisations. It is an approach to be welcomed.

Amendment 106 not moved.

Amendment 107 not moved.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the noble Baroness, Lady Brinton, will be taking part in the next group remotely, and I invite her to move her amendment.

Amendment 108

Moved by ***Baroness Brinton***

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

"Duty to report child sexual abuse

(1) Where a provider of activities in a school-age educational setting has reasonable grounds for knowing or suspecting the commission of sexual abuse of children who are in their care, they have a duty to report their knowledge or suspicion as soon as practicable to—

(a) the local authority designated officer (LADO),

(b) children's services, or

(c) such other single point of contact with the local authority as designated by that authority for the purpose of reporting the knowledge or suspicion of sexual abuse of children.

(2) The duty in subsection (1) applies whether the abuse has taken place in the setting of the regulated activity or elsewhere.

(3) The duty under subsection (1) applies to—

(a) the operators of a setting in which the activity takes place;

(b) staff employed in any such setting in a managerial or general welfare role;

(c) all other employed, contracted or voluntary staff and assistants only for the period of time during which they have had direct personal contact with such a child.

(4) For the purposes of subsection (1) children are in the care of providers of regulated activities—

(a) in the case of the operators of any setting in which the regulated activity takes place and of staff employed by the operators at any such setting in a managerial or general welfare role, for the period of time during which the operators are bound contractually or otherwise to accommodate or care for such children whenever the regulated activity is provided, and

(b) in the case of all other employed or contracted staff or voluntary staff and assistants, for the period of time only in which they are personally attending such children in the capacity for which they were employed or their services were contracted for.

(5) A person who fails to fulfil the duty in subsection (1) is guilty of an offence.

(6) It is a defence to show that the LADO, children's services or other single point of contact was informed by any other party of the commission or suspected commission of sexual abuse.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) A person who makes a report under subsection (1) in good faith, or who does any other act as required by this section, cannot by so doing be held liable in any civil or criminal or administrative proceeding, and cannot be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

(9) A person who causes or threatens to cause any detriment to a person to whom subsection (1) applies, or to another person, either wholly or partly related to the person's actual or intended provision of a report under this Act, is guilty of an offence.

(10) In subsection (9) "detriment" includes any personal, social, economic, professional, or other detriment to the person.

(11) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) In this section—

"children" means persons who have not attained the age of 18 years;

"providers of activities" has the same meaning as in section 6 of the Safeguarding Vulnerable Groups Act 2006, in so far as the activity takes place in a school-age educational setting."

Baroness Brinton (LD) [V]: Amendment 108 in my name is on mandatory reporting of child sex abuse. I thank the Minister for her comments at the Dispatch Box in Committee, when she said that the Government have no evidence that mandatory reporting is effective. In my contribution, I referred specifically to academic research in countries where mandatory reporting has been introduced and is working well. It is evidenced, but the Government clearly do not want to look at it.

Teachers in Australia, who were unhappy with the principle prior to its introduction, now feel it has given them more confidence in reporting suspicions and that they would not be ignored by the school or, worse, punished for reporting difficult evidence. Professor Ben Mathews from Queensland University of Technology, a world expert in mandatory reporting and how it works in practice, gave evidence in 2019 to the Independent Inquiry into Child Sex Abuse. I hope that, once Ministers have read this evidence and the comments of the Independent Inquiry into Child Sex Abuse victims' group when they responded to a survey on mandatory reporting, the Government would reconsider.

I am very well aware that the IICSA will be publishing its final report in the autumn. I understand that the Government will want to wait until then and will respond in due course, but I remain concerned that there is not a will yet to understand how mandatory reporting is transforming the reporting on child sex abuse by educational professions. I beg to move.

Baroness Wilcox of Newport (Lab): My Lords, Amendment 118D would mean teachers in all schools would be

"required to have, or be enrolled on a course such that they are working towards, qualified teacher status"

before September 2024. I have spoken extensively previously about teachers without QTS having less pedagogical training and less subject knowledge than their qualified colleagues, although I do note the Minister's previous replies to this on several occasions. However, I firmly believe the Government need to match the ambition of Labour's national excellence programme. This amendment will begin to address these current failings.

Amendment 118E would mean that, within a year of Royal Assent, the Secretary of State, whoever he or she will be, would have to ensure that

"every … school is working towards establishing a breakfast club, able to provide a free breakfast to every pupil who requests one".

Yet again this evening, the UK Government could learn from what the Labour Government are doing in Wales: providing free breakfasts in primary schools has been an integral part of the wider work the Welsh Government have done to improve food and nutrition in schools maintained by local authorities since September 2004.

Finally, Amendment 118I would mean that, within six months of Royal Assent, the Secretary of State would have to

"consult on and launch a school children's pandemic recovery plan".

The consultation would include:

"free breakfast clubs … extra-curricular activities for every child … provision of … in-school mental health counselling staff … small group tutoring … ongoing learning and development for teachers, and … an education recovery premium".

This may include uplifting the current premium rate by 10%, increasing the early years pupil premium to match the premium rates for primary school pupils, and expanding the secondary age pupil premium to include pupils aged 16 to 18 and children with child protection plans. There is so much to do but this amendment clearly sets out the difference between what a Labour Government would do for the children and young people of England compared with what little they are now receiving and will continue to receive under this Conservative Government.

Lord Hacking (Lab): My Lords, I was for a short time a governor—the noble Baroness is looking at me as if I am doing something wrong—of our local primary school. I remember at a governors' meeting that one of the teacher-appointed members of the governing body was the English teacher. The only trouble was that he could hardly speak any grammatical English. I wondered often—and spoke to the headmistress about it—how good he was at teaching English.

Two other amendments are being considered in this group, both in the names of my two noble friends on the Front Bench. I support both of those. It is not easy to set up breakfast clubs and the like at primary schools. You have to stretch teachers to provide those services but when they can be provided, they are of enormous assistance and enable parents to go and get on with their lives—nothing could be easier. It also ensures that children start with a good breakfast.

Baroness Boycott (CB): My Lords, I rise to speak to Amendment 118L in my name and I am grateful for the support of the noble Baroness, Lady Bennett of Manor Castle. Although we were too late to get him on the list, this is also supported by the noble Lord, Lord Field of Birkenhead. He was the first chair of Feeding Britain, a job he passed on to me.

This is a very simple amendment which would mean that families of pupils who are eligible to receive free school meals are automatically registered rather than having to opt in. By the Government's best estimate, 11% of children who are eligible are not registered. This could mean that up to 200,000 children in England are missing out on both a nutritious meal and the pupil premium.

We have investigated this a great deal at Feeding Britain. We know that it works. When the noble Lord, Lord Field of Birkenhead, was in the other place he attracted cross-party support from 125 Members, but that Session drew to a close before his Bill could receive a Second Reading. As well as the support, my amendment has the advantage of being proven to work. When automatic registration has been piloted, as it was under the old housing benefit regime in the Wirral, more than 600 additional children were automatically signed up.

The Children's Commissioner, the Local Government Association and Henry Dimbleby, in the national food strategy, have all supported this, and this amendment really goes with the grain of government policy in other areas, such as the warm home discount and cost of living payments. Even my own pension arrives automatically, whether I want it or not. It seems quite extraordinary that a child has to opt in to get a meal, especially now in the cost of living crisis. This is a very simple and straightforward amendment and I urge the Government to accept it.

Baroness Bennett of Manor Castle (GP): My Lords, I am aware of the hour and will be extremely brief. I just want to speak in favour of Amendment 118L, so ably introduced by the noble Baroness, Lady Boycott. I want to make two points in addition to what she said, while associating myself with what she said and noting that the noble Lord, Lord Field, has also shown his support for this.

First, the children who are the most vulnerable, from families which for whatever reason—language difficulties, other disadvantages—may find it difficult to navigate the system, are those who need those free school meals the most. If we do not have an automatic opt-out system, the people who miss out will include the most vulnerable.

The other point is that, a couple of weeks ago, a survey by LACA, the school caterers' trade body, demonstrated that despite the number of pupils eligible for free school meals rising very significantly, more than half of the caterers surveyed were seeing the number of free school meals that they were providing going down. As the noble Baroness, Lady Boycott, said, we know that so many families are struggling with the cost of living crisis. This very modest amendment would at least ensure that those who are eligible for free school meals are getting them. I would like to see free school meals expanded much further and perhaps renamed to take away some of the stigma. This would simply ensure that people who are entitled to something get it. They are not only entitled to it; people desperately need these healthy school meals.

10 pm

Baroness Barran (Con): I begin by responding to Amendment 108, tabled by the noble Baroness, Lady Brinton, regarding mandatory reporting. As we set out in the March 2018 government response to the reporting and acting on child abuse consultation, and as the noble Baroness quoted me as saying—though perhaps I should have been clearer—there was no clear evidence from those who responded to the consultation to show that introducing a mandatory reporting duty would help keep children safe, and therefore the case was not made for its introduction. We are keeping this under review, and we await the final report of the Independent Inquiry into Child Sexual Abuse, which is expected in the autumn.

Schools and colleges are already under legal duties to exercise their functions to safeguard and promote the welfare of children. This includes having regard to the *Keeping Children Safe in Education 2022* statutory guidance, which makes it clear that if staff have any concerns about a child's welfare, they should act on them immediately, and that any concerns should be referred to local authority children's social care. Many other settings, such as extracurricular activities or clubs, are already required to register with Ofsted and must ensure that they have the processes and policies in place to safeguard the children they look after. That includes reporting any incident or allegation of serious harm or abuse to Ofsted, or any significant event that might affect someone's suitability to look after or be in regular contact with children.

In all such cases Ofsted will pass the information to the relevant police or local authority and take appropriate action to ensure the safety of children cared for at the registered provider. Where settings are not registered with Ofsted, our guidance is clear that these settings should have clear escalation routes to manage concerns and allegations against staff and volunteers that might pose a risk of harm to children.

I am grateful to the noble Baronesses, Lady Chapman and Lady Wilcox, for Amendments 118D, 118I and 118E regarding qualified teacher status, education recovery and breakfast clubs. Amendment 118D would restrict the flexibility that school leaders in academies currently have to recruit unqualified teachers and goes further than the restrictions currently imposed on maintained schools via the Education Act 2002. The current scheme allows maintained schools to employ teachers without qualified teacher status in several circumstances beyond those where a teacher is working towards qualified teacher status. This amendment would also remove those limited freedoms for maintained schools.

On Amendment 118I, we know that the impacts of the pandemic have been significant for all children, especially those who are disadvantaged, which is why we are targeting our support at those most in need. The latest evidence suggests that recovery is under way following the Government's almost £5 billion investment for a comprehensive recovery package. Since spring 2021,

primary pupils had recovered around two-thirds of progress lost in reading and around half of progress lost in maths. By May 2022, 1.5 million courses had already been started by children across England through the National Tutoring Programme. I can confirm that the latest data is due to be published imminently, and we expect to see a further significant increase.

Through the catch-up and recovery premium, we have provided £950 million of direct funding to schools, to help them deliver evidence-based approaches for those pupils most in need. The Government are providing an additional £1 billion to extend the recovery premium over the next two academic years. Additionally, this year, through the national funding formula, we are allocating £6.7 billion towards additional needs, including deprivation. The Government are also increasing pupil premium funding to £2.6 billion this year, and allocating £200 million a year to support disadvantaged pupils as part of the holiday activities and food programme over the next three years. Altogether, we are allocating £9.7 billion this year for pupils with additional needs, including deprivation.

On Amendment 118E, the Government recognise that a healthy breakfast can play an important role in ensuring that children from all backgrounds have a healthy start to their day, so that they enhance their learning potential. We are committed to supporting school breakfasts, and our approach has always been to support pupils from disadvantaged backgrounds who are most in need of that provision. We are investing up to £24 million in the national school breakfast programme for 2021-23, and will support up to 2,500 schools in disadvantaged areas, which will be targeted by the programme. Alongside our national programme, schools can also consider using their pupil premium funding to support their financial contribution to breakfast club provision, as endorsed by the Education Endowment Foundation's pupil premium guide. Overall, the Government are investing significantly to support children from low-income families, and it is right that we are targeting investment towards those who are most in need.

Finally, I am grateful to the noble Baronesses, Lady Boycott and Lady Bennett, for Amendment 118L regarding free school meals. We want to make sure that as many eligible pupils as possible are claiming their free school meals, and to make it as simple as possible for schools and local authorities to determine eligibility. We provide an eligibility checking system to make the checking process as quick and straightforward as possible, and we continue to use and refine a model registration form to help schools encourage parents to sign up for free school meals.

We are also continuing to explore the options and delivery feasibility of introducing auto-enrolment functionality. However, there are complex data, systems and legal implications of such a change, which require careful consideration. Therefore, we think it is premature to change this through primary legislation at the moment, but I would be happy to meet both noble Baronesses to discuss how we can move this forward. For the reasons outlined, I hope the noble Baroness, Lady Brinton, will withdraw her amendment.

Baroness Brinton (LD) [V]: My Lords, Amendment 118D in the names of the noble Baronesses, Lady Wilcox and Lady Chapman, talks about the importance of ensuring that all trainee teachers are working towards qualified teacher status. Amendment 118E outlines the important way that breakfast club arrangements work well in Wales, and Amendment 118I focuses on a recovery plan of pupil premiums. We are so delighted that Labour is as keen as the Lib Dems on the pupil premium, which we brought in during the coalition, and which we have pushed the Conservatives to expand since those days. I hope the Government will now consider it.

Amendment 188L from the noble Baroness, Lady Boycott, on free school meals is simple—ensuring an auto opt-in and a voluntary opt-out, so that no child will slip through the net—and probably virtually without cost.

I am grateful to the Minister for her response to my Amendment 108. I am relieved that she clarified things by saying that there was no evidence of mandatory reporting working from a survey, which is rather different from the strong body of academic research from around the world that now shows that mandatory reporting makes a big difference. I hope the Government will look at that research—IICSA certainly has. I am very much looking forward to seeing the IICSA report in the autumn. I hope that it will make clear recommendations on mandatory reporting. I will not press this to a vote this evening so, with that, I beg leave to withdraw Amendment 108.

Amendment 108 withdrawn.

Amendments 109 and 110 not moved.

Amendment 111 had been withdrawn from the Marshalled List.

Amendments 112 to 118M not moved.

Clause 70: Commencement

Amendment 119 not moved.

House adjourned at 10.11 pm.

Grand Committee

Monday 18 July 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, are we not glad we are in a nice, cool Room?

Before the Committee gets under way, I remind your Lordships that if there is a Division in the Chamber, the Committee will adjourn at the sound of the Division Bell and resume after 10 minutes.

Procurement Bill [HL]

Committee (5th Day)

3.45 pm

Relevant document: 3rd Report from the Delegated Powers Committee

Clause 15: Preliminary market engagement

Amendment 86

Tabled by ***Lord Lansley***

86: Clause 15, page 11, line 16, after "suppliers" insert ", especially among small and medium-sized enterprises,"

Lord Lansley (Con): I thank my noble friend Lady Noakes for the splendid way in which she addressed my amendments last week, for which I am most grateful.

Amendment 86 not moved.

Amendments 87 and 88 not moved.

Amendment 89

Moved by ***Lord True***

89: Clause 15, page 11, line 30, leave out from "must" to end of line 31 and insert "in relation to the award—

(a) treat the supplier as an excluded supplier for the purpose of—

(i) assessing tenders under section 18 (competitive award), or

(ii) awarding a contract under section 40 or 42 (direct award), and

(b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure."

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, this group seeks to deal with amendments relating to the process for excluding suppliers and with the debarment list. I recognise that there is considerable interest in this topic. Amendments relating to the grounds for the exclusion of suppliers will be dealt with separately in a later group. I look forward with interest to submissions from noble Lords, but there are a number of government amendments in this group.

Amendment 89 ensures that suppliers which gained an unavoidable unfair advantage through involvement in preliminary market engagement are excluded from the procurement in question.

Amendment 148 is consequential on Amendment 93, which was debated last week. Amendment 93 clarifies that the authority's requirements and award criteria are two separate concepts.

Amendment 154 broadens the concept of an entity associated with the supplier for the purpose of the exclusion grounds. This concept covers entities which are being relied on to meet the conditions of participation and is expanded by this amendment to also cover entities which may not be involved in the delivery of the contract. An example would be a consortium member providing financial backing to the supplier in order to meet conditions of participation relating to financial capacity. This aligns the concept of associated entities with the existing concept in Clause 21. An exception is made in respect of exclusions for guarantors such as banks, where it would be inappropriate to consider the exclusion grounds.

Amendment 150 is the lead of 21 amendments which all serve to change the term "associated supplier" to "associated person" for the purposes of the exclusions regime. This is consequential on Amendment 154 because the entities being relied upon to meet the conditions of participation may not be involved in the actual delivery of the contract. It is therefore accurate to refer to them as "persons" rather than "suppliers".

Amendments 151, 159 and 166 require contracting authorities to notify suppliers when they are considered to be excluded or excludable by virtue of an exclusion ground applying to an associated person or subcontractor. These amendments are linked to Amendments 168 and 171, which require ministerial consideration before a supplier is notified and given the opportunity to replace an associated supplier or subcontractor when they are considered by the contracting authority to be a threat to national security.

Amendment 162 requires contracting authorities to ask for details of intended subcontractors and to check whether any intended subcontractors are on the debarment list, as part of determining whether the supplier is excluded or excludable. Amendments 163, 164, 165 and 398 are consequential.

Amendment 169 corrects a drafting error which incorrectly described suppliers subject to the exclusion ground on national security as being "excluded" when they are in fact "excludable". Amendment 170 is also a technical amendment.

Amendments 175, 182, and 414 clarify what it means to treat a supplier as an excluded supplier in relation to the award of a public contract. They make it clear that contracting authorities are required to disregard tenders from such suppliers and prevent such suppliers from participating in, or progressing as part of, any competitive tendering procedure.

Amendments 176 and 178 provide for the list of improper behaviour at subsection (4) of Clause 30 to be an exhaustive list. It is important to be clear on the circumstances in which a supplier has acted improperly, given that the consequences are exclusion. Amendment 339

[Lord True]
removes financial and other resources of suppliers from the list of the matters that contracting authorities may have regard to in setting proportionate requirements for suppliers to provide particular evidence or information as to whether exclusion grounds apply and whether the circumstances giving rise to any application are likely to occur again. Proportionality is sufficiently and more appropriately achieved by having regard to the nature and complexity of the matters being assessed, which is also listed. This amendment aligns with the matters that contracting authorities must have regard to in considering whether a condition of participation is proportionate, as specified in Clause 21.

Amendment 349 is made at the request of Northern Ireland and provides that transferred Northern Ireland authorities should make notification of exclusion to a department in the Northern Ireland Executive that the authority considers most appropriate, rather than a Minister of the Crown. This is necessary to provide information to the relevant department, for example to consider a potential investigation of suppliers under Clause 57. Amendment 352 requires that a Minister of the Crown must consult with the Northern Ireland department that the Minister considers most appropriate —rather than any Northern Ireland department—before entering a supplier's name on the debarment list or removing an entry from the debarment list following an application for removal under Clause 60.

Amendment 399 extends the circumstances in which there is an implied right for a contracting authority to terminate a contract where a subcontractor—which the supplier did not rely on to meet the conditions of participation—is an excluded or excludable supplier. The amendment includes circumstances where the authority checked the debarment list or asked for information about the subcontractor but did not know that the subcontractor was excluded or excludable prior to award.

Finally, Amendment 402 requires contracting authorities to seek the approval of a Minister of the Crown before terminating a contract on the basis of the discretionary exclusion ground of national security. This is necessary to align with the other circumstances in which ministerial approval must be sought before relying on this particular ground. I beg to move.

Lord Coaker (Lab): In keeping with the obvious mood of the Committee, I actually do not want to say very much either on this particular group. The interest I had was in the amendment from the noble Lords, Lord Wallace and Lord Fox, in this group, on how excluded suppliers demonstrate their reliability following the application of an exclusion order, and the process of self-cleansing. I was particularly interested in what this process of self-cleansing means. I am presuming—from the Minister's helpful introduction—that the company is excluded for X reason, and is told that in the notice that goes to an excludable supplier, and then it goes back to the Government and says, "We've undertaken the process of self-cleansing and therefore the problems that you highlighted with us are no longer applicable". So, I wondered whether the Minister could say a little bit more about the process of self-cleansing, which was the element that I found a little bit vague, if I am honest, and goes with many of the problems we have: the Minister talks about a "proportionate response" from the Government, and those sorts of phrases, and again we get into the problem of definition.

The other point I will make concerns what the Minister rightly pointed out: Schedules 6 and 7 outline the grounds rather than the process. There are the mandatory grounds in Schedule 6 and the discretionary grounds in Schedule 7, both of which a contracting authority might think applies to it. On the grounds in these schedules, can the Minister give us an example of what the process or timescale will be and an example of how it would work? Presumably the Minister sends this to the contracting authority and says, for example, "We think you should be excluded because of this in Schedule 6", and if the company says, "No, this isn't the case", a discussion takes place. It would be helpful for the Committee to understand this process.

Finally, can the Minister confirm that, as I read it, there is also an appeals process? If the Government decided that a firm or supplier should be excluded, am I right in saying that this decision could be appealed? If it is appealed, who is it appealed to—presumably not the same person who made the decision to exclude them in the first place? I am querying the independence of that appeal process and the amount of time that this would take. A little more detail would be useful on the matter of an "excluded supplier" and an "excludable supplier".

I do not want to keep the Committee any longer on this group of amendments, because the Minister's helpful outline clarified some of the points I would have made about why "person" changes to "supplier". I look forward to the Minister's response to my questions.

Lord True (Con): My Lords, I think that in a test match that is called putting the spinner on early when the batsman is better at fending off fast bowling.

The noble Lord asked a number of questions, which I am not in a position to answer at this juncture. We believe that self-cleansing is an important process because exclusion is a risk-based measure as perceived; it is not a punishment. As such, suppliers should be encouraged to clean up their act and given the right to make the case that they addressed the risk of misconduct, or the other issues, occurring again. It is for contracting authorities to decide whether the evidence they have seen is sufficient to reassure themselves that the issues in question are unlikely to occur again. The noble Lord asked a further question about what happens should there be a difference of judgment. The formal position is that it is for the contracting authorities to decide whether self-cleansing has occurred.

It is not our intention to make the exclusion of suppliers more difficult for contracting authorities, because many noble Lords, on a number of subjects, have asked for the opportunity to exclude suppliers. The Bill seeks to ensure that all the relevant issues can be considered. We believe that suppliers will thereby be encouraged to take as much comprehensive action as possible to avoid recurrence if they seem to fall foul of these risks. I repeat: the decision must be made by the contracting authority, and the burden to present

remedial evidence to avoid exclusion is on the supplier. The lack of remedial evidence—or if the remedial evidence is inadequate—may give the contracting authorities sufficient reason to conclude that the issues in question are likely to occur again. However, I will look very carefully at this flighted ball that the noble Lord has sent. We accept the need for guidance on self-cleansing to accompany the legislation, and can assure the noble Lord opposite that this will be published as part of the implementation package for the Bill.

I cannot ask the noble Lord, Lord Wallace, not to move his amendments, as he is not here, but I hope that is something of an answer to the noble Lord, who has amendments in this group.

4 pm

Lord Coaker (Lab): That is quite helpful. Further to that and to make sure I have understood, would an excluded or excludable supplier be put on a debarment list? I refer to Clause 61, which is titled "Debarment decisions: appeals". Am I reading this right or have I got it wrong?

Lord True (Con): We will come on to the details of debarment on a later group—on Clause 61, I believe. A supplier may certainly appeal against the decision of a Minister, who ultimately places the debarment list. On the process of self-cleansing, which we were talking about, the contracting authority, not the Government, undertakes exclusion. It will notify the supplier that a ground for exclusion applies; the supplier may then make representations and submit self-cleansing evidence, as I previously discussed. The contracting authority then weighs it up and decides on exclusion.

This is the further wrinkle that I had not answered in saying rather more words than the succinct selection I have been given, but it confirms what I was saying: the supplier may challenge, but through the courts under the remedies regime, if it disputes the contracting authority's judgment on self-cleansing.

We will come on to debarment decisions and permanent exclusion on amendments after Clause 61, but certainly a supplier may appeal against a ministerial decision.

In moving government Amendment 89 in my name, I request that the other amendments are not moved.

Amendment 89 agreed.

Clause 15, as amended, agreed.

Clause 16: Preliminary market engagement notices

Amendment 90

Moved by ***Lord True***

90: Clause 16, page 11, line 33, leave out subsection (1) and insert—

"(1) If a contracting authority carries out preliminary market engagement, the authority must—

(a) publish a preliminary market engagement notice before publishing a tender notice, or

(b) provide reasons for not doing so in the tender notice."

Lord True (Con): My Lords, here I pay the penalty for the discussion we had before the Committee started: there are more government amendments that I must move in this group. I will beg to move a range of amendments today.

Government Amendments 90 and 91 make improvements to preliminary market engagement notices. Together they ensure that, where a contracting authority chooses not to publish a preliminary market engagement notice, a justification must be set out in any subsequent tender notice. I know this will be welcomed, particularly by small businesses, which often rely on early market engagement.

Government Amendment 277 makes provision for contract details notices. It removes a superfluous reference to contracts awarded under this part, which is unnecessary as the definition of a public contract in Clause 2 covers that which needs to be covered.

Government Amendments 278 to 281 correct a timing error in relation to the publication of a contract details notice for a light-touch contract. This will ensure that the contract details notice is published first, within 120 days of entering into the contract. The publication of the contract is required within 180 days of entering into it, allowing time for the contracting authority to make any necessary redactions before publication.

Government Amendments 282 to 286 are at the request of Northern Ireland and exclude transferred Northern Ireland authorities from the obligation to publish contracts above £2 million.

Government Amendment 287 is a minor drafting change, which better reflects the operation of the provisions.

Amendments 355, 356, 357 and 359 make changes to the requirements in Clauses 64 and 65 for contracting authorities to publish information about, respectively, compliance with the prompt payment obligation in Clause 63 and payments made under public contracts. Northern Ireland has chosen to derogate from both those requirements, so these amendments reflect that policy.

Government Amendment 358 makes it clear that the exemption for utilities in Clause 65(4)(a) applies to private utilities only. Government Amendment 403 clarifies that user-choice contracts which are directly awarded are not subject to the requirement to publish a contract termination notice.

Government Amendments 429 and 430 are technical amendments to Clause 79 to reflect consistent drafting practice and the fact that Northern Ireland has chosen to derogate from the below-threshold rules in Part 6 and so does not require the threshold-altering power in subsection (7).

Government Amendments 446 and 447 to Clause 84 also relate to Northern Ireland. Northern Ireland has chosen to derogate from the requirement for its contracting authorities to publish pipeline notices.

Government Amendment 457 inserts a new clause entitled "Data protection" after Clause 88. This is a now standard legislative provision that reiterates the need for those processing personal data under this Bill to comply with existing data protection legislation.

[LORD TRUE]
As we discussed on an earlier group, I look forward to engagement with noble Lords opposite on issues of particular concern relating to processing and holding data. I beg to move.

Lord Hunt of Kings Heath (Lab): My Lords, I have Amendment 445 in this group. This amendment is concerned with the challenge facing charities seeking to obtain contracts from public authorities. The Bill is ambitious in its aim to simplify procurement rules, which is very welcome, but it is important that it is done in a way which does not make it more difficult for small businesses and particularly charities successfully to bid for contracts.

We know from past experience with current contracting rules and law that charities experience some barriers here. I hope that in our discussions on the Procurement Bill it will be recognised that a large proportion of the voluntary sector is pretty fundamental to the delivery of public services—indeed, in some cases the voluntary sector is the leading provider of such services. For example, according to research commissioned by DCMS, voluntary and charitable organisations and social enterprises won 69% of the total value of contracts awarded for homeless services between April 2016 and March 2020, and 66% of the total value of contracts to support victims of domestic violence and sexual abuse.

We know that the voluntary sector can produce outstanding results; we know about its ability to build trusting and long-term relationships with communities that are often excluded, its focus on prevention, its versatility and its agility. So I welcome the requirement for contracting authorities to publish pipeline notices—the Minister referred to this in relation to one of his amendments today—but, given the utility of such notices for smaller providers and the market diversity and improved services that could be cultivated by giving smaller providers a chance to prepare the bid, we want transparency to be prioritised in the requirements to publish pipeline notices; hence my amendment.

My Amendment 449 is slightly different but it none the less raises issues in relation to the way in which public authorities engage with the private sector—or the independent sector, depending on how you look at it. This amendment arises from concerns that public bodies are failing to act within the spirit if not the letter of the freedom of information legislation in relation to procurement contracts.

I just want to refer the Minister to an openDemocracy report, published last year, which looked at the operation of the Freedom of Information Act in 2020. It found that

"2020 was the worst year on record for Freedom of Information Act transparency … Official statistics published by the Cabinet Office show that just 41% of FOI requests to central government departments and agencies were granted in full in 2020—the lowest proportion since records began in 2005 … The Cabinet Office is blocking requests from MPs about its use of public money to conduct political research … Stonewalling, a brutally effective tactic for evading FOI, is increasingly prevalent … Government departments are cynically exploiting a legal loophole to deny timely access to information in the name of the 'public interest' … Government departments are failing to comply with a legal requirement to work constructively with requesters".

The FoI Act was meant to be a safety net for members of the public so that there would be as much openness as possible. However, there are two obstacles to that happening. The first is the operational aspect of policing the Act through the Information Commissioner. The commissioner has been seriously affected by huge cost-cutting. Last November, Elizabeth Denham, the former commissioner, told the House of Commons Public Administration and Constitutional Affairs Committee that the ICO's resources were "40% less" than in 2010 while, at the same time, the number of requests had increased by one-third. In its most recent annual report, published in July 2021, the ICO noted that there had been a build-up of the caseload over the financial year.

The other obstacle to the public being able to find out what is going on is the subject of my amendment. One exemption in FoI legislation relates to commercial interests in Section 43(2). This is a qualified exemption subject to the public interest test. Its application ought to be straightforward but, unfortunately, it is used regularly to refuse information in often the most absurd situations. The outgoing commissioner said:

"The reality of the delivery of Government services involves so much of the private sector now. The scope of the Act does not … cover private sector businesses that are delivering public services. I think that is a huge challenge. I have seen statistics that say up to 30% of public services are delivered under private sector contracts, but those bodies are not subject to"

FoI legislation.

I am afraid that the NHS is a frequent offender when it comes to this. We know that, over the years, the Government and the NHS have looked to expand private sector involvement. There is a long-established trend of trying to outsource some NHS functions to private contractors and a recent trend to set up what I can only describe as tax-dodging subcos, as they are called, to avoid VAT payments and reduce staff's terms and conditions. This is where public health bodies set up their own subsidiary companies and transfer staff over. Basically, they do it to get around VAT payments, but we have also seen them use it to reduce the terms and conditions of the staff who are so employed.

What is so objectionable is that trusts frequently refuse to disclose information about what they are doing. Decisions are made in secret. In one example, an FoI request went in for the business case. In the decision-making record, the request was turned down on the basis of commercial confidentiality. This happens up and down the country. Section 42(2) is also used to refuse to disclose information long after any commercial considerations have gone.

This is a serious issue. As members of the public, we have a right to know when the NHS outsources services. The FoI legislation was never envisaged as getting in the way of transparency in those cases. When you combine it with the enforcement problem that we have, in essence we are seeing the FoI legislation not being effective. I am not sure how hopeful I am, but I am ever hopeful that the Government will see the error of their ways in relation to FoI. It was set up with the best of intentions and its principles still stand today in terms of transparency, but the more we see the public sector using the private sector, the more FoI considerations ought to come into play.

4.15 pm

Lord Aberdare (CB): My Lords, I added my name to Amendment 445, tabled by the noble Lord, Lord Hunt, and I shall make a couple of points in addition to what he has said.

Clause 84 requires pipeline notices to be published where the contracting authority expects to pay more than £100 million under relevant contracts in the coming financial year. However, this will be required only for contracts with an estimated value of more than £2 million. This threshold will do very little to improve transparency or, indeed, preparedness and competitiveness for SMEs and charities. According to research by the Federation of Small Businesses, over the past three years almost half—48%—of public sector contracts applied for by SMEs were worth below £25,000 and nine in 10, or 89%, were worth below £100,000.

My second point is that the amendment merely requires contracting authorities to consider publishing a pipeline notice where this would be likely to enable a wider range of providers to participate, thus improving the quality and value for money of services tendered. This would surely be a useful, if relatively mild, way of promoting greater awareness of the importance of engaging more small businesses, charities and social enterprise in public contracts. It deserves support.

Lord Mendelsohn (Lab): My Lords, I rise to support Amendment 445, which I was also pleased to sign. The noble Lord, Lord Hunt, made a very good case for why it would be so useful for charities and the noble Lord, Lord Aberdare, extended that. I wish to extend it further to reinforce the point that the importance of the pipeline notice is that it provides guidance for the authorities to take a risk that, in a sense, goes slightly beyond the principle that no one got fired for choosing IBM. If we are trying to get the best service, we must look for the right opportunities and the right people, not just in the context of charities, or even small businesses. Those especially penalised are microbusinesses, freelancers or even start-ups in the commercial sector, not-for-profits and social enterprises. All are massively disadvantaged by tendering for any contract. Many have more than enough skill to be able to do it, and many of the people who provide the backbone for those areas are people who accomplished it very comfortably in larger companies. The effective use of pipeline notices is a strong signal that the Government expect all contracting authorities to make a judgment that will help all those sorts of businesses and those people who can provide excellent and outstanding service. They deserve the opportunity to do so.

Lord Berkeley (Lab): My Lords, I shall speak to Amendment 449A tabled in my name and that of the noble Lord, Lord Clement-Jones. I support the two amendments to which my noble friend Lord Hunt of Kings Heath has just spoken. Amendment 449A covers much the same ground as his Amendment 449, but it probably goes a bit further in arguing for the need for transparency. It relates to public service contractors and where information about them should be available under FoI.

The Bill's disclosure provisions are very limited in comparison with what would be available under FoI. Authorities responsible for contracts worth over £200 million would be required to set and publish key performance indicators, but they do not give the same information, there is a delay of probably up to one year in them and they do not help members of the public and others who might be interested in getting the information.

The amendment sets out that the FoI Act should be extended to cover information held by public sector contractors about these contracts. At present, it allows access to such information only if it is held on behalf of the commissioning authority, which normally applies only where the contract specifically entitles the authority to obtain particular information from the contractor. Where it does not, the information held by the contractor is outside the scope of FoI provisions.

There are many examples of this. Some of those cited by my noble friend probably also apply here but I shall mention one or two others. The first is a report on potential fire safety defects at Hereford County Hospital, constructed and managed under a PFI scheme by Mercia Healthcare Ltd under an agreement with the NHS trust. The report was commissioned by Mercia Healthcare from the now-defunct contractor Carillion, which was still operating at the time. The request to the trust for information about this was refused on the grounds that the report was not held by or on behalf of the trust. There are many such examples. I could explain at length some of the contracts that HS2 has got into; I shall not, but the same comments apply. There is a complete lack of transparency about information on that.

The extension to cover information held by contractors about contracts with public authorities has been supported by the Information Commissioner, the Public Accounts Committee, the Public Administration and Constitutional Affairs Committee, the Justice Committee, the Committee on Standards in Public Life, the Independent Commission on Freedom of Information, set up by the Government to review the FoI Act in 2015, and the Institute for Government. There are many other examples from around the world where transparency is thought necessary and desirable. I believe the UK FoI provisions should be extended to allow access to such information via a request to the public authority responsible for the contract.

While I am on my feet and while we are talking about transparency, I should like to ask the Minister about a Written Statement giving guidance to Ministers participating in government commercial activity. It comes from the Minister for Brexit Opportunities and Government Efficiency and says that the Bill we are discussing

"creates a simpler and more flexible commercial system that better meets our country's needs while remaining compliant with our international obligations. Ministers have the opportunity to participate fully in this system with certain safeguards to protect them from the risk of legal challenge."—[*Official Report*, Commons, 15/7/22; col. 17WS.]

I could add that it does not protect the taxpayer and does not seem to protect anybody from the Minister making lots of money out of NHS contracts, as we have heard. It is odd that this Statement has come out

[Lord Berkeley]
in the middle of our deliberations on this Bill. Could the Minister explain when we can see the guidance—I have asked the Library and it does not have it yet—and how it fits in with the Bill we are discussing?

Lord Alton of Liverpool (CB): My Lords, I support Amendment 449 in the name of the noble Lord, Lord Hunt of Kings Heath, and Amendment 449A from the noble Lords, Lord Berkeley and Lord Clement-Jones, which deal with transparency. The Minister will not be surprised that I will use this opportunity to raise the blocking of information about the purchase of Hikvision cameras, which are used all over the United Kingdom; he was good enough to meet me twice to discuss this and I am very grateful to him for the time he gave. The noble Lord, Lord Clement-Jones, raised this in a Motion to Regret debate in February. I raised it at Second Reading, quoting the Biometrics and Surveillance Camera Commissioner, Professor Fraser Sampson, who said he was

"encouraged to see reports … that the Secretary of State for Health and Social Care has now prohibited any further procurement of Hikvision surveillance technology by his department".

I asked the Minister at the time whether he would be willing to share his own department's response to that letter to the Cabinet Secretary from Professor Sampson, and to explain why, if it was the right thing to do in the case of the Department of Health—and I believe it was the right thing to do—to give information to Members of Parliament in parliamentary Questions, which it was, because the Minister answered Questions from me specifically on this on 25 and 26 May, it was not possible on security grounds to give the same answers it was possible to give in connection with the Department of Health.

Even more relevant, in conjunction with these amendments, is the fact that only last week the information requested in a freedom of information request about Hikvision in connection with HS2—which I will come back to—was denied. That raises quite a lot of serious problems, I think, in the minds of any member of the public, let alone parliamentarians anxious to discover the truth about why particular things are being ordered, how much they cost, whether they pose security risks and what the dangers are to the United Kingdom.

I think we have a serious problem in our procurement supply chain when it comes to the problem of Chinese technology companies—blacklisted, I might add, by a Five Eyes ally, the United States, as a threat to national security and yet allowed in the United Kingdom—who are known for their complicity in human rights violations taking place in Xinjiang against Uighurs, and I declare a non-pecuniary interest as vice-chair of the All-Party Parliamentary Group on Uighurs. When I met the noble Lord to discuss the legislation before us, he noted that there are over 1 million Hikvision and Dahua Technology cameras in the United Kingdom—I repeat, over 1 million. The noble Lord outlined that the Government do indeed have concerns regarding the security of these cameras and their links to the concentration camps in Xinjiang.

Now as many will be aware, a number of civil society organisations, including Free Tibet and Big Brother Watch—through freedom of information requests—have found that a number of government departments, local authorities, NHS trusts, schools, police forces, job centres and prisons use cameras manufactured by Dahua Technology and by Hikvision. What is not clear is the extent of the issue across the public procurement supply chain, and that is why these amendments are so important.

I have asked the Cabinet Office how many departments have cameras manufactured by Dahua Technology and Hikvision and, as I have explained, Ministers—with the exception of the Department of Health—have refused to reply. I welcome the decision made by the former Secretary of State at the Department of Health to commit to removing Hikvision cameras from his department, but when will we have a timetable for other departments to follow suit? How can we justify doing one thing on national security grounds in one department and not elsewhere?

I have asked Ministers how many of these cameras are at UK ports, airports and train stations and, again, I have been rebuffed on the grounds that the Government will not speculate on the security provisions on our transport network. When you apply through freedom of information requests for that information, it is declined. So, sadly, the debate around the use of Hikvision and Dahua in our public procurement supply chain is shrouded in secrecy. I hope Ministers unwilling to be transparent about the issues that we have faced hitherto will see that they are wrong to have been so and will remedy that.

Nowhere is this issue more evident than when I was recently approached by a concerned party who had reported to me that Hikvision may have received a contract from HS2 to install its cameras along the entire length of this new high-speed rail network. Following this information, I submitted a freedom of information request to HS2 asking for information on whether Hikvision has any contracts with HS2, and I was informed that HS2 does not centrally hold information regarding contracts with its suppliers. This is clearly an unacceptable state of affairs. Phase 1 of HS2 is to cost taxpayers—and the noble Lord, Lord Berkeley, I am sure will correct me if I am underestimating this—some £44.6 billion, and that includes substantial procurement contracts. It is well within the public interest to ensure that taxpayers' money is not going to Chinese technology companies that have been accused of complicity in gross human rights violations and the use of forced labour—slave labour.

4.30 pm

With that in mind, I believe the Government should consider provisions to this Bill that will ensure transparency and that public procurement contracts do not go to companies such as Hikvision and Dahua, which have these known links to slave labour. That is why I think Amendments 449 and 449A are so admirable.

I recognise that the Government are beginning to wrestle with the substantial task of removing Hikvision and Dahua technology cameras from the public sector supply chain. One person about whom I have no doubts is the noble Lord, Lord True, who, as I have already indicated, has already been extremely helpful on this matter. But this will become possible only with a timetable and a developed plan, which requires transparency

about the extent of the problem. I hope the Minister will consider what more the Government can do to fully outline the extent of Hikvision's and Dahua's presence in the UK—they already have 1 million cameras in this country—so that we can finally discuss a reasonable timetable for their removal, as is happening in other Five Eyes countries such as the United States.

Baroness Boycott (CB): I speak on behalf of my noble friend Lady Worthington, who cannot be here, to support our Amendment 452, which makes transparency provisions, in particular on issues of climate change. I welcome the Minister's commitment at Second Reading that the Government

"want to deliver the highest possible standards of transparency in public procurement".—[*Official Report*, 25/5/22; col. 856.]

While the Bill does not include a general duty of transparency compared with previous procurement rules, which required that contracting authorities act in a transparent manner, the Government have said:

"Transparency will be fundamental to the new regime. Extended transparency requirements and a single digital platform on which procurement data will be published will mean that decisions and processes can be monitored by anybody that wishes to do so."

The Bill widens the authorities' duties to publish notices and information on their procurement activities, and the provisions under Clauses 86 and 88 should improve transparency by making such notices available through a specified online system. This is welcome, but there is no substantive information on what exactly is going to be published. Instead, Clause 86 provides for appropriate authorities, through secondary legislation, to make regulations that will set out how notices and information will be published.

The amendment in my name and that of my noble friend Lady Worthington is intended to clarify what the regulations for the publication of notices, documents and information must contain as a minimum, by ensuring that any regulations include provisions around the availability of notices or information and that these are easily accessible.

Open and accessible procurement data will be crucial in the years ahead to enable modelling of the impacts of public contracts on carbon emissions, particularly when it comes to renewal. Spend Network has started to collect procurement data on every public tender and contract in the world and to map some of this impact on a freely available basis, but it has been hampered by a lack of good-quality inputs. Nevertheless, the data available has confirmed that a 20% reduction of emissions at each contract renewal would

"see the UK government's contracting still emitting 686,000 tonnes of carbon per month by 2030",

but that

"poor quality data meant that we were only able to evaluate 40% of the data".

The recent Written Question to the Minister from my noble friend Lady Worthington highlighted the lack of easily accessible data being kept by departments on both contracts and emissions from those contracts. Will the Minister agree to this simple amendment, which would ensure that there is clarity in the legislation about transparency and accessibility, especially in relation to carbon?

While I am on my feet and we are discussing transparency in contracts, I would like to ask the Minister something that I was asked at the weekend, about the £360 million Palantir contract to manage NHS data. I was contacted by a very worried local NHS manager, who says that a list of 300 redundancies has already been drawn up in the NHS digital department and that this contract with Palantir—a second person has now left the NHS to work for Palantir—is a "done and dusted deal". I would be incredibly happy if the Minister could give me a small reassurance that I could pass on to my friend, because obviously everyone in his department is really anxious.

Baroness Hayman of Ullock (Lab): My Lords, I start by thanking the Minister for introducing all the government amendments in this group. Again, it is very helpful, as there are quite a few of them, so we appreciate that.

I will speak to my four amendments and offer my support for the others in this group, so ably introduced by noble Lords. My first three are Amendments 455, 458 and 459A, which are on digital registers and digital information. I will speak to those first. Amendment 455 would require the establishment of a digital register of all public procurement for all notices; Amendment 458 would allow the creation of a digital registration system for suppliers; and Amendment 459A would require a contracting authority to publish required procurement documents on a single digital platform. The intended purpose is to allow public spending priorities and the performance of the procurement system to be understood by stakeholders, and therefore allow authorities to plan and deliver procurement in a strategic manner.

The Green Paper *Transforming Public Procurement* said that a

"lack of standardisation, transparency and interoperability is preventing the UK from harnessing the opportunities that open, common and shared data could bring",

and that

"a clear digital procurement strategy focused on transparency results in greater participation and increased value for money driven by competition."

The Cabinet Office *Declaration on Government Reform* policy paper, published in June last year, also supports this when it says:

"We must do better at making our data available to all so that we can be more effectively held to account."

It also includes an action to:

"Ensure all data is as open as possible to public and third parties."

I am sure we would all support that.

We were therefore very pleased to see this ambition reiterated by the Minister at Second Reading when he said:

"I acknowledge that transparency has been a key ask for the House. The House expects that transparency will be improved. We believe that the Bill does this."—[*Official Report*, 25/5/22; col. 926.]

We have learned from today's debate that real transparency is incredibly important to noble Lords, as this Bill progresses. We therefore believe that it is essential to put the Green Paper ambitions into the Bill, both to deliver on this promise effectively and to make sure that it cannot be rolled back or diluted, which is one of

[Baroness Hayman of Ullock]
our concerns. An unambiguous statement of this commitment would help secure adequate resources, and I am sure the Minister would agree with me on the importance of this.

Looking at Clause 88, on information relating to a procurement, in Part 8 of the Bill—there are number of subsections, so I will not read it all out—I just want to check that I am reading its implications correctly. If I understand it, it creates powers to have a single supplier portal right across government. If this is correct, it is extremely positive, but I would like clarification from the Minister that that is exactly the intention of this clause. If that is the case, it would save a huge amount of time across government and across business, allowing companies to register and update their credentials once to do business with UK government. It would also allow them to establish unique IDs for contracting authorities and, we hope, then move forward in a much more practical and efficient way, which is what we would all like to see. The purpose of my Amendment 455 is to allow the Bill and the Government to articulate this objective much more clearly. I would be grateful if the Minister can clarify this.

The other vital part of the Government's data ambitions—to bring together all the notices and data around procurement into a single source—should also have the same elevation in the Bill. It is really important that the information can then be fed back into a variety of user-friendly ways to local authorities, major procurement companies and others, so that we can generate data-driven insights and properly track the performance of different companies. Because there is spend, there is live, ongoing and updated data, which will be extremely helpful. There seems to be the ambition behind the UK's adoption and approval of the open contracting data standard, about which it would again be helpful to get clarification. The purpose of my three amendments on data is to gain clearer provisions in this regard in the Bill, which will be easier to understand for anyone working in the procurement industry or wanting to gain a contract.

The noble Lord, Lord Clement-Jones, also has a number of amendments on data, and I thank him for his support for one of my amendments. I know he will speak to his amendments, but I think we are in the same place on all this. I am extremely grateful for his amendments and will listen carefully to what he has to say when he introduces them.

I turn to my other amendment, Amendment 459, and thank the noble Baroness, Lady Bennett of Manor Castle, for her support for it. Its purpose is to require each ministerial department to calculate the estimated carbon emissions from public contracts entered into and to lay an annual report on this before Parliament. The amendment seeks to look at the impact of the procurement regime from an emissions perspective. Given the weather at the moment, climate change is on everyone's mind, so I hope the Minister and the Government will think carefully about the areas where we are looking to improve the impact of the Procurement Bill—on climate change, emissions, net zero and so forth.

There is a National Audit Office report on public sector emissions, which is extremely worth looking at. I urge the Minister to have a close look at it to see whether there is any way that its recommendations can also be part of what we are trying to achieve through the Procurement Bill. The main issue is around reporting: although many companies will do it voluntarily, many others do not report at all, so there is no balance in the information that we have. For example, there are no mandatory emissions measurements or reporting requirements for the public sector as a whole. The wider public sector includes local authorities, schools and hospitals, all of which may well have high carbon emissions. Peers for the Planet published a very good report on local authorities and net zero, in which it noted that there was little consistency in local government reporting of emissions. I understand that a lot of this concerns BEIS, but the Procurement Bill provides us with an opportunity to look at whether this is something that would have a positive impact on driving down emissions.

This concludes the introduction of my amendments and I will turn now to those of other noble Lords. Many noble Lords spoke in support of the different amendments on the publication of notices and the concerns around freedom of information. My noble friend Lord Hunt of Kings Heath, in particular, made an extremely important speech about his two amendments. He said again that it is a welcome ambition to simplify what we are trying to achieve here with procurement. As I have said, any noble Lord who worked on OJEU will be very grateful for simplification. As was debated last week, it is terribly important that we do not make things more difficult for SMEs, charities, voluntary organisations and, as my noble friend Lord Mendelsohn said, for freelancers, who were often forgotten when we debated this Bill previously. Transparency is clearly very important when looking at those kinds of contracts.

4.45 pm

The noble Lord also spoke to his Amendment 449 around the importance of transparency around FoIs. This is incredibly important. We had a few examples of this. The noble Lord, Lord Wallace, is not in his place, but he, too, had an amendment on FoI. My noble friend Lord Berkeley spoke to his amendments on this and made an important contribution. The noble Lord, Lord Alton of Liverpool, gave a particularly powerful example of the problems he had trying to get information through an FoI about Hikvision. If we are going to have freedom of information, it should be freedom of information unless there is a very good reason why the information should not be available. It is concerning that that is not becoming the norm and that we are moving away from that. I shall be interested to hear the Minister's response, but I hope that the Government will take particular note of that.

Finally, the noble Baroness, Lady Boycott, talked about the need for clarification on what the regulations will be for the publication of notices, documents and information. There is a welcome ambition on transparency in the Bill. We support the Government in what they are trying to achieve on that, but we must make sure that it happens in a way that is effective and makes a difference.

Lord Clement-Jones (LD): My Lords, I rise to speak to a number of amendments in this group on behalf of my noble friend Lord Wallace and myself. I must first apologise that there was no presence on the Liberal Democrats Benches at the beginning. I am afraid my colleagues have been in the wars. My noble friend Lord Wallace is at the dentist, my noble friend Lord Fox is suffering from Covid and my noble friend Lord Scriven was delayed for four hours on a train—so it has all been a tale of disaster.

I shall speak first to my noble friend Lord Wallace's Amendments 450 and 451, which are intended to probe the nature of the exemptions from publishing or disclosing information. It is welcome that centralised investigations by a Minister of the Crown into whether suppliers should be excluded are explicitly allowed under the Bill and that reports from these investigations must be published. However, under the current Bill the grounds for not publishing such reports include national security and the release of sensitive commercial information. Sensitive commercial information is defined under Clause 85 as any information which

"would be likely to prejudice the commercial interests of any person if it were published".

Given that a debarment investigation, by its very nature, is likely to prejudice the commercial interests of a person in that it will have a significant reputational impact on a company or individual that will affect their commercial relations, this test is too broad and is likely to lead to many debarment investigation reports not being published or to decisions to do so being contested by the company.

Clause 85(2)(b) is likely to lead to more redaction of information than is necessary or in the public interest by putting the onus on the contracting authority to prove there is no chance it will cause any harm to the commercial interests of any person—a standard which is very vague and difficult to enforce. We therefore argue that information in public contracts regarding how public funds are spent should be public by design and redacted only by exception when doing so is in the overriding public interest. Doing so reduces the risk for contracting authorities and will avoid overreaction.

My noble friend's Amendment 448 has the same intent as Amendment 449A. The noble Lord, Lord Berkeley, spoke to that amendment extremely cogently and I have signed it. As he said, the Freedom of Information Act 2000 applies to information about a contract held by a public authority but not normally to information held by the contractor. Public access to information about public sector contracts varies from contract to contract, depending on their precise terms and on the willingness of the parties to adopt measures permitting greater access.

Much of the information the public may seek will relate to problems not anticipated at the contract stage or to information which the authority did not consider it needed to monitor in relation to performance under the contract. The Bill provides for only limited disclosure to the public about the performance of a contract. An annual assessment of performance against KPIs will be required for contracts valued at over £2 million, but an authority will not be required to publish more than three KPIs and may not be required to publish any at all if it considers that they would not allow the appropriate assessment of the contract's performance. The actual information to be published about compliance with KPIs will be left to regulations.

In any event, a 12-month wait for an annual publication is unlikely to satisfy the needs of those concerned about an existing problem, and this amendment, as the noble Lord described, provides that all information relating to a contract with a public authority held by the contractor or a subcontractor will be subject to the FoIA or to the Environmental Information Regulations 2004. As he described, this follows the approach of many countries' FoI laws: for example, Australia, Germany, Ireland, Italy, New Zealand—I could go on.

Amendment 449 would in effect make this position under the UK's Freedom of Information Act and the EIR. It would ensure that any information held by a contractor in connection with a public authority contract would be deemed to be held on behalf of the authority and thus be subject to the FoIA and EIR. The public's right to such information would no longer depend on the precise terms of the contract. We strongly support that amendment.

We also support Amendments 455 and 459A in the name of the noble Baroness, Lady Hayman. I have also tabled Amendment 456, which is complementary to Amendment 459A. As the noble Baroness described, Amendment 459A is designed explicitly to frame a duty around transparency in UK procurement beyond publishing the notices themselves as required in the Bill. As she described, this is drawn from the OECD's recommendation on public procurement and seems to have some purchase with the Cabinet Office. The amendment would help establish how and where the notices should be published. It also says why or what the objective behind publishing the notices is. It is important that the completeness and comprehensiveness of the notices are not changed without accountability.

Amendment 456 goes a bit further and adds specific requirements about the platform's implementation and would ensure that the information on the digital platform was regularly reviewed for accuracy, timeliness and completeness. A crucial aspect is the need for the contract award notices to be published in a timely fashion. Current legislation requires contract award notices to be published within 30 days, yet research by the Spend Network shows that the mean time to publish contract award notices is over 40 days. Many ministerial departments spending billions of pounds take more than three months to publish notices. The Cabinet Office takes an average of 2.7 months. Vital information is missing from nearly three-quarters of contract award notices, and this is wrong because it denies the public, businesses of all sizes and the media the ability to understand what financial commitments the Government are making and with whom—as with that egregious fast-track PPE contract situation.

We need to ensure that this long-standing problem does not get worse and that the appropriate authority ensures that public sector organisations publish complete, accurate and accessible data under an open licence and that the 30-day threshold set out in Clause 51 is respected in practice. That is what Amendment—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I apologise to the noble Lord for interrupting him. I am afraid that there is a Division in the Chamber. The Committee will adjourn for 10 minutes.

4.54 pm

Sitting suspended for a Division in the House.

5.04 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I am tempted to say to the noble Lord, Lord Clement-Jones, that he need not sit down since I am about to call him.

Lord Clement-Jones (LD): Thank you. My Lords, if noble Lords thought that my previous speech took a long time, they will not be happy with the second half of it, which concerns the technical parts. These relate to Amendments 452A, 452B, 519A and 519B, which are technical amendments from the Local Government Association designed to ensure that all notices come within the new digital platform.

Amendments 452A and 452B relate to Clause 86(1) of the Bill, which sets out that appropriate authorities may by regulations make provision about

"the form and content of notices, documents or other information to be published or provided under this Act"

and

"how such notices or documents are, or information is, to be published, provided or revised."

The amendments would help ensure that future regulations do not contravene the purpose of the single digital platform wherever possible and support the move to progressively streamline the many different publication requirements for procurement information and contract-spend data placed on local government and the public sector as a whole through different pieces of legislation.

Amendment 519A would omit Section 89(4)(b) and 89(5) of the Transport Act 1985. This would remove the requirement for local authorities to issue notices of tender individually to all persons who have given to that authority a written notice indicating that they wish to receive invitations to tender for the provision of local services for that authority's area. This would bring the requirements to advertise tenders for transport services into line with those set out in the Bill and facilitate the ambition to create a single digital platform where all public tenders are advertised in one place.

Finally, Amendment 519B would amend the Service Subsidy Agreements (Tendering) (England) Regulations 2002 by removing Regulations 4 and 5. Regulation 4 requires local authorities to publish information relating to tender invitations in accordance with Part 1 of Schedule 1 to the same regulations. Regulation 5 requires local authorities to publish tender information to the general public at times, in places and in a form which are convenient to the public, and to publish notices of tenders in local newspapers. Removing the two regulations would ensure that information about contract pipelines and contract awards for service subsidies will in future be published in the same place and format as information about any other public contract, to improve consistency and accessibility. A service subsidy in this context is where councils subsidise companies operating public passenger transport services to run services on routes which may not otherwise be economically viable, for example bus services in rural areas. I hope that has explained these rather technical amendments and very much hope that the Minister understands the motive behind them.

Lord True (Con): My Lords, I apologise for not rising sooner; I never know how many spokesmen are going to rise from the various Benches. This has been another interesting and informative debate. It has also been extremely wide-ranging, as has become our custom in this Committee. I will try to answer as many points as possible, but there are things coming from various areas that we will look at carefully. This is your Lordships' Committee and therefore it is perfectly reasonable for points to be made. My aspiration is to answer, but I may not be able to answer them all.

Before I get on to the main amendments, I will address various things I was asked about. The noble Baroness, Lady Boycott, asked about the Palantir contract. I am advised that this is a DHSC NHS contract. I am not informed in my department of the details she asked for, but I will ask my officials to follow up and respond to her later.

The noble Lord, Lord Berkeley, asked about a Written Ministerial Statement made last week. The timing of the publication of the participation in government commercial activity guidelines for Ministers referred to in that Statement is not connected to this Bill. The guidance sets out how Ministers can be appropriately involved in commercial activity, including procurements, under the current procurement rules.

I was anticipating in a later group—indeed, there are some relevant amendments—a debate about Hikvision. I am grateful for what the noble Lord, Lord Alton, said, as well as for the opportunity to speak to him about this matter, which, as he said, has some security considerations. So far as the actuality of what might or could happen is concerned—that is a potential rather than a loaded spin on it—it is ultimately up to contracting authorities to apply the grounds for exclusion under this Bill on a contract-by-contract basis. The national security ground is discretionary, meaning that authorities can take into account a range of factors, including the nature of the contract being tendered. However, the debarment regime will allow for the central consideration of suppliers on the grounds of national security. As the noble Lord knows, the Government's security group is working with the National Technical Authority and the Government Commercial Function on the government security aspects of this issue.

I appreciate the noble Lord's impatience, given the sensitivities of the issue. Policy options are being worked out for how to mitigate the security risks posed by this type of equipment; they range from primary legislation to ban certain companies from the government supply chain to issuing more advice and guidance for contracting authorities. The Cabinet Office has also published guidance setting out the steps that all government departments must take to identify and mitigate modern slavery and labour abuse risks throughout the commercial lifecycle, focusing on the areas of highest risk. We may well return to this issue in debate on a later group, but

I can assure the noble Lord that the matters he raised are ones that the Government are not minimising but currently considering.

Lord Alton of Liverpool (CB): I am grateful to the Minister. Without pre-empting our debate later in the Committee's proceedings, is he in a position now to respond to the letter to the Cabinet Secretary from Professor Sampson, which I referred to in my remarks earlier? If not, could that correspondence be made available to your Lordships between now and Report?

Also, has the Minister had a chance to look at the Foreign Affairs Select Committee's report, which called for a total prohibition of Hikvision, and the decision not just of the United States Administration but of the European Parliament to ban Hikvision from their public procurement policies? Given the national security implications, as he said—earlier, I referred specifically to the suggestion that HS2 might procure and use Hikvision cameras on the whole of its new network—does the noble Lord not agree that this is something on which we should shine more light rather more urgently?

Lord True (Con): Perish the thought that I might comment on the shelf life of HS2, but I do take what the noble Lord says very seriously. The fact is that some of the factors he mentions are taken into consideration. This issue is live. I accept his chiding. I will look carefully at his words and at what he has asked to be published or not published, but I hope that we may get a resolution of this matter, because I understand the demand, the request and the desire for a clear and public solution to the points put forward by the noble Lord. We will see what we can do, if not before the next group then certainly before we come back to this issue on Report.

5.15 pm

Returning to the main amendments in the group, the noble Lord, Lord Hunt, made a very interesting intervention, which raised important issues. He asked about business cases, for example. There is nothing to prevent contracting authorities publishing their business cases and it could happen as a part of the tender document pack. We have said, as we have discussed, that we do not believe there is any express benefit to sharing information in every situation. Although the work would appear minimal, contracting authorities would have to seek to protect their own legitimate commercial interests and apply the transparency exemptions to the case, along with a public interest test. This is likely to involve input from the legal team and additional sign-off from senior staff. Once the burden of publication is balanced against the benefits of the transparency of the data, we submit there is no advantage to publication as a duty, given the other data that we are required to publish under the Bill. However, we will reflect on the points the noble Lord has made.

Amendment 445, tabled by the noble Lord, Lord Hunt, with the support of the noble Lord, Lord Aberdare, amends Clause 84. I agree, again, with what he said about the importance of pipelines and their availability. I understand their importance, particularly in relation to small businesses in the voluntary sector, social enterprises and the various uses we have discussed in other groups. Certainly, this is something I have undertaken that we will reflect on, not only inside government but in engagement between now and the next stage. Pipelines are important and I brought in a request from the Northern Ireland Executive in terms of limiting pipelines, but that had to do with their particular desire to adjudicate. That is not, however, an indication that the Government are not interested: we think this is important. We view the amendment as unnecessary because we believe that contracting authorities may already go further—if they wish to—than the statutory minimum of £2 million the noble Lord referred to, as set out in this regime, and voluntarily publish procurement pipelines. Again, let us look at what he and others said. I listened carefully also to the noble Lord, Lord Aberdare.

Amendment 448, proposed by the noble Lords, Lord Wallace and Lord Fox, was the amendment on which Hikvision was mentioned. I am advised that in relation to the specific letter to the Cabinet Secretary, we cannot publish it at this stage but, repeating what I have said, we cannot comment on security arrangements on the government estate. As I said, these are matters under consideration.

Lord Alton of Liverpool (CB): My Lords, before the noble Lord continues, I hope he will go back to the original statement to reflect further on whether this information could be published. This was an open letter from Professor Sampson that was published—it appeared in the national newspapers that the letter had been sent to the Cabinet Secretary—and I would have thought that most of the issues raised in that letter are things to which Members of your Lordships' House should certainly be privy.

Lord True (Con): My Lords, I have given further information. The noble Lord referred to a whole range of factors which he asked to be considered and asked me to respond to the Foreign Affairs Select Committee report and so on. I said I would reflect on all he has said and come back, but I gather there has been some reflection on this aspect of his menu. We will no doubt maintain this dialogue.

The amendments we were talking about—Amendments 448, 449 and 449A—all relate to freedom of information and seek to bring external suppliers into the scope of the Act. In practice, the Government do not believe that the amendment would add much and could impose burdens on businesses that would make public contracts unattractive. The public authority will already hold all the details of the tendering process and the resulting contracts, and that information can already be requested under the FoI Act. The desire has been expressed in some quarters to reform the FoI Act, but we are looking at the proposals before us.

Furthermore, information held by a supplier or subcontractor on behalf of a contracting authority is already within scope of the Act. The amendments also introduce unhelpful limitations on the ability of contracting authorities to withhold commercially confidential information. This is a point of debate, but the FoI Act sets out the duties on public bodies when they receive requests for information under the Act.

[Lord True]
Restating the operation of that legislation is not necessary in this Bill. The Bill sets out in detail what information is required to be published and the triggers for publication, as well as requiring contracting authorities to explain why they are withholding any data.

Amendment 449A also seeks to extend the enforcement powers of the Information Commissioner to suppliers and subcontractors and open them up to criminal prosecution. The Information Commissioner already has enforcement powers in relation to public authorities and therefore in relation to the information held by others on their behalf. We believe that transparency is a sanction for authorities that fail to fulfil their obligations to publish as the failure will be obvious to the public. Failure to publish information required by the Act could be subject to judicial review, and there is also potential for a civil claim for breach of statutory duty pursuant to Clause 89 if the supplier can demonstrate that it suffered loss or damage arising from a breach of a publication obligation. Additionally, an appropriate authority has a power under Clauses 96 to 98 to investigate a contracting authority's compliance with the Act, make recommendations and, if appropriate, provide statutory guidance to share lessons learned as a result of the investigation. Recommendations issued under Clause 97 come with a duty on the contracting authority to have regard to those recommendations when considering how to comply with the Act, and failure to do so would also leave the contracting authority open to judicial review.

Where a contracting authority is required to publish something that includes sensitive commercial information, it may withhold or redact that information only if there is an "overriding public interest" in doing so. Where the commercial confidentiality exemption is used to withhold or redact information, this must be publicly recorded. As such, there will be full transparency about what has been withheld and why, and interested parties can always challenge such decisions by requesting the withheld information under FoI law. This process is subject to the oversight of the Information Commissioner. Interested parties can also complain to the procurement review unit, which we discussed the other day.

Amendments 450 and 451 are from the noble Lords, Lord Wallace and Lord Fox. They are absent, and I send them best wishes for their respective aliments. Expertus dico: I have just had an aliment as noble Lords saw in the last Session, and I very much feel for all noble Lords. These amendments would make it harder for contracting authorities to withhold information in instances where there is sensitive commercial content. The overall result could be the inappropriate disclosure of sensitive information or fear of such disclosure, both of which are likely to have a chilling effect on suppliers bidding if they cannot be confident that their commercial secrets will be respected by contracting authorities. This could lead to a reduction in choice, quality and value.

Amendment 452, tabled by the noble Baronesses, Lady Worthington and Lady Boycott, and Amendment 455, tabled by the noble Baroness, Lady Hayman of Ullock—which I think is intended to address the central digital platform, not the data on the supplier registration system—propose to introduce various requirements about the accessibility of published information and how it is licensed. The Government have already committed to a publicly available digital platform which will allow citizens to understand authorities' procurement decisions. This data will be freely available. It will remain subject to data protection law and redaction under the exemptions set out in Clause 85.

However, not all information should be published on the central digital platform. For example, some associated tender documents produced under Clause 20 in certain procurement exercises may need to be circulated to only a limited group of suppliers, for instance, where that information is sensitive. As set out in the Green Paper, we will apply the open contracting data standard, and specify this in more detail in secondary legislation. Published data will be covered by open government licence where possible; personal data contained on the platform will be available without any licence.

Amendments 452A and 452B, tabled by the noble Lord, Lord Clement-Jones, would amend Clause 86 to ensure that regulations require publication on a single digital platform. These amendments are unnecessary as the Government have already committed to providing this platform.

The noble Lord, Lord Clement-Jones, has tabled Amendment 456, which imposes obligations on an appropriate authority in relation to standards and quality of data on the platform. Clause 86(1)(a) already makes specific provision for regulations to set out both the form and the content of information to be published under the various notices required by the Bill. This power is there to ensure that regulations can establish the very standards and formats that I believe the noble Lord is seeking.

On the noble Lord's proposed new paragraph (b), a notice is usually a snapshot of a moment in time. Most notices should not be updated after the initial publication and it is the legal responsibility of the contracting authority publishing the information to ensure that it is timely, accurate and complete. The appropriate authority—a Minister of the Crown, a Welsh Minister or a Northern Ireland department—will not be in a position to verify all that information, which is why it is the responsibility of the contracting authority.

Lord Clement-Jones (LD): My Lords, I apologise for interrupting, but can the Minister therefore explain why these time limits are so regularly and hugely overridden? The research shows, as I mentioned, that the Cabinet Office itself has a delay of 2.7 months compared with its legal obligation of 30 days. How does the Minister explain that, and why is no further action needed in terms of compliance?

Lord True (Con): My Lords, if the Cabinet Office is sinning, I will take the matter away and look into it. I heard what the noble Lord said about time limits, but I do not have a specific response in this area at the moment, and nor can I either confirm or deny the figure he gave. We have undertaken to engage on these issues, and we will find the answers and will look very carefully at what the noble Lord said in his speech—or rather, his two speeches.

Amendment 458, tabled by the noble Baroness, Lady Hayman of Ullock, relates to the creation of a digital registration system for suppliers. The register of suppliers described in the Green Paper remains a priority, and provision for this register is set out in Clause 88.

Amendment 459, tabled by the noble Baroness, the noble Lord, Lord Coaker, and others seeks to introduce a requirement for government departments to produce reports on carbon emissions relating to procured goods, services and works. I made the Government's position clear previously that such matters should not be included in the Bill and that remains our position.

I thank the noble Baroness and the noble Lords, Lord Coaker and Lord Clement-Jones, for their Amendment 459A. However, the Government are opposed to this amendment as well. It would create an obligation to have the central digital platform operational within six months of passing the Act. Just to be clear, Clause 86 creates the powers that the Government will use to require publication on the single digital platform. Clause 88 is the basis of the supplier registration system, which is the "tell us once" system through which suppliers will communicate information about themselves to contracting authorities.

I understand from his helpful explanatory statement that the noble Lord, Lord Coaker, was referring to the former—the single digital platform. We do not wish to commit to such a timetable now, as it might not be necessary or possible to deliver the whole functionality of that platform to that timetable. As the noble Lord knows, there is already a six-month period of pre-implementation built in, but I hear what he says and I think there is broad agreement in the Committee that this development is desirable. I welcome the positive response from the Liberal Democrats and Her Majesty's Opposition, having had discussions about it, and I will take away what they say.

5.30 pm

Lord Coaker (Lab): Can I just say—because sometimes these things pass by and they should be noted—that we are very pleased with that commitment from the Minister and thank him for it?

Lord True (Con): Right. Unfortunately, the noble Lord will be disappointed by my response to the second part of the amendment, because I have already explained that contracting authorities will not be required to publish all information to the central platform.

I turn finally to Amendments 519A and 519B from the noble Lord, Lord Clement-Jones. The Bill exempts contracts for public passenger transport services under paragraph 17 of Schedule 2, as their award is regulated by Department for Transport legislation. We believe that it is more appropriate that the transparency provisions governing these arrangements are kept within their existing legal regime, and local authorities are therefore not placed under an unnecessary burden of trying to comply with two separate regimes simultaneously when placing such contracts. I have, however, asked my officials to engage with the Department for Transport to better understand how we can ensure that both regimes are aligned—I think that was one of the points behind the noble Lord's remarks.

I thank the noble Lord for his generous remarks. Having been a bit flinty on a number of the others, I will none the less, as ever, study carefully *Hansard* and your Lordships' very well-informed submissions. Against that background, I commend the government amendments in my name and respectfully request that other amendments in the group not be pressed.

Amendment 90 agreed.

Amendment 91

Moved by ***Lord True***

91: Clause 16, page 11, line 36, after "conduct" insert ", or has conducted,"

Amendment 91 agreed.

Clause 16, as amended, agreed.

Clause 17 agreed.

Amendment 92 not moved.

Clause 18: Award of public contracts following a competitive procedure

Amendments 93 to 95

Moved by ***Lord True***

93: Clause 18, page 12, line 17, after "considers" insert—

"(a) satisfies the contracting authority's requirements, and

(b) "

94: Clause 18, page 12, line 19, at beginning insert "if there is more than one criterion,"

95: Clause 18, page 12, line 20, leave out from "assessing" to "a" and insert "tenders for the purposes of this section"

Amendments 93 to 95 agreed.

Amendment 96

Moved by ***Baroness Noakes***

96: Clause 18, page 12, line 22, leave out "must" and insert "may"

Member's explanatory statement

This amendment probes why suppliers which do not satisfy conditions of participation must be excluded from a contract award under clause 18 though such suppliers are not required to be excluded from the tendering process under clause 21(6).

Baroness Noakes (Con): My Lords, I shall speak also to Amendment 107 in this group. The large part of this group is government amendments, but my two small probing amendments have found their way into my noble friend's rather large group.

Amendment 96 is another "may/must" amendment, which we always enjoy in this Committee. It probes the effect of not satisfying participation conditions on a tender. Clause 21 allows a contracting authority to set conditions of participation in specific areas. Subsection (6) permits but does not require the contracting

[Baroness Noakes]
authority to exclude a supplier which does not satisfy a participation condition from then participating in all or part of the tendering process.

If a contracting authority does not exclude a supplier from the tender process, one might think that such a tender could result in the award of a contract. If that were not the case, I can see no reasonable case for allowing such a tender into the process at all. However, subsection (3)(a) of Clause 18, which deals with contract award, states that

"a contracting authority … must disregard any tender from a supplier that does not satisfy the conditions of participation".

Hence, we seem to have an Alice in Wonderland world where a supplier which has fallen foul of participation provisions can take part in the tender process, but only on the strict understanding that it cannot win the contract. That does not make any sense to me. My amendment would make the terms of Clause 18 permissive, so that a contract could be awarded. Another solution would be to make exclusion mandatory from the tender as well as from the contract award.

My second amendment in this group, Amendment 107, is a simple probing amendment to ascertain what is meant by Clause 19(3), which deals with competitive tendering procedures. Subsection (3) requires the procedure to be proportionate,

"having regard to the nature, complexity and cost of the contract",

which seems at first sight entirely sensible and should stop contracting authorities using unnecessarily burdensome procedures. What subsection (3) does not say, however, is how this is to be assessed.

In a rare case of going beyond what is in the Bill, the Explanatory Notes say:

"Subsection (3) requires contracting authorities to ensure that the procedure is not designed in a manner that is unnecessarily complex or burdensome for suppliers".

This is, in fact, from paragraph 141 of the Explanatory Notes, not paragraph 142 as I set out in my explanatory statement. The Explanatory Notes therefore firmly place the consideration of proportionality in the context of suppliers, but that has not found its way into the text of Clause 19, and that is what my Amendment 107 seeks to change.

In addition, even if subsection (3) could be read as being a supplier-centred proportionality requirement, it does not give any help as to whether the contracting authority has to consider suppliers generally, in an objective way, or whether they should take account of the particular characteristics of likely suppliers. I have in mind in particular that what proportionality might look like to a multi-million-pound contracting business is light years away from its impact on a small or medium-sized enterprise.

I hope my noble friend will agree to make the Bill clearer in this regard, or at least make a clear statement from the Dispatch Box as to how Clause 19(3) is intended to be interpreted. I beg to move.

Lord Scriven (LD): My Lords, I rise to speak to Amendment 105 in the names of my noble friends Lord Wallace of Saltaire and Lord Fox. I will come on to some of the points the noble Baroness, Lady Noakes, made, but before I start, I apologise for not being here at the start of the Committee. As my noble friend Lord Clement-Jones said, I was on a train for four hours. Actually, you can hear my croakiness: I am the healthiest one on our Front Bench today, so I am here—

Baroness Smith of Newnham (LD): That is not quite true.

Lord Scriven (LD): Well, the healthiest on the Procurement Bill and constitutional affairs Front-Bench team. I thank the Minister, I think, for passing on his cold of last week to me.

My noble friends' Amendment 105 is also a probing amendment. Clause 19 uses the word "appropriate", and this amendment is to see

"under what circumstances it may be considered 'appropriate' not to undergo an open tendering procedure."

There are no criteria or guidelines about what may be appropriate. This is just a probing amendment to see if the Minister can explain why such a wide-ranging word as "appropriate" is in the clause. Who will decide whether it is appropriate, and what guidelines or criteria would the Government expect the authority to seek in determining whether the open tendering procedure should not go ahead?

With Amendment 96, yet again, the noble Baroness, Lady Noakes, raises some important points in Committee by changing just one word. I particularly point to what she described as the "Alice in Wonderland world", in which you can be debarred from one part of tendering but not have been given a contract—or the other way round. The noble Baroness's suggestion to include exclusion from the tendering process in the Bill makes eminent sense or we will be in the position in which people could, by law, tender but would be debarred from getting the contract, even if theirs was potentially the best tender around.

With those comments, I feel that, particularly on Amendment 105 in the name of my noble friends, some clear guidance from the Dispatch Box would be welcome.

Baroness Hayman of Ullock (Lab): My Lords, I thank the noble Baroness, Lady Noakes, for introducing her two amendments. As ever during Committee on this Bill, she has spotted where the nonsense lies and where problems could quite easily be resolved, if her wise words are listened and adhered to.

On her Amendment 96, I know my dear and noble friend Lord Coaker is very disappointed not to be having the must/may discussion with her today and that it has fallen to me, but it is an important point. Different terminology in different parts of the Bill impacts on what is expected. What does that mean? As the noble Baroness clearly demonstrated, if you follow that logically—all the way down the rabbit hole, to carry on the metaphor—it does not make sense any more. I think she has picked up something that could be sorted out straightforwardly and I would be interested to see whether the Minister agrees.

The noble Baroness's second amendment, Amendment 107, on the lack of assessment and what is in the Explanatory Notes not being sufficient for what we need to know to feel secure about this clause, is again a simple amendment that makes a lot of sense.

To me, it strengthens and provides clarity to the Bill. The noble Baroness made the critical point that these kinds of things have a different impact on multinationals from small businesses and, as we have said previously, charities and voluntary organisations. This is important.

The noble Lord, Lord Scriven, ably introduced the amendments in the name of the noble Lord, Lord Wallace. I hope the Liberal Democrat Front Bench manages to recover before we come back in September, but I thank the noble Lord for that. They are about terminology —what the words mean and what the impact of that terminology is on the Bill. As the noble Lord pointed out, there are no guidelines and criteria, and nothing specified about what "appropriate" means, nor on whose shoulders it falls to interpret what it means and whether that could be open to challenge. Again, they are small but important amendments and we support them.

There are a number of government amendments in this group. I have read through them and they seem straightforward, but I shall be interested to hear the Minister's introduction.

Baroness Scott of Bybrook (Con): My Lords, I seek to deal with amendments related to competitive procedures. I will start with the government amendments. Amendment 98 ensures that contracting authorities can choose not to assess tenders that do not comply with the procedure. This is different from improper behaviour in a procurement resulting in exclusion, which is addressed in Clause 30. As such, this amendment gives contracting authorities the discretion to exclude for procedural breaches that do not meet the higher threshold for improper behaviour and to ignore an insignificant breach, depending on the context. Government Amendments 99 and 103 are consequential to Amendment 98.

Turning to the Clause 19 amendments, Amendment 106 would replace

"a competitive tendering procedure other than an open procedure"

with "a competitive flexible procedure", making it much easier to understand the two types of competitive tendering procedure. There are many consequential amendments to update this terminology, including Amendments 108, 109, 115, 132, 133, 155, 156, 157, 161, 188, 189, 192, 195, 199, 202, 213, 221 and 289.

5.45 pm

Amendment 110 would delete an unnecessary phrase—

"the exclusion of suppliers by reference to"—

as it is already dealt with in a cross-reference. Amendment 122 would make the change from "competitive procedure" to "competitive tendering procedure", as per Clause 18's heading. Amendments 146, 190 and 261 reflect this.

I now turn to Clause 32. Amendments 193 and 194 would work together to clarify that, where a supplier does not qualify for the reserved contract, the contracting authority can exclude that supplier at any point in the procurement process. Amendments 196 and 197 are made simply to improve the drafting.

Similarly, in Clause 33, Amendments 200 and 201 would clarify that, where a supplier does not qualify for the reserved contract, the contracting authority can exclude that supplier at any point in the procurement process.

Lord Aberdare (CB): I apologise for interrupting, but I just want to ask a question in relation to Clause 32. It is about supported employment provision, which has been raised with me by Aspire Community Works, an award-winning community enterprise working to promote social mobility.

Its concern is that the current drafting of the Bill represents a significant reduction in the ability of commissioning authorities to reserve contracts for supported employment, first by restricting them only to competitive flexible procedures—rather than open procedures, as is currently the case—and, secondly, by limiting their use only to supported employment providers rather than enabling other bodies to carry out such work within a supported employment setting—again, as is the case at present.

At Second Reading, the noble Lord, Lord True, indicated that the Bill

"continues the existing ability to reserve certain contracts for public service mutuals and for supported employment providers."—[*Official Report*, 25/5/22; col. 858.]

This seems inconsistent with the Bill's inclusion of the two restrictions I have mentioned. Can the Minister tell us, probably not now but subsequently, whether this is an intentional limitation on the use of reserved contracts or simply an oversight in drafting which I hope she will want to correct in view of the Government's desire to enhance the role of social enterprises and SMEs in the procurement process? I have probably chosen the wrong time to raise this, but the Minister had just mentioned the relevant clause.

Baroness Scott of Bybrook (Con): It is certainly not the Government's intention to exclude those groups of providers. In fact, we want to encourage them and make things easier and more transparent for them. I will take a look at *Hansard* and discuss the issues in Clause 32 with the team. We will make sure that, perhaps in those groupings throughout the summer period, we discuss these issues further; I will make a note to do that. It is absolutely our intention not to make this more difficult for those groups but to make it easier, so we will look at how we can do that if this clause makes things more difficult.

In Clause 33, Amendments 200 and 201 would clarify that, where a supplier does not qualify for the reserved contract, the contracting authority can exclude that supplier at any point in the procurement process. Amendments 203 and 204 to Clause 33 are simply to improve the drafting, as I said.

Amendment 206 would make it clear that suppliers will fail to be eligible for reserved contracts only where they have signed a "comparable contract", as defined in subsection (7), within the previous three years, not just because such a contract was awarded to them. It ensures that there is no risk of a supplier being penalised where a contracting authority had decided to award a contract to a supplier but, for whatever reason, the contract did not progress.

I turn next to Clause 34. Amendment 209 clarifies that competitive flexible procedures can allow for the exclusion of a supplier from both participating and progressing in the procedure where the supplier is neither a member of a dynamic market, nor a part of a

[Baroness Scott of Bybrook]
dynamic market—for example, a category of goods or services. The current provision refers only to "the exclusion of suppliers", and this change clarifies that this means participation and progression in the procurement by, for example, progressing to the next stage of a multi-stage procurement. Amendments 214 and 215 are consequential to this amendment.

Amendment 262 in Clause 48 changes "virtue of" to "reference to" for ease of reading.

Amendment 341 removes the more general reference to "procurement" in Clause 56, to clarify that notification of exclusion is required in all competitive tendering procedures.

Finally, Amendments 427 and 428 are technical amendments to Clause 78: the first to ensure drafting consistency across the Bill and the second to reflect the fact that Northern Ireland and Wales have derogated from this provision and so do not require the threshold-altering powers in subsection (4).

I turn now to Amendment 96, tabled by my noble friend Lady Noakes, which questions why a supplier "must" satisfy the conditions of participation in Clause 18(3)(a) to be awarded the contract, while in Clause 21(6) contracting authorities only "may" exclude the supplier from participating or progressing in the competition. I reassure noble Lords that the two clauses work together: suppliers must satisfy the conditions of participation in order to be awarded the ensuing public contract, and that is what is addressed in Clauses 18(3)(a) and 21(2). Clause 21(6) gives the contracting authority the flexibility to decide when to assess the conditions of participation, and at what point to exclude suppliers that have not met them. Having "may" in Clause 21(6) allows the condition to be assessed during the procedure. For example, when it comes to insurance requirements, a company may not have the full cover initially, but it may have the chance to obtain it before that contract is awarded. I hope that this makes it slightly clearer; if not, I am sure that we can discuss it further throughout the summer months.

I now turn to non-government amendments. Amendment 105 to Clause 19 from the noble Lords, Lord Wallace and Lord Fox—both of whom I hope will be better very soon—proposes to remove the competitive flexible procedure. The practical reality of procurement is that the open procedure is simply not appropriate in all circumstances. The government procurement agreement contains three procedures: open, selective and limited or direct-award tendering. The open procedure is popular where the requirement is well-defined and straightforward; price is likely to be the key feature. There is no pre-qualification of suppliers, any interested party can submit a tender and they must all be assessed.

We want contracting authorities to use the new competitive flexible procedure, which we could not have had when we were in the EU, to design fit-for-purpose procurements that deliver the best outcomes. This may mean including phases such as a prototype development when seeking innovative solutions. Contracting authorities will use it to limit the field by applying conditions of participation to take forward only those suppliers with the financial and technical capability to deliver the contract. Clause 21(1) requires these to be proportionate so as not to disadvantage smaller suppliers.

The competitive flexible procedure also allows for negotiation and discussion of the requirements, which is particularly important to ensure not only that the best value is obtained but that requirements are clearly understood. The ability to negotiate is severely limited under the current EU-derived rules.

Clause 19(3) requires the contracting authority to ensure that any competitive tendering procedure is proportionate, having regard to the nature, cost and complexity of the contract. Amendment 107 from my noble friend Lady Noakes proposes to make these considerations from the perspective of the supplier. We believe that these assessments are better considered by contracting authorities in the round following pre-market engagement. Otherwise it would be possible for prospective suppliers to challenge and assert that a procedure is not appropriate.

To counterbalance the flexibility given to contracting authorities to design a competitive tendering procedure, we wanted to ensure that procedures do not become overly convoluted or burdensome for suppliers. We believe that Clause 19(3) achieves this, as it will force the contracting authority to consider what is proportionate, without suppliers dictating the specifics of the procedure. I understand that my noble friend Lady Noakes requires more clarity, and I am sure we can do that if that explanation did not provide it.

Lord Scriven (LD): I want to come back to the Minister's explanation about the word "appropriate" and it being wide. I understand that there may be reasons why a fully open procurement would not be wanted. Amendment 105 deals with what is appropriate. The Minister raised an issue relating to prototypes. Clause 18(3)(a) states:

> "In assessing which tender best satisfies the award criteria, a contracting authority … must disregard any tender from a supplier that soes not satisfy the conditions of participation."

If it cannot do the prototype, it would be debarred. I think further clarification is required about the Government's view about an appropriate situation in which a fully open tendering procedure would not be required.

Baroness Scott of Bybrook (Con): It is obvious that the noble Lord, and probably all noble Lords, need more clarity about this. I do not have any further clarity at the moment, but we will make sure we provide that because it is obviously an issue of concern.

I have just been handed a note to avoid a *Hansard* correction. To correct something I said about the consistency of Clause 21, I need to refer to Clauses 18(3)(a) and 21(2), which both make clear that conditions of participation must be satisfied. I believe I said Clause 22(2) rather than Clause 21(2). I clarify that we were talking about Clause 21(2), not Clause 22(2).

The competitive flexible procedure also allows for negotiation and discussion of the requirements, which is particularly important not only to ensure that the best value is obtained but that the requirements are clearly understood. The ability to negotiate is severely limited under the current rules—I think I have got past that, but we will keep going.

Clause 19(3) requires the contracting authority to ensure that any competitive tendering procedure is proportionate, having regard to the nature, cost and complexity of the contract. Amendment 107 from my noble friend Lady Noakes proposes to make these considerations from the perspective of the supplier—we have been through all this, and we have agreed that clarity is what my noble friend Lady Noakes requires. Sorry, I went back in my speech. I was looking back because the noble Lord, Lord Scriven, had asked me to go back. I will now go forward.

6 pm

The tender notice will detail the procedure to be followed. If suppliers do not want to engage, the market response will be clear and contracting authorities will know that they need to revisit the procedure.

I respectfully request that these amendments be withdrawn, and I beg to move the government amendments. I apologise; I think I am still on beach head and not on Grand Committee head.

Baroness Noakes (Con): My Lords, I do not think my noble friend the Minister can move her amendments yet; she will move them when they are reached in their proper place on the Marshalled List. I thank all noble Lords who have taken part in this debate and particularly for the support for my amendments in this group, for which I am grateful.

So far as Amendment 96 is concerned, I was grateful for my noble friend's explanation, which seemed to make sense. I am content with that. I have no idea what the clarification she was reading into *Hansard* was about, but I do not suppose it really matters.

Where Amendment 107 is concerned, I am rather less satisfied. I think I agree with my noble friend that clarity is required. My amendment was tabled because the Explanatory Notes went further than the Bill and said that it should be from the suppliers' perspective. But I think I heard my noble friend say that we do not want contractors challenging the procedures; well, actually, yes, we do, if they are burdensome. If we are trying to set out that the aim is, as correctly stated in the Explanatory Notes, to make sure that these are not burdensome for suppliers, we should facilitate challenge of contracting authorities and not just assume that contracting authorities have a monopoly on wisdom on what is proportionate in this regard. I am not happy with that response today, but we are agreed on clarity, so perhaps we can achieve a route to clarity between now and Report. I beg leave to withdraw the amendment.

Amendment 96 withdrawn.

Amendment 97 not moved.

Amendments 98 and 99

Moved by ***Lord True***

98: Clause 18, page 12, line 29, leave out "must" and insert "may"

99: Clause 18, page 12, line 29, leave out "materially"

Amendments 98 and 99 agreed.

Amendment 100 not moved.

Amendment 101

Moved by ***Lord Coaker***

101: Clause 18, page 12, line 31, at end insert—

"(3A) In the case of a defence and security contract, unless it would leave no tenders that satisfy all other award criteria, a contracting authority must disregard any tender from a supplier that—

(a) is not a United Kingdom supplier or treaty state supplier, or

(b) intends to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier."

Lord Coaker (Lab): My Lords, I welcome the noble Baroness, Lady Goldie, to her place and I thank her for carrying on the tradition in this Committee of briefing me on some of the points that I may raise in the way that other Ministers in this Committee have done.

For the benefit of the Committee, I start by saying that nothing I am going to say—which in some respects will be quite critical of the Government's equipment programme—in any way suggests that any Member of this Committee, or anybody making these decisions, is not absolutely concerned with the proper defence of our country. I just wanted to make that clear. I think it is really important to state that we may have a difference of opinion and we may disagree about some of the equipment programmes and some of the decisions that have been made, but I would never question the commitment of any Member of this Committee or any Minister of this Government to defend our country and do their best for the security of our nation—particularly in the current circumstances. I think it is important to start with that, and I am sure that will be met with agreement by all Members of the Committee.

I wish to move my own Amendment 101—I am grateful for my noble friend Lord Hunt's support for that—and Amendment 485, where, again, I am grateful for the support of my noble friend but also for that of the noble Baroness, Lady Smith. I will deal quickly with Amendment 101, which I think can be summed up by saying that it is just trying to encourage the Government to look at how we might use more of our defence procurement spending to support British industry and British suppliers. That is the extent of it.

I am sure the Minister will say that the Ministry of Defence does everything it can, that it works according to various international agreements, that it is not always possible to source certain contracts within the UK, et cetera, but many of us looking at contracts wonder why it appears so difficult for us to support British industry, when many countries do not seem to face the same difficulties. Given the freedoms we are now supposed to have, one would perhaps expect that to be easier than it was before.

I will give just one example to make this point. In 2018, the Government announced a £1.5 billion programme for fleet support ships to be built. They said they were going to build them in British yards but, as far as I am aware, not a single screw or bolt has been fastened. It is that sort of thing. When is that

[Lord Coaker]

going to happen? When are the fleet support ships going to be built in British yards, as they were supposed to be? The Government said they were looking at a high proportion of this being done in the UK, but what does that mean? Some clarity would be helpful for the Committee and for those who read these deliberations on whether it is the Government's intention to increase the amount of procurement that takes place in UK industry, so we can use our procurement to support that.

Before I move on to Amendment 485, this goes to the heart of what I am saying. Before us is a procurement Bill. It is an important government Bill that seeks to make a difference and use the hundreds of billions of pounds that are spent to deliver certain objectives for the Government. Why will this Bill, as it is drafted, make a difference to the defence equipment budget and programme? We could sit down now. How will this make a practical difference? What is in here? Some of this needs to be put on the record, so I am going to quote the Public Accounts Committee of the other place. It was not clear from the Government's letter in response to that committee's report, which said that the Procurement Bill was going to make a great difference, how it is going to do that. That is what I think is really important.

Noble Lords will recognise that Amendment 485 is a proposed new clause to be inserted after Clause 98, so it does not relate specifically to the defence clauses, as such. It relates to Clauses 96, 97 and 98. In other words, the Bill itself allows for procurement investigations, and the recommendations and guidance that follow them. My Amendment 485, supported by my noble friend Lord Hunt and the noble Baroness, Lady Smith, goes after that clause because it seeks to insert an audit of the equipment plans, and therefore investigate them and make recommendations. That is the whole point of doing the annual audit.

Why is this so important? I am not going to read all sorts of things, but I will use one or two examples, because this is really serious. The Public Accounts Committee of the other place, in October 2021, produced the report *Improving the Performance of Major Defence Equipment Contracts*. It said:

"There have been numerous reviews of defence procurement"—

this is why I am saying we all have an interest in this—

"over the past 35 years".

I am making a defence-equipment point, not a party-political point. The reviews have

"provided the Department with opportunities to take stock and learn from experience. We are therefore extremely disappointed and frustrated by the continued poor track record of the Department and its suppliers—including significant net delays of 21 years across the programmes most recently examined by the National Audit Office—and by wastage of taxpayers' money running into the billions."

If you go through this report, you see that it logs detail after detail of problems that the committee believes the Government need to urgently address. The Government's response is that they are dealing with this, but I think the Committee would want to know how. What are they doing on all of those points?

Using the work of the Defence Select Committee again, it talks about problems in aviation and an inquiry it has just launched. We read in the *Sunday Telegraph* at the weekend about procurement problems with the type of aircraft purchased for aircraft carriers and whether the F-35B will actually be suitable. It will be suitable in terms of being launched off the aircraft carrier, but will all that have to be changed and will there be another procurement difficulty with that?

The report on the Army's armoured vehicle capability published a few months ago says:

"This report reveals a woeful story of bureaucratic procrastination, military indecision, financial mismanagement and general ineptitude, which have … bedevilled attempts to properly re-equip the British Army".

I understand that the noble Lord, Lord Alton, was at a committee meeting in your Lordships' House last week where this was discussed in the context of the Ajax contract. The Public Accounts Committee published a report on 3 June 2022 which pointed to a £5.5 billion contract with General Dynamics, with an initial order for 589 Ajax armoured fighting vehicles that were supposed to be in service in 2017. But by December 2021, at a cost of £3.2 billion, the department had received 26 vehicles, none of which can be used. Maybe now the Government will have to scrap that and move to a Warrior replacement.

So, all these different things are going on, and, again, the Government say that they have sorted these issues. However, I had a quick look and found *The Treatment of Contracted Staff for the MoD's Ancillary Services*, another recent report by the Defence Committee from May of this year, which said:

"Outsourcing ancillary services has become commonplace in the Ministry of Defence … If an activity is not a core part of the MoD it is liable to be outsourced. For example, catering, vehicle maintenance and firefighting are liable to be outsourced. However, despite the billions of pounds spent on outsourcing, this is a relatively unscrutinised area. The MoD's outsourcing practice is not exemplary. Outsourcing appears to be the default position, with little consideration given to providing services in-house. Contractors drop standards and squeeze employees to raise their profit margin, but the MoD is not always willing to step in and enforce the expected standards. It is an absurd state of affairs that the MoD is not allowed to look at a contractor's previous performance when assessing their bid—a state of affairs that needs to be rectified immediately."

Yet when we have asked Ministers about excluded contracts, excluded suppliers and what is going to be looked at, we have been reassured that the Procurement Bill will mean that a contractor's previous performance will be looked at, and that if its bid is not up to scratch or not what you would expect, that supplier can be excluded. However, we read in a May 2022 report from the Defence Select Committee that the MoD is not allowed to look at a contractor's previous performance when assessing its bid. So, is the Defence Select Committee wrong, or is the Bill wrong? It would be useful for us to hear from the Minister whether the MoD is allowed to look at a contractor's previous performance, and whether it has or has not.

I have been speaking for a few minutes and I do not want to speak for any longer than that. I have tried to use contracts run by the Ministry of Defence to give some examples of appalling contract management. I have seen the response that the Government sent back

to the committee, which says, "We're dealing with all of these. We don't agree with the committee; essentially, it is wrong on some aspects of this, but we agree with it on others. We are doing all sorts to tackle this".

6.15 pm

The fundamental point is that we all want defence equipment programmes to be successful. We all want our country defended properly. I know that that is what the Government want—this is not a deliberate attempt not to do so—but why is it that continued reviews and resets still reach a position where this is happening? The fundamental point goes back to where I started: why will this Procurement Bill, which includes Clause 6, headed "Defence and security contracts", and Clause 105, headed "Single source defence contracts" and goes to Schedule 10—it reforms various aspects of this procurement programme—work this time? Why will it be different this time? Why will this Procurement Bill mean that, in five, 10 or 15 years' time, instead of a report that goes on about improving the performance of major defence equipment contracts, we have a report that asks how the MoD did it and reformed its contracts to ensure not only that there was value for money but that we got the equipment we needed to defend our country?

Lord Alton of Liverpool (CB): My Lords, the noble Lord, Lord Coaker, has made a telling and persuasive case. I hope it will convince the Committee to support the tenor of Amendment 485 in particular; I added my name to it on Friday last. I strongly agree with what the noble Lords, Lord Coaker and Lord Hunt of Kings Heath, and the noble Baroness, Lady Smith of Newnham, are arguing for in that amendment, specifically on the role of the National Audit Office; it is long overdue.

I want to develop the points made by the noble Lord, Lord Coaker, a little further for the Committee. Here are some headline points: £4.8 billion has been wasted on cancelled contracts since 2010. Some £5.6 billion has been overspent on MoD projects since 2010, and £71 million spent on unplanned life extensions. Some £2.6 billion has been wasted on write-offs: there are 20 cases of wastage by write-off in the report that was referred to, contributing to some £2.6 billion—or 20% of total wastage—since 2010. Some £64 million has been wasted on admin errors, including £32.6 million in HM Treasury fines almost uniquely imposed on the Ministry of Defence for poor accountancy practices.

The noble Lord, Lord Coaker, referred to the ongoing International Relations and Defence Select Committee inquiry into future defence policies, not least on procurement; indeed, I mentioned at Second Reading on this Bill. Last week, we heard from Professor John Louth, who was the director of RUSI's defence, industries and society research programme from 2011 to 2019. Today, he is a private sector consultant. He shared several important insights into the peculiarities and particularities of defence procurement, not least the need to work with significant uncertainty, because of the speed with which technology moves, and how to strike a reasonable balance between insisting on value for money and having appropriate flexibility. The committee also explored associated issues, such as whether there is an optimal balance between indigenous development and off-the-shelf purchases in defence procurement; what considerations would have to be made; how the Government would intervene to prioritise them; how much of our defence capability needs to be supplied by the state itself, and what can and should be sourced from private suppliers; and who the legitimate partners are in the UK's defence enterprise—manifestly not companies owned or controlled by countries such as Russia or China.

It was clear that there were other factors which distort procurement in the case of defence contracts. I think the noble Baroness, Lady Goldie, enjoys the sympathy and understanding of this Committee that it is not an easy world in which to operate. Professor Louth suggested to our Select Committee last week that there had been some successes, mainly around innovation. However, when asked about this Bill, specifically the measures before us now, he said:

> "I tried to read as much into the Bill as possible. But it proved hard to identify the end state which the Government was looking for"—

the very point the noble Lord, Lord Coaker, just made. Professor Louth continued:

> "Seeing the approach as an attempt to streamline is sensible but we need an Act that identifies the sharing of risk. There are lines and lines of rhetoric; lines and lines of legal reform—some of it incomprehensible even for those of us who are academics."

He saw the Bill and its provisions as a missed opportunity, saying that

> "quite often the private sector does things best and mixing it directly with what the state does would help enormously."

He pointed to a high degree of private wealth that is funding our defence research and emerging capabilities but said we would get more value for money if a combined commitment was identifiable.

The noble Lord, Lord Coaker, referred to Ajax. During last week's Select Committee proceedings, I asked Professor Louth about this, to which he replied,

> "Ajax has been a disaster."

As we heard from the noble Lord, in June the House of Commons Public Accounts Committee warned about the delays to Ajax, a programme which has already been running for 12 years, a point picked up in this admirable amendment about projects that overrun and the costs to the public purse. It said, and I am sure we all agree, that this risks national security and compromises the position of our defences.

Ajax was intended to produce a state-of-the-art reconnaissance vehicle for the Army. It has cost a staggering £3.2 billion to date and yet it has failed so far to deliver a single deployable vehicle—not one. The vehicles were supposed to enter service in 2017, but Ajax has been subject to what the Commons committee describes as "a litany of failures." The failures included noise and vibration problems that injured soldiers who were testing the vehicles. As the MoD has been unable to say, even now, when Ajax will enter service, perhaps the noble Baroness can tell us whether she has any further information on that, whether the safety issues have been resolved and if it is likely that they will ever be resolved.

Last week, I reminded our Select Committee that the Public Accounts Committee says the programme has been "flawed from the outset", but also said it was illustrative of a deeper failing, commenting that the MoD had

> "once again made fundamental mistakes"

[Lord Alton of Liverpool]
in the planning and management of a major defence programme. Pulling no punches, it accused the Ministry of Defence of "failing to deliver" vehicles which the Armed Forces need to

"better protect the nation and meet … NATO commitments."

In the current situation, with one eye eastwards on Ukraine, this is a very serious statement by a senior committee of this Parliament.

Meg Hillier, who chairs the Public Accounts Committee, spelled it out in these terms:

"Enough is enough—the MoD must fix or fail this programme, before more risk to our national security and more billions of taxpayers' money wasted. These repeated failures … are putting strain on older capabilities which are overdue for replacement and are directly threatening the safety of our service people and their ability to protect the nation and meet NATO commitments."

Some 324 hulls for Ajax-family vehicles have been built, along with 74 turrets, and 26 vehicles have been handed over to the Army for training purposes. The PAC report points to "operational compromises" which the Army has been forced to make, which include the prolonging of the use of ageing Warrior armoured vehicles which came into service back in 1987 and are expensive to maintain.

In total, the contract with General Dynamics is worth £5.5 billion, and the PAC says that it doubts whether the programme can be delivered within existing arrangements. We have a duty to make a forensic examination of what Professor Louth told us in the International Relations and Defence Committee last week has been a "disaster" and what lessons might be applied via this Bill, especially lessons about poor project management and inadequate contract performance, soaring costs and lengthy delays even before contacts were signed.

As we heard from the noble Lord, Lord Coaker, the same issues have been raised again and again in various attempts to reform procurement. This has all been at great cost to the public purse and, as I have argued, at a risk to our national security. This Bill should be much clearer about how it intends to put flesh on the bones of a strategic relationship with industry, focusing on delivery within the budget and on time. What a pity it is that this Bill is not in draft before both Houses, being examined by parliamentarians during pre-legislative scrutiny, rather than being placed in the context of the many other diverse issues that we have been considering.

In conclusion, Ajax was a heroic figure from Homer's *Iliad*. Apart from Agamemnon, he was the only principal character who received no substantial assistance from any of the gods—perhaps they will come to the aid of the Minister today. She can at least be heartened that Poseidon struck Ajax with his staff, renewed his strength and joined in Ajax's prayer to Zeus to remove the fog of battle to see more clearly the light of day. I have no doubt that the amendments in the names of the noble Lords, Lord Coaker and Lord Hunt, and the noble Baroness, Lady Smith of Newnham, will do precisely that. I hope we will lift the fog and support these amendments.

Baroness Smith of Newnham (LD): My Lords, I support Amendment 485. I will also speak to Amendment 101, which was not signed by noble Lords on the Liberal Democrat Benches, although there is clearly some interest in the issue of whether we use British suppliers for defence. There were some reservations from the trade team, the international team and the business team about whether we should be focusing solely on looking at British suppliers for defence contracts.

One particular question I would like the Minister to consider, which may be something on which the Labour Front Bench also has view, links to the point made by the noble Lord, Lord Alton, about whether it is more appropriate to have bespoke defence contracts or whether sometimes it is better to have off-the-shelf procurement. In that context, I would very much like to hear the Minister's response to Amendment 101.

The reason for not signing this amendment was not that we do not support British industry; clearly there are a huge number of opportunities in particular where we might be looking for small and medium-sized enterprises to be very closely involved in the delivery of defence contracts. Most of the high-level contracts we have talking about—the catastrophe of Ajax, the major extensions, the cost and time overruns and the failures of defence procurement—are about the high-level programmes, but there will be many subcontracts within them. Trying to support our small and medium-sized enterprises is clearly desirable. If there is a way of doing that, alongside ensuring best value for money, there could be some interest in this amendment. However, it needs a lot more exploration and perhaps, as the noble Lord, Lord Alton, said, it would have been better having pre-legislative scrutiny to explore how we look at procurement.

The noble Lord, Lord Coaker, stole many of my lines, including many of the notes I made during, and the points I raised at, Second Reading, to which the Minister did not have the opportunity to reply, because her colleague, the noble Lord, Lord True, was responding instead. In line with the noble Lord, Lord Coaker, I am very much looking forward to hearing a series of answers from the Minister which will enable us to understand in what way this Bill is intended to help defence procurement. In many ways, the idea of having a single Bill that deals with all types of procurement is superficially very attractive, yet, as the Grand Committee has already heard, it is not clear in any way, shape or form how this Bill is going to improve defence procurement.

6.30 pm

As we have heard, over the past 35 years—in other words, the whole of my adult life—these defence procurement problems have been going on. That is not adequate. What are Her Majesty's Government doing to improve defence procurement in a way that is accountable? One area in which we are lacking is accountability. One of the conclusions of the Public Accounts Committee's report of October last year was:

"We are deeply concerned about departmental witnesses' inability or unwillingness to answer basic questions and give a frank assessment of the state of its major programmes."

Like other Members of your Lordships' House, I have great respect for the Minister. I hope that it will not put her in an invidious position if I ask her whether she is able to give some frank responses to the questions

that have been raised by the noble Lords, Lord Alton and Lord Coaker, because they are crucial. We need defence procurement that is fit for purpose. As the noble Lord, Lord Coaker, said, we are united in our commitment to the Armed Forces and the importance of defence procurement, but it is absolutely wrong for the country, for the taxpayer and for the security of our nation if those defence procurement contracts are not running on time and delivering what we need.

Amendment 485 appears to raise many of the questions that your Lordships' House and the other place have raised time and again. It seeks to ensure that the travesties which we have seen in defence procurement over decades can be rectified. I hope that the Minister will feel able to accept the amendment. I hope too that she will be able to respond to some of the concerns.

Finally, on the outsourcing of ancillary services, I think this is one area which is hugely important for the morale of our service personnel. If we outsource delivery of catering, if we outsource accommodation and particularly its maintenance, they are exactly the sorts of things that affect the lives of service personnel on a day-to-day basis. Beyond that, it is not the service man or woman; it is their families. Very often, somebody —a spouse, very often a wife—is waiting in for the maintenance that has been outsourced. It is not adequate. It needs to be dealt with. Can the Minister give us some hope that this Bill will deal with the problems? If not, we will require other mechanisms to do so.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): I am endeavouring, my Lords, not to tip my water down the back of my noble friend's neck, although he might welcome that refreshment.

First, I thank all noble Lords for their contributions. I am in no doubt about the genuine interest which your Lordships have in defence. The noble Lord, Lord Coaker, articulately expressed that, and I respect that. I thank him for the way in which he expressed his sentiments. I know that he speaks for the other contributors to the debate.

I shall try to address the principal points which have come up, so I want in the first instance to address Amendments 101 and 485 and then proceed to speak to the government amendments in the group, Amendments 520 to 526 inclusive. As I have said, I shall endeavour to address the issues which have been raised.

I turn to Amendments 101 and 485, tabled by the noble Lords, Lord Coaker and Lord Hunt of Kings Heath, and, in relation to Amendment 485, also by the noble Baroness, Lady Smith of Newnham. They relate specifically to defence and security contracts and Ministry of Defence procurement.

Amendment 101 would require a contracting authority to disregard any tender from a supplier which is not a supplier from the United Kingdom or a treaty state or which intends to subcontract the performance of all or part of a contract to such a supplier unless there is no other tender that satisfies all the award criteria. I understand the sentiment behind the amendment from the noble Lord, Lord Coaker, which is laudable, but I will explain why I think this amendment is neither necessary nor indeed desirable.

The Bill already provides a discretion for the contracting authority to exclude from procurements suppliers that are not treaty state suppliers and extends this to the subcontracting of all or part of the performance of the contract to such suppliers. This includes defence and security procurements. It is important to note that, for the majority of defence and security procurement, market access is guaranteed only to suppliers from the United Kingdom, Crown dependencies and British Overseas Territories. For those procurements, a supplier established in another country would not be a "treaty state supplier".

However, due to the nature of defence procurement and the defence market, a discretion to go outside of UK suppliers or treaty state suppliers is required where doing so would best meet the requirement that the contract is to serve—there may be an immediacy about that—and would offer best value for money. Further, to exclude non-treaty state subcontractors would probably make some defence and security procurement much less effective and, in some cases inoperable, as it would exclude, for example, suppliers from the United States, Australia, France, Sweden or Canada from the supply chain.

I assure noble Lords that industrial consequences and commercial strategies will be given case-by-case consideration—that is already how we conduct business—taking into account various factors, including the markets concerned, the technology we are seeking, our national security requirements and the opportunities to work with international partners, before we decide the correct approach to through-life acquisition of any given capability. Where, for national security reasons, we need industrial capability to be provided onshore or where we need to exclude a particular supplier on national security grounds, we will not hesitate to make that a requirement.

The noble Lord, Lord Coaker, raised the specific matter of fleet solid support ships. He will be aware that in the refreshed *National Shipbuilding Strategy* there is specific reference to the fleet solid support ships. The procurement is in train; the first ship is scheduled to enter into service in 2028 and the last in 2032. I hope that reassures the noble Lord that the matter is under active consideration.

I turn now to Amendment 485. In a sense, this amendment was preceded by a general observation made by the noble Lord, Lord Coaker, and echoed by the noble Lord, Lord Alton, and the noble Baroness, Lady Smith. In essence it was: what difference does this make? That is a fair question and one that deserves an answer. I would say that the Bill provides greater flexibility to the MoD and includes the use of a single system to encourage participation by small and medium-sized enterprises. That is an area not just of significance to the economy but of particular significance to such smaller entrepreneurial organisations. They have sometimes felt out in the cold when major contracts were being awarded by the MoD, principally because, traditionally, the structure was to have a very large primary contractor, with the primary contractor subcontracting various aspects. This is designed to encourage greater participation by small and medium-sized enterprises, which I think is to be applauded.

[Baroness Goldie]

MoD derogations, and the Bill itself, provide more flexibility to deliver the defence industrial strategy—I will not rehearse that; your Lordships are familiar with it, but I think it is a very positive strategy and one which I think received support from across the Chamber. That strategy replaces the previous defence procurement policy of defaulting to international competition. I know that was of concern to many of your Lordships and, as I say, the strategy has altered that, and I think that is important reassurance on where we are in defence and the greater flexibility we now have. That is why I said earlier that industrial consequences and commercial strategies will be given much more case-by-case consideration, taking into account the various factors which I previously mentioned.

Amendment 485 would require the Ministry of Defence to commission a report from the National Audit Office setting out instances of procurement overspend, withdrawal or scrapping of assets, termination of pre-paid services, cancellation or extensions of contracts, or administrative errors with negative financial impacts. I would suggest the amendment is unnecessary, as what it seeks to achieve is already being delivered through existing processes or initiatives; let me explain what these are.

The National Audit Office already conducts regular audits across defence, which we know to our discomfort because the National Audit Office is an independent entity in that it does not spare its comments when it comes to the MoD, and that is right—that is exactly what it is there to do. In these audits, it regularly includes recommendations for improvement to which we pay very close attention. These include value-for-money studies, such as the yearly audit on the defence equipment plan, regular audits on defence programmes such as Ajax—which the noble Lord, Lord Alton, mentioned—and carrier strike, as well as financial audits. As I say, MoD pays close attention to what the NAO says.

The Infrastructure and Projects Authority also publishes an annual report. That tracks progress of projects currently in the Government Major Projects Portfolio and it provides an analysis of how they are performing. The MoD has successfully introduced several initiatives following on from such recommendations to improve capability and deliver and obtain better value for money, including the defence and security industrial strategy, the defence and security 2025 strategy and the introduction of the Single Source Contracts Regulations 2014.

Lord Alton of Liverpool (CB): My Lords, I am sorry to interrupt the noble Baroness. On the question of the National Audit Office, I was wondering whether the Minister could tell us whether there had been any formal discussions between her department and the NAO about whether something more formalised—as anticipated in the amendment before your Lordships—would be beneficial. If not, might she consider having such a discussion before we return to this issue on Report?

Baroness Goldie (Con): What I think is important is that we accord the National Audit Office the absolutely critical character of independence, which is necessary for it to do the job it does. I think that part of that independence is that it is quite separate from government departments, and, with the greatest respect, I think that is what the MoD should not be doing. The National Audit Office should be saying, "If we think you've got dirt lying under the carpet, we're going to rip the carpet up and have a look at the dirt", and I think that is the freedom we expect the National Audit Office to have and that is the freedom it has got. As I say, everyone, I think, will understand that the Ministry of Defence knows well the feeling of being on the receiving end of a National Audit Office report which makes uncomfortable reading.

Baroness Smith of Newnham (LD): My Lords, the Minister has spoken about the legislation giving the MoD greater flexibility, but following up from her response to the noble Lord, Lord Alton, to what extent does it enhance accountability, which is at the crux of what we have all been asking about?

Baroness Goldie (Con): As the noble Baroness will be aware, the National Audit Office reports not to the MoD; it reports to Parliament. It is a very powerful line of accountability that introduces the legitimacy in any democratic society for elected parliamentarians—or Members of this House—to ask on the basis of a report what the department has been doing. It has never inhibited Members of the other place or Members of this House from doing just that, as your Lordships are very well aware.

The noble Lords, Lord Alton and Lord Coaker, raised particularly the very legitimate question of what we are doing within the MoD to try to improve our procurement performance. I think your Lordships will understand that, probably more than any other department, the Ministry of Defence carries out massive procurement contracts. Then again, that is a very justifiable reason for asking us to demonstrate that we are doing that effectively and efficiently, being fair to the taxpayer and to our industry partners.

6.45 pm

We recognise the challenges facing defence acquisition and are working hard to address them. We are setting new projects and programmes up for success by promoting a one-team approach that brings the right experts and stakeholders together at the start of a programme. We are also supporting our senior responsible owners. The senior responsible owner in any contract is a vital presence. One of the identified weaknesses that I think came to light in relation to the Ajax contract was that the senior responsible owner was constantly changing and there was therefore a lack of continuity of knowledge, experience and awareness. That has been recognised as a weakness and therefore very close attention is now being paid to ensure that these senior responsible owners are there for the long term and that they have project professionals with new tools to better understand and manage risk and complexity, and to enable early consideration of strategic factors.

If your Lordships think that is just a lot of comforting rhetoric, I say that I have seen at first hand how this technology is working. The effect is quite spectacular. It means that, at any time, the critical senior managers

of a contract in the MoD can ascertain in detail where it has got to and whether there are any areas of concern. That has been a major improvement. I will not deny that the Ajax contract has been a very difficult experience for the MoD, but we have learned a lot from it and are certainly applying those lessons. We are streamlining our processes and focusing expertise on areas of high risk and complexity—as the Committee will understand, this is a regular and recurring characteristic of defence contracts—so that we support robust, evidence-based investment decisions.

Noble Lords asked whether we were satisfied that relevant and appropriate checks are already in place. I have tried at some length to explain the procedures. We are satisfied. We are certainly anxious that placing a legal obligation for such an extensive and wide range of audits would have a detrimental effect on defence in the protection of our national security and might result in a reduction in risk-taking, which is key to driving forward innovation. We are anxious that this arrangement could cause an additional burden on defence resources.

Specifically on Ajax, which the noble Lord, Lord Alton, covered, we acknowledge the challenges, as I have already indicated, and are taking steps to put it back on a sound footing. The noble Lord will be aware that the MoD health and safety directorate carried out a very extensive investigation under the director-general of that department, David King. He produced a very useful and instructive report which has informed MoD thinking in relation not just to the Ajax contract but to how we address other contracts. It was a very analytical, forensic report. We are taking all necessary steps to secure our contractual and commercial rights under the Ajax contract with General Dynamics to deliver a value for money outcome. I am unable to say much more than that, but the recommendations contained in the report to which I referred have been given close attention. I can certainly make an inquiry and write to the noble Lord with a more up to date position.

I suggest that, with what I have been describing as already happening within the department, these initiatives are designed to create more realistically costed, affordable and agile acquisition plans, improving strategic relationships within the defence and security industries and improving tools and processes. The single-source contracts regulations, with which your Lordships are familiar, are there to help ensure value for money in non-competitive contracts.

As I said earlier in relation to this amendment, the NAO is set up under statute to be independent of the Executive, having complete discretion to decide which examinations to perform and how they are conducted, and the NAO is already able to report directly to Parliament. While I understand the intention behind the amendment, it conflicts with these principles on how and what to investigate, and I humbly submit that that should be left to the NAO to determine under its existing statutory powers. I hope that I have provided reassurance to noble Lords that steps have been and are being taken to address issues in defence procurement and I respectfully suggest that the amendment is withdrawn.

Lord Coaker (Lab): Will the Minister address the point about the treatment of contracted staff for the MoD's ancillary services? I will just remind her that the Defence Select Committee report published recently says in its summary:

> "It is an absurd state of affairs that the MoD is not allowed to look at a contractor's previous performance when assessing their bid—a state of affairs that needs to be rectified immediately."

Will the Procurement Bill rectify what the Defence Select Committee says is an appalling state of affairs that the supplier's previous performance cannot be looked at?

Baroness Goldie (Con): My understanding is that the Government's response has been framed to that report and is currently under review. I have no more up to date information, but I will write to the noble Lord. The department is under an obligation to respond to that proposal.

Lord Coaker (Lab): The Government cannot answer the point about whether the Procurement Bill will allow the MoD to look at a contractor's previous performance when assessing its bid—a state of affairs that needs to be rectified immediately. Every time we have talked about what is an excluded supplier or an excludable supplier, we have been told that previous performance is one of the criteria that can be looked at, yet from what the Defence Select Committee said, and the Minister just said, is that it is not clear whether the MoD can do that.

Baroness Goldie (Con): Well, yes, within the law the MoD can, and this Bill provides more flexibility for past performance to be taken into account. However, there are legal constraints which govern how any party entering into a contract can responsibly consider previous conduct. The Bill allows the MoD to exclude a supplier, and there are various grounds in the Bill to clarify when the MoD can make such a decision. Our view is that there is the necessary flexibility within the Bill. The Government will be looking at the observations of the Committee.

Lord Coaker (Lab): It would be really helpful if the Minister, as she suggested, wrote to me and copied it to noble Lords in the Committee, because she said it was not allowed and then she said it was allowed, but the Defence Select Committee report, which was published just a few weeks ago, said the MoD was not allowed to look at a contractor's previous performance when assessing its bid. So either the Defence Select Committee is wrong, or the MoD has changed the regulations or the Bill changes the regulations. All I am trying to seek is what the situation actually is.

Baroness Goldie (Con): What I said to the noble Lord was that, as happens with any committee report, the department is preparing a response to the committee, and that is currently being done. I do not want to pre-empt that, but, when the response has been submitted to the committee, it will for the committee to determine whether it wants to make that response public.

On the issue that is perplexing the noble Lord and causing him anxiety, we believe that the Bill as drafted gives the MoD the power to exclude suppliers if we have reservations.

Baroness Smith of Newnham (LD): My Lords, when the noble Baroness is writing to the noble Lord, Lord Coaker, could she undertake to clarify which point of this Bill deals with the issue, so that Members can look and assess whether we believe it is adequate, or whether a further set of amendments might need to be brought forward on Report?

Baroness Goldie (Con): There is a part of the Bill that allows the Secretary of State to exclude a supplier; that is a specific provision in the Bill. Where defence and security contracts are concerned, I think these are powerful provisions. I am very happy to take the advice of my officials and see if I can clarify the position further for your Lordships' Committee.

Moving on, government Amendments 520 to 526, to which I referred earlier, are what I would describe roughly as Schedule 10 amendments. Schedule 10 amends the Defence Reform Act 2014 principally to enable reforms to the Single Source Contract Regulations 2014. The regulations are working well to deliver their objectives of ensuring value for money for the taxpayer and a fair price for industry. That is the balance against which we always have to work. Delivering the *Defence and Security Industrial Strategy* and building on experience since 2014 means that some reforms are needed. This will ensure that the regulations continue to deliver in traditional defence contracts and can be applied across the breadth of single-source defence work in the future, providing value for money for the taxpayer while ensuring that the UK defence sector remains an attractive place in which to invest.

We are making two government amendments to Schedule 10 which will clarify the wording and deliver the full policy intent. The first relates to paragraphs 3(2) and 3(8) of Schedule 10, where we are increasing the flexibility of the regime by taking a power to enable contracts to be considered in distinct components—this is an important development—allowing different profit rates to be applied to different parts of a contract where that makes sense. Secondly, we are simplifying the contract negotiation process by an amendment to paragraph 8(3)(a) of Schedule 10, which ensures that the contract better reflects the financial risks involved, and in paragraph 8(3)(c) of Schedule 10, taking a power that will clarify how the incentive adjustments should be applied. We are clarifying the wording currently in paragraph 8(3)(c), which will become paragraph 8(3)(ea)—I am sorry that is a little complicated; it is just to achieve accuracy of reference—by government amendment in Committee to ensure that the schedule fully delivers the policy intent.

In short, these government amendments provide improved clarity and greater flexibility in the defence procurement process, and I hope your Lordships will be minded to support them.

Lord Coaker (Lab): My Lords, I thank the noble Baroness for that informative reply, and I look forward to the letter to clarify the point that we had some discussion on. I apologise to the noble Lord, Lord Alton; I knew that he had signed the amendment and forgot to mention it. It is in my notes: "Don't forget Lord Alton"—and I did. I apologise for that but thank him for his support.

For reasons of allowing us to move on to the next group, which I know a number of noble Lords are waiting to discuss, I would just say that Amendment 101 is almost like an encouraging amendment; it is trying to encourage the Government to do more. I accept what the noble Baroness said with respect to contracts and some of the difficulties that there are—to be fair, the noble Baroness, Lady Smith, raised that as well. The amendment is just an attempt to ask whether we can do a bit more to support our own industry and small and medium-sized enterprises. I know that the noble Baroness agrees with that and will take it on board.

As far as Amendment 485 is concerned, we need to look at what the noble Baroness has said, look again at the Bill and reflect on it. The important part of Amendment 485, as usual, is tucked away. Proposed new subsection (4) says:

"The Secretary of State must commission the National Audit Office to conduct a similar review annually."

It is that continual microscope that is needed. I accept the point that the National Audit Office can conduct the reports and that it is independent. I accept all those sorts of things; the noble Baroness is right about that. I just think that all of us want to get this right. Therefore, that point about an annual review is particularly important. With that, I beg leave to withdraw.

Amendment 101 withdrawn.

Amendment 101A not moved.

7 pm

Amendments 102 and 103

Moved by ***Lord True***

102: Clause 18, page 12, line 34, at end insert—

"(4A) In this Act, a reference to a contracting authority's requirements is a reference to requirements described in the tender notice or associated tender documents (see section 20(5) and (6))."

103: Clause 18, page 12, line 35, leave out subsection (5)

Amendments 102 and 103 agreed.

Amendment 104 not moved.

Clause 18, as amended, agreed.

Clause 19: Competitive tendering procedures

Amendment 105 not moved.

Amendment 106

Moved by ***Lord True***

106: Clause 19, page 13, line 14, at end insert "(a "competitive flexible procedure")"

Amendment 106 agreed.

Amendment 107 not moved.

Amendments 108 to 114

Moved by ***Lord True***

108: Clause 19, page 13, line 18, leave out "tendering procedure other than an open" and insert "flexible"

109: Clause 19, page 13, line 26, leave out "tendering procedure other than an open" and insert "flexible"

110: Clause 19, page 13, line 34, leave out from first "to" to end of line

111: Clause 19, page 13, line 35, leave out from "to" to "which" on line 36 and insert "an assessment of"

112: Clause 19, page 13, line 36, after "tenders" insert—

"(a) satisfy the contracting authority's requirements, and

(b) "

113: Clause 19, page 13, line 39, at beginning insert "if there is more than one criterion,"

114: Clause 19, page 13, line 39, at end insert—

"in each case, at the point of assessment."

Amendments 108 to 114 agreed.

Clause 19, as amended, agreed.

Clause 20: Tender notices and associated tender documents

Amendment 115

Moved by ***Lord True***

115: Clause 20, page 14, line 8, leave out "procedure other than an open" and insert "flexible"

Amendment 115 agreed.

Amendment 116 not moved.

Amendment 117

Moved by ***Lord True***

117: Clause 20, page 14, line 21, at end insert—

"(5) A tender notice or associated tender document must detail the goods, services or works required by the contracting authority.

(6) In detailing its requirements, a contracting authority must be satisfied that they—

(a) are sufficiently clear and specific, and

(b) do not break the rules on technical specifications in section 24."

Amendment 117 agreed.

Amendment 118 not moved.

Clause 20, as amended, agreed.

Clause 21: Conditions of participation

Amendments 119 to 121 not moved.

Clause 21 agreed.

Clause 22: Award criteria

Amendment 122

Moved by ***Lord True***

122: Clause 22, page 15, line 15, after "competitive" insert "tendering"

Amendment 122 agreed.

Amendments 122A to 124 not moved.

Amendment 124A

Tabled by ***Baroness McIntosh of Pickering***

124A: Clause 22, page 15, line 18, at end insert—

"(ba) take account of the environmental impact of the award,"

Member's explanatory statement

This amendment requires a contracting authority to be satisfied that the award criteria take account of environmental impact.

Baroness McIntosh of Pickering (Con): My Lords, although I am not moving Amendment 124A, I just thank the noble Lord, Lord Wigley, for speaking to the amendment in my absence.

Amendment 124A not moved.

Amendment 125 not moved.

Amendment 126

Moved by ***Lord True***

126: Clause 22, page 15, line 26, at beginning insert "if there is more than one criterion,"

Amendment 126 agreed.

Amendments 127 to 131 not moved.

Clause 22, as amended, agreed.

Clause 23: Refining award criteria

Amendments 132 and 133

Moved by ***Lord True***

132: Clause 23, page 16, line 14, leave out "tendering procedure other than an open" and insert "flexible"

133: Clause 23, page 16, line 18, after "competitive" insert "tendering"

Amendments 132 and 133 agreed.

Clause 23, as amended, agreed.

Clause 24: Technical specifications

Amendments 134 to 140

Moved by ***Lord True***

134: Clause 24, page 16, line 29, at end insert—

"(A1) This section applies in relation to—

(a) a competitive tendering procedure;

(b) an award of a public contract in accordance with a framework;

(c) a process to become a member of a dynamic market."

135: Clause 24, page 16, line 30, leave out "terms of a procurement" and insert "procurement documents"

136: Clause 24, page 16, line 33, leave out "terms of a procurement" and insert "procurement documents"

137: Clause 24, page 16, line 36, after "tenders" insert ", proposals or applications"

138: Clause 24, page 16, line 40, leave out "terms of a procurement" and insert "procurement documents"

139: Clause 24, page 17, line 1, leave out "terms of the procurement" and insert "procurement documents"

140: Clause 24, page 17, line 2, after "tenders" insert ", proposals or applications"

Amendments 134 to 140 agreed.

Amendment 141 not moved.

Amendments 142 to 145A

Moved by ***Lord True***

142: Clause 24, page 17, line 5, leave out "terms of a procurement" and insert "procurement documents"

143: Clause 24, page 17, line 5, leave out "anything set out in"

144: Clause 24, page 17, line 6, after "any" insert "requirements of a"

145: Clause 24, page 17, line 7, at end insert—

"(b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract;

(c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions of membership;"

145A: Clause 24, transpose Clause 24 to after Clause 53

Amendments 142 to 145A agreed.

Clause 24, as amended, agreed.

Clause 25: Sub-contracting specifications

Amendment 146

Moved by ***Lord True***

146: Clause 25, page 17, line 19, after "competitive" insert "tendering"

Amendment 146 agreed.

Clause 25, as amended, agreed.

Amendment 147 not moved.

Clause 26: Excluding suppliers from a competitive award

Amendment 148

Moved by ***Lord True***

148: Clause 26, page 17, line 24, leave out from "assessing" to end of line and insert "tenders under"

Amendment 148 agreed.

Amendment 149 not moved.

Amendments 150 to 154

Moved by ***Lord True***

150: Clause 26, page 17, line 32, leave out first "supplier" and insert "person"

151: Clause 26, page 17, line 33, after "tender" insert—

"(a) notify the supplier of its intention to disregard, and

(b) "

152: Clause 26, page 17, line 34, leave out "supplier" and insert "person"

153: Clause 26, page 17, line 35, leave out "supplier" means a supplier" and insert "person" means a person"

154: Clause 26, page 17, line 36, at end insert "(see section 21(7)), but not a person who is to act as guarantor as described in section 21(8)."

Amendments 150 to 154 agreed.

Clause 26, as amended, agreed.

Clause 27: Excluding suppliers from a competitive tendering procedure

Amendments 155 to 161

Moved by ***Lord True***

155: Clause 27, page 17, line 38, leave out "tendering procedure other than an open" and insert "flexible"

156: Clause 27, page 18, line 2, leave out "tendering" and insert "flexible"

157: Clause 27, page 18, line 5, leave out "tendering" and insert "flexible"

158: Clause 27, page 18, line 8, leave out "supplier" and insert "person"

159: Clause 27, page 18, line 8, after "must" insert—

"(a) notify the supplier of its intention, and

(b) "

160: Clause 27, page 18, line 9, leave out second "supplier" and insert "person"

161: Clause 27, page 18, line 10, leave out "tendering" and insert "flexible"

Amendments 155 to 161 agreed.

Clause 27, as amended, agreed.

Clause 28: Excluding suppliers by reference to sub-contractors

Amendments 162 to 167

Moved by ***Lord True***

162: Clause 28, page 18, line 13, at end insert—

"(A1) A contracting authority must as part of a competitive tendering procedure—

(a) request information about whether a supplier intends to sub-contract the performance of all or part of the public contract, and

(b) seek to determine whether any intended sub-contractor is on the debarment list."

163: Clause 28, page 18, line 16, leave out paragraph (a)

164: Clause 28, page 18, line 20, after "subsection" insert "(A1) or"

165: Clause 28, page 18, line 27, after "subsection" insert "(A1) or"

166: Clause 28, page 18, line 35, after "must" insert—

"(a) notify the supplier of its intention, and

(b) "

167: Clause 28, page 18, line 41, leave out "supplier" and insert "person"

Amendments 162 to 167 agreed.

Clause 28, as amended, agreed.

Clause 29: Excluding a supplier that is a threat to national security

Amendments 168 to 171

Moved by ***Lord True***

168: Clause 29, page 19, line 3, leave out "or exclude the supplier" and insert ", exclude the supplier or notify the supplier of its intention"

169: Clause 29, page 19, line 7, leave out "excluded" and insert "excludable"

170: Clause 29, page 19, line 8, leave out "virtue of" and insert "reference to"

171: Clause 29, page 19, line 9, at end insert—

"(3) The reference in subsection (2) to a contracting authority notifying a supplier of its intention is a reference to notification in accordance with section 26(3), 27(4) or 28(4)."

Amendments 168 to 171 agreed.

Clause 29, as amended, agreed.

Clause 30: Excluding suppliers for improper behaviour

Amendments 172 and 173 not moved.

Amendment 174

Moved by ***Lord Mendelsohn***

174: Clause 30, page 19, line 16, at end insert—

"(d) a supplier is not a signatory of good standing on the Prompt Payment Code."

Member's explanatory statement

This amendment would strengthen requirements of good practice and simplify checking processes for all contracts either under this Act or in the open market.

Lord Mendelsohn (Lab): My Lords, I think the phrase in a situation like that is "follow that"; that was an impressive performance by the chair.

In moving Amendment 174, I will speak to Amendment 317 in this rather interesting little group. The amendments I propose relate to the Prompt Payment Code. Amendment 174 aims to ensure that suppliers are signatories to the code and of good standing; and to ensure their exclusion in government procurement if they are not of good standing, not signatories to the code or have been subject to an investigation and not done the right thing having been found wanting.

I suggest these amendments for three reasons. First, the Prompt Payment Code offers a public and obvious ease of reference for any public authority or anyone involved in public procurement, even just checking the process. The real value of what the Government have done in increasing its resourcing and housing it with the Small Business Commissioner is that it makes it much easier to use it as a reference point. Making sure that you have something clear, public, available and transparent is of great use.

Secondly, it is worth acknowledging that the Government have taken steps to try to encourage a more effective Prompt Payment Code by creating a series of initiatives that came into force this year to encourage much stronger compliance with good payment terms. We do not talk just about late payments, of course, because there has been a greater imposition of long payment terms; the Prompt Payment Code has reduced those. Also, it starts to help clarify the problems that are now being felt by many where either an agreed contract is delayed or payments are reduced post hoc, with only one side making that conclusion using the asymmetries of power.

Those initiatives on the Prompt Payment Code have been welcome. In September 2019, the Government made an announcement about the importance of how people pay for government contracts, including how they must pay within the right payment terms and on the right timescale. It is useful that all these initiatives are brought together quite nicely—as I say, they are publicly available—through the code so that we have one reference point.

However, it is important to start introducing these measures together because all of them constantly need strengthening. The Government's attempt to use their new code to make sure that suppliers cascade the money to all the people who are due has faced difficulties because master contracts are now used so that the main supplier to the Government can say that it discharged its duty easily while all the other payments are held up by people who pay the next layer. Those dates have then been massively extended, as we have seen.

Indeed, it is not as if the Prompt Payment Code is immune to certain problems. For that reason, it is important that the Government show their full

[Lord Mendelsohn]
commitment to it and use it most effectively to encourage those are not doing the right thing on payment terms. The members of the Prompt Payment Code pay better but the difference between them and those who are not members is widening, although the code has a huge advantage. It is also clear that what was hoped—that the code would be some sort of cultural change or even encourage people to do more of the right thing—is not happening. We are starting to see that the Prompt Payment Code is something that companies find easy to evade. The idea of naming and shaming does not seem to have much significance.

I say this because we have seen a series of substantial, prodigious suppliers to government walk out on the Prompt Payment Code. They include some of Britain's biggest companies. Tesco left because the code's definition of a small business did not correspond to how it viewed a small supplier. Recently, in only the past few months, two of the top five Britain-based listed companies—that is, two of our largest companies by market capitalisation—have left the code: Unilever and Diageo. The culture of compliance is not there. We must reinforce the mechanisms that we use to ensure that, across the chain, prompt payment and good payment terms are properly enforced.

We now know the costs of this. We have always talked about the costs and consequences, about the number of businesses that are at stress, but we also now know the benefits. The recent report from the Centre for Economics and Business Research—Cebr—said that, if invoices were paid as they were presented, small businesses would increase their turnover by £40 billion to £60 billion. That shows, as always, the importance of the velocity of cash.

If the Government can play an enhanced role in making sure that payment terms are done properly across any procurement in the public sector, and can encourage the private sector in all of its transactions to do the right thing, this will be extremely useful. Bringing the Prompt Payment Code into the canon of law for public procurement will be a very important and useful step in that regard.

7.15 pm

Lord Aberdare (CB): My Lords, I have added my name to both of the amendments in the name of the noble Lord, Lord Mendelsohn. Until he performed his remarkable imitation of a human ping-pong ball, I was all ready to introduce the amendment on his behalf. I am very relieved that he made it back from the Schools Bill just in time and has relieved me of the necessity of saying almost anything at all, other than to give full support to his amendments.

These two amendments would ensure consistency and complementarity between the provisions of this Bill and those of the code, while also having the positive effect of encouraging more potential suppliers of government contracts to sign up to the code and, indeed, to abide by its requirements. I very much support the noble Lord in everything he has said and in saving me the trouble of saying it.

Baroness Stroud (Con): My Lords, I rise to introduce Amendment 353, tabled in my name and in the name of the noble Lords, Lord Alton and Lord Coaker, and the noble Baroness, Lady Smith, demonstrating cross-party support for this amendment. I also want to underline my gratitude to the Government for seriously engaging with this amendment to the Bill; I know that we share a desire to mitigate the two key risk areas in public procurement which this amendment covers, and I am grateful for their engagement.

Amendment 353 seeks to give the Government two things: first, it seeks to provide the tools to monitor and control the UK's dependency on authoritarian states; and, secondly, it seeks to ensure a consistent approach to modern slavery across all government procurement. So let us look at how it seeks to monitor and control the UK's dependency on authoritarian states first. Clause 1 places a burden on the Secretary of State to create regulations that reduce the dependency of public bodies on authoritarian states. There is no agreed definition of what constitutes an authoritarian state in UK law or regulation, therefore Clause 2 adopts the categorisations contained within the *Integrated Review of Security, Defence, Development and Foreign Policy*, allowing for the legislation to adapt to contemporary geopolitical developments in line with the latest iteration of the review. The countries this amendment would currently apply to as threats are Iran, Russia, North Korea, and, as a systemic competitor, China.

It should be noted that Clause 1 applies to all goods and services which originate in whole or in part in one of the named countries. The amendment is constructed to apply not solely to entire products but also to their constituent parts. So, for example, where a solar panel has been constructed in the UK but relies on polysilicon from another region of the world categorised as a threat or a systemic competitor, that solar panel would, therefore, be within scope of these regulations.

Clause 3 sets out what must be included in the regulations. So, proposed subsection (3)(a) provides for an annual review of dependency to be published by the Government, while proposed subsection (3)(b) requires the Government to define "dependency" and to establish acceptable levels of dependency across industries. Proposed subsection (3)(b) also seeks to appreciate that the risks associated with dependency vary across products and industries. For example, reliance on one region for semiconductors presents very different challenges for resilience from reliance on another region for PPE. So proposed subsection (3)(b) allows the Government the flexibility to take these nuances into account.

Yet the risks of economic dependency are not the only relevant matter here. The second part of this amendment, proposed new subsections (4) and (5), addresses a separate issue: the question of modern slavery in the supply chains of publicly procured goods. The presence of modern slavery in supply chains is clearly unacceptable. This has rightly been acknowledged by the Department of Health and Social Care, which has already taken steps in the Health and Care Act to eradicate from its supply chains goods which have been "tainted"—its word—by slavery. Proposed new

subsection (4) adopts substantially the same language as Section 81 of the Health and Care Act, passed earlier this year. The requirement to bring regulations to, in the Department of Health and Social Care's words, "eradicate" from public contracts goods and services "tainted" by slavery now stands as part of that Act.

When the Health and Care Act regulations are drawn up and passed, those procuring health equipment will have to apply different human rights standards from those procuring goods and services on behalf of other departments, as things currently stand. The main intention of this amendment is to ensure that the UK Government speak with one voice and apply these standards across government. It seems odd for us to be unwilling to procure goods from Xinjiang for the NHS but comfortable doing so for Defra. This is about correcting a loophole in the law and seems to be a matter of simple common sense.

In addition, paragraphs (d), (e) and (f) of proposed new subsection (5) provide improvements on the current modern slavery framework. I particularly commend to the Minister (5)(d), which will improve standards of disclosure and transparency by requiring firms to provide evidence and trace their full supply chain if necessary. Requiring public disclosure of supply chains will considerably improve compliance when compared with the current audit measurements. This is because it is difficult to conduct a credible audit in an authoritarian state. In this context, it is better to know where companies are sourcing from, rather than have an auditor who has no ability to get accurate information.

In conclusion, the two risk areas of economic dependency and modern-day slavery cut to the heart of our character as a nation. We want to stand as a beacon for liberal, democratic values around the world. To do this, we need to ensure we retain the autonomy to act in line with our values by reducing dependency on authoritarian states. We need to ensure that we are living consistently within our values by ensuring there is no modern slavery in our supply chains. The Department of Health and Social Care has shown the way; this amendment enables the rest of government to come into line.

Lord Hain (Lab): My Lords, I commend the speech from the noble Baroness. It was compelling and I hope the Minister will find it so too. I wish to speak to Amendments 184 and 187 in my name and those of my noble friends Lord Hendy, Lady Wheatcroft and Lord Kerslake, to whom I am most grateful. These amendments grant Ministers the power to bar companies which have acted unlawfully or unethically from tendering for public contracts. It is hard to understand why that will not be acceptable to the Government.

The two amendments have the same objective but use different means. Amendment 184 requires a statutory instrument for Ministers to act to bar companies in that way, whereas Amendment 187 enables a quicker route but one that is capable of being challenged if any party considered that the Government had acted unjustifiably. As I say, it is hard to see why the noble Lord, Lord True, would not accept both amendments with acclamation.

It will come as no surprise to either him or many of your Lordships that the particular target I have in mind and which I am angry Ministers have been so shamefully slow and negligent about—despite the generous remarks about me from the noble Lord, Lord True, in the Chamber following a Question I asked, for which I am grateful and thank him—is Bain & Company. I first raised this scandal in your Lordships' House nearly six months ago and have tried to get the Government to act on it by barring Bain from accessing public contracts.

It is a global brand and presents itself as reputable global consultancy operating right across the world. Bain has its second-largest office here in London, which has been awarded multimillion recent UK government contracts and has influence across our economy, so this company is particular to us. We should take account of the fact that in South Africa Bain purposefully assisted former President Jacob Zuma to organise his decade of barefaced looting and corruption, the company earning fees estimated at £100 million or 2 billion rand from state institutions.

South Africa's state capture commission, a judicial inquiry headed by Chief Justice Zondo, which recently concluded its work, and to which I gave written and oral evidence in November 2019, condemned Bain's deliberate immobilising of the South African Revenue Service—SARS—as "unlawful". So concerned is the commission with Bain's illegal behaviour in the South African public sector that it has recommended that law enforcement authorities examine every public sector contract Bain has had, not just the SARS one, with a view to prosecution.

The Zondo report was devastating about Bain's behaviour. The evidence,

"bears out the pattern of procurement corruption which has dominated the evidence heard by this Commission. These include … the collusion in the award of the contract between Bain and Mr Moyane"—

he was President Zuma's crony put in to head SARS and effectively dismember it—

"the irregular use of confinement and condonation to avoid open competition, transparency and scrutiny … and the use of consultants to justify changes that were necessary to advance the capture of SARS."

As expected there has been an upswell of civil society opposition to Bain's continued presence in that country. Such public pressure recently forced Bain to withdraw from South Africa's largest business association in disgrace.

These findings and events are devastating indictments of a company which operates at and influences the highest level of civil service and business around the world, including profitably from our own Government's contracts for many years, and relies on the trust of its clients to deliver social and economic value.

Yet in South Africa, Bain used its expertise not to enhance the functioning of a world-renowned tax authority, as SARS was acknowledged to be, but to disable its ability to collect taxes and pursue tax evaders, some of them former President Zuma's mates, all in the service of its corrupt paymasters. The very company which possessed the expertise to bolster South Africa's defences against the ravages of state capture in fact weakened these defences and profited from it, yet this

[Lord Hain]
is the very company that works across our government and economy in the UK, influencing our public institutions and impacting millions of British lives.

Bain would have us believe that what happened in South Africa was the work of one rotten apple, but its South African office's work was endorsed by leaders in London at the time and in its US headquarters in Boston, and many senior people currently working for Bain in London were in the South African business during the corrupt President Zuma era. Some of the very people who broke public procurement rules, colluded with Zuma and committed a "premeditated offensive" against SARS, as an earlier judicial commission described Bain's actions, are now working in Bain's London office through which it consults to our public institutions and businesses, including government departments.

We are not only dealing with the matter of to whom we pay taxpayers' money, although that is a major issue; what should make us shudder is that we allow these people into the inner workings of our public institutions, including government departments. A company has demonstrated a propensity to act selfishly in its own commercial interest at the expense of public good. This is what Bain South Africa did, and it led to the devastation that followed. This is a warning to us all.

Given the scandalous collusion of Bain UK and Bain USA, I am asking that the UK Government and the US Government immediately suspend all public sector contracts with Bain and bar it from entering any new contracts. I wrote to the Prime Minister in February of this year requesting this, which resulted in Cabinet Office officials meeting with Bain. Subsequent to this meeting, the right honourable Jacob Rees-Mogg wrote to me in March this year and was clearly swayed by Bain's superficial internal changes and repayment of only a tiny fraction of the fees that it had earned from South African public sector contracts in the corrupt Zuma era. Using weasel words, he assured me:

> "The Cabinet Office continues to monitor the situation and will engage with Bain & Co again … to determine the most appropriate set of actions."

To date, I have not heard anything about what has resulted from this monitoring or what set of actions has been determined. It sounds to me like Ministers are shelving any action, which is disgraceful if true, although I am encouraged that Mr Rees-Mogg has now invited me to meet him this Wednesday to discuss these matters.

7.30 pm

However, Bain's shockingly shady behaviour in South Africa is just the tip of the iceberg. The prodigious decade of looting, corruption and money laundering under former President Zuma would not have been possible without the complicity of additional global companies such as KPMG, McKinsey, SAP, the law firm Hogan Lovells and the banks HSBC, Standard Chartered and Bank of Baroda. These fee-clutching, global corporates and turn-a-blind-eye Governments—from London and Washington to Dubai, Delhi and Beijing—helped rob South African taxpayers, contributing to a catastrophic loss of around a fifth of its GDP. Economists estimate the full cost of the Zuma state capture to be a monumental £750 million, or 1.5 trillion rand. The Government's total annual expenditure is just 2 trillion rand, and 1.5 trillion rand was the cost of that looting and corruption.

These global corporates, like Bain, all obtained sweetheart state contracts, which helped Zuma's business associates, the Gupta brothers—who have belatedly been arrested in Dubai and now await extradition to South Africa; we will see whether that happens—to loot the state. I also welcome the fact that UK Ministers have imposed sanctions against them, which I have been requesting since I first exposed their activities to your Lordships nearly five years ago in November 2017. Global banks such as HSBC, Standard Chartered and Baroda transferred this looted money through their digital pipelines to less regulated jurisdictions such as Dubai and Hong Kong, or British Overseas Territories in the Caribbean, to then clean the money by mingling it with other funds, disguising its origins and enabling it to be more easily spent.

Lawyers and accountants assisted the Guptas to set up complex shell, or front, companies, hiding their true owners—the Guptas or their associates—and enabling money to be moved to a country where there is low transparency. Dishonest audits left suspicious transactions hidden. Estate agents received and processed laundered money during the Gupta property purchases in Dubai and India, as well as other places. Global brand names, from KPMG to McKinsey, from HSBC to Standard Chartered—and Bain of course—all profited while the Guptas hid and spent stolen funds that could otherwise have been destined for essential South African public services, job creation or infrastructure, leaving the country's public finances near bankrupted and its growth completely stalled.

Unless the United Kingdom, US, Chinese, Indian and UAE Governments co-operate with each other, state capture will happen again, either in South Africa or other countries. The truth is that international criminals continue to loot and launder money with impunity through centres such as London, New York, Hong Kong, Delhi and Dubai. I am afraid that UK Ministers talk the talk on corruption, but refuse to take the necessary tough action against guilty big corporations to stop it. That also goes for other Governments I have mentioned.

I draw my remarks to a close by saying that, meanwhile, financial crime is estimated by the United Nations Office on Drugs and Crime to be worth around 5% of global GDP, or $2 trillion, each and every year. We have an opportunity to stop this onslaught, at least as it relates to Bain and any other corporate complicit, and to make an example of the company. Bain continues to refuse to make full disclosure in South Africa and refuses to make amends for the terrible harms it has done. It similarly refuses to make amends to its former senior partner in South Africa, Mr Athol Williams, who acted with integrity to offer it guidance in taking right action and then, owing to its refusal, was forced to blow the whistle at great personal and financial cost. Mr Williams testified before the Zondo commission and was praised by the commission in its report, but

he bears the burden of Bain's defamation and has now had to flee to the UK for his safety. I hope that he will be able to meet Mr Rees-Mogg on Wednesday, as I have asked.

I therefore find it completely unacceptable that Bain is licensed to operate commercially in the UK, the USA or anywhere else in the world, at least until it has repaid all of its £100-million fees earned from the South African state during the Zuma/Gupta years, made full amends and answered charges in the courts here.

These two amendments are designed to encourage UK Ministers to clean up public sector contracts by ensuring that taxpayers' money is spent on companies with high standards, not ones with grubby standards, such as Bain. I ask that the Minister accepts them and pursues this matter with his colleagues in the Cabinet Office. I will happily discuss privately with him any drafting changes that might be required to satisfy the Government's requirements in this Bill, but I think it necessary that Ministers provide leadership on this, particularly by making an example of Bain, or else everybody else will think that they can do the same thing.

The Earl of Dundee (Con): My Lords, I will speak to Amendment 353, introduced by my noble friend Lady Stroud.

As many of your Lordships know, the United Kingdom is a signatory to the Council of Europe's anti-trafficking convention, an international treaty that affects Europe and beyond, with Israel having acceded a short while ago as the second non-member state of the Council of Europe. Last week, on 13 July, its Group of Experts on Action against Trafficking in Human Beings—GRETA—published its annual report for 2021. In December last year, a number of recommendations were adopted, based on the evaluation report produced for the United Kingdom, among other states. Certainly our Modern Slavery Act 2015 has enabled the United Kingdom to take a lead internationally.

I congratulate the noble Lord, Lord Coaker, on his excellent recent Council of Europe report, *Concerted Action Against Human Trafficking and the Smuggling of Migrants*. The prospect of concerted action has been assisted, not least by our 2015 Act along with other steps taken by the UK Government to prevent and eradicate human trafficking from businesses and supply chains, including in the public sector.

Migrants and refugees are clearly a particularly vulnerable group of people who fall prey to human traffickers far too often. The Russian war on Ukraine has displaced more than 10 million people, and 5.5 million Ukrainians have been recorded across Europe since 24 February. They constitute a vast group of potential victims, having fled shelling, bombardment and occupation by the Russian army; hence all the more so is there a compelling case for linking human trafficking and modern slavery with making provisions for reducing the dependency of public bodies on goods and services that originate in a country considered by the United Kingdom as either a systemic competitor or a threat.

In that context, with this legislation, Amendment 353 in the names of my noble friend Lady Stroud and others is much to be welcomed. I hope that the Minister will feel able to accept it.

Baroness Boycott (CB): My Lords, I declare my interests as set out in the register. I am introducing Amendments 310, 318 and 322. I am grateful for the support of the noble Baroness, Lady Young of Old Scone.

My amendments follow on a lot from things that have already been mentioned. They are designed to remedy what appears to be a significant inequity in the treatment of environmental offences relative to other offences listed in Schedules 6 and 7, which relate to mandatory and discretionary exclusion grounds. In Schedule 6, there is no mention of mandatory exclusions for environmental offences. Apparently, no environmental offence, however serious or wide-reaching in its impact on people's health or finances or the wider environment, currently merits mandatory exclusion. In contrast, almost any offence in relation to employment agency law, common law or tax, however minor, triggers mandatory exclusion.

In Schedule 7 there are grounds for discretionary exclusion on environmental misconduct, but let us work through the terms of that exclusion. First, the authority is required to ignore any event predating the coming into force of the schedule. The noble Baroness, Lady Noakes, has tabled an amendment to query that proposal, and I will be interested in the Minister's response to her. I also note that the reference to an event rather than an offence seems to leave the contracting authority in doubt about whether they must exclude convictions for environmental offences after the date of coming into force where the conduct took place.

Secondly, the contracting authority has to decide whether the conduct caused or had the potential to cause significant harm to the environment. I would be very interested to hear about the breaches which are serious enough to result in convictions for offences—not, as I understand it, simple enforcement notices or civil penalties but actual offences—but do not even have the potential to cause significant harm to the environment. Still, the legislation erects an additional hurdle for contracting authorities with absolutely no clarity about what an insignificant offence looks like or why it is an offence if it is insignificant.

Thirdly, the contracting authority must consider whether the circumstances giving rise to the application of the exclusion are likely to recur. I do not believe that this is the Government's intention, but if we wanted a regime which gave a surface-level semblance of treating environmental offences seriously in public procurement while making contracting authorities extremely reluctant in practice ever to exclude any supplier on environmental grounds, we have done it really well. However, I believe that that is not the Government's intention, so I have tabled this amendment to achieve what I believe is needed and meant.

Amendment 310 makes an offence under any provision of environmental law subject to mandatory rather than discretionary exclusion. There is no judgment to be made about the potential for causing significant harm where there has been an environmental offence. An additional effect of this drafting is that the contracting authority would be required to disregard only offences that took place longer ago than the default position—set out in paragraph 42 of Schedule 6—of five years.

[Baroness Boycott]

Amendment 318 provides a definition of environmental law, which is currently missing from the Bill. It is taken from last year's Environment Act, Amendment 322 removes the existing discretionary exclusions in Schedule 7, as previously described. This is a modest proposal. It would mean that contracting authorities would receive clarity that convictions for offences against a defined range of environmental law in the past five years would always be grounds for mandatory exclusion. However, contractors would not necessarily be excluded out of hand. Contracting authorities would still have to give consideration to the likelihood of the circumstances occurring again or, if the amendments in the names of the noble Lords, Lord Wallace and Lord Fox, are accepted, the contractor would need to demonstrate this to everyone's satisfaction.

Neither do the amendments I am speaking to create new burdens on contracting authorities; they merely replace an unclear discretionary exclusion with a clearer one. Authorities which intended never to give a moment's consideration to contractors' environmental records—which is what happens now—or to the possibility of excluding firms in any circumstances would now need to do a small amount of work in identifying whether convictions had taken place. I assume that the noble Lord, Lord True, would welcome that increased diligence and consideration. However, contracting authorities which did take their responsibilities seriously would now not need to worry about venturing out on an unguided journey into deciding whether a breach was significant. This seems far closer to the vision of procurement set out in the procurement Green Paper, which referred to the environment as one of the Government's strategic policy priorities and specifically referenced a supplier's plans for achieving environmental targets across its operations as an example that the switch to considering bids on the basis of most advantageous tender would deliver. It is also closer to the Bill's Explanatory Notes, which refer to simplifying the procurement process and making it more transparent. Finally, it is closer to the vision that the noble Lord, Lord True, set out at Second Reading, which was quicker and simpler and better meets the needs of the UK.

7.45 pm

Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to follow my noble friend Lady Boycott and to associate myself with the remarks she has just made, and also with the noble Lord, Lord Hain, who made an important contribution to the proceedings of the Committee this afternoon. We will all be interested to hear how his meeting with the right honourable Jacob Rees-Mogg goes on Wednesday.

I shall speak to Amendments 331 and 353. Amendment 331 in the name of the noble Baroness, Lady Hayman, and the noble Lords, Lord Coaker, Lord Bethell and Lord Fox, deals with serious human rights abuses. When the Minister responds I hope he will bear in mind the very helpful conversations he and I had when he agreed to meet me to discuss modern-day slavery and genocide. I should mention that I am a trustee of the anti-modern-day-slavery charity the Arise Foundation and a patron of Coalition for Genocide Response.

It concerns me that the word "genocide" has been put in a list that simply states that

"'serious human rights abuses' includes, but is not limited to",

and then sets out a list from (a) to (f). It is not that any of these things are minor questions. Winston Churchill said that the horrors committed during the Nazi regime constituted a crime that had no name. It took Raphael Lemkin, the Jewish Polish lawyer, to create the name "genocide" to describe what had been done. Indeed, the 1948 convention on the crime of genocide came from that. Your Lordships will recall that the amendments to earlier legislation I moved specifically on the procurement of technology via Huawei and later on the Health and Care Bill, which the noble Baroness, Lady Stroud, referred to, were careful to set aside the word "genocide" from other questions.

I have one specific and, I hope, helpful remark to make to the noble Baroness and others, which is that if this amendment is to be pursued later, perhaps these questions can be separated, because there are many people who would be willing to vote on genocide not only in your Lordships' House but in another place but who would not be willing to support something that was simply a list of serious human rights violations. I think that some further thought should be given to that.

On Amendment 353 on supply chain resilience against economic coercion and slavery, I shall try to be brief because I set out some of the arguments about this in our earlier debate about Hikvision and the role that companies such as that have played throughout procurement processes. They are surely what the Bill is dealing with, yet they operate with impunity from their base inside the People's Republic of China and have been directly associated with the enormities that have been committed in Xinjiang, where it is estimated that more than 1 million Uighurs are held in concentration camps. All of us have read appalling accounts of their treatment, and anything we can do at any stage, we should try to do. I know that the noble Lord, Lord True, is sympathetic to this argument.

Therefore, let me briefly set out some of the arguments that have perhaps been put to him by officials or others who would oppose the excellent amendment in the name of the noble Baroness, Lady Stroud, which is supported by the noble Baroness, Lady Smith of Newnham, the noble Lord, Lord Coaker, and me. First, will this not have a chilling effect on government procurement? Yes, there will be a chilling effect on government procurement of slave-made goods—and so there should be. Businesses that do not rely on slavery for sourcing have absolutely nothing to fear. The amendment sets the bar low but establishes certain minimum standards. It is noteworthy that the Uyghur Forced Labor Prevention Act goes much further than this proposal—I drew it to the attention of the noble Lord, Lord True, during our discussions—and there has been no "chilling effect" documented in the USA. I will add that that legislation enjoyed significant bipartisan and bicameral support in the United States.

Secondly, will this not discourage competition and therefore crush markets? No. On the contrary, the amendment will incentivise business to raise its human rights game and encourage competition among entities which meet basic human rights standards. We should

be using our purchasing power, this phenomenal amount of money, more than £300 billion, to nudge the business world. This amendment helps us to achieve that. It removes disadvantage for lawful performers, and that is something we should all welcome.

Thirdly, is this not just another anti-China amendment? No. The amendment does not even mention China. Forced labour is a global issue, whether it is exploitation in Brazilian mines or Malaysian tech factories or indeed Uighur slave labour. It is morally imperative that taxpayers' money does not fund slavery, wherever it is and wherever it is practised.

Fourthly, does this not turn civil servants into police for business supply chains? Civil servants already assess those bidding for government contracts against certain criteria, and that is exactly how it should be. All the amendment seeks to do is to make the criteria more robust. Civil servants generally do not have the resources to inspect supply chains. As the noble Lord, Lord Coaker, probably knows better than any other noble Lord in this Committee, assessing what is going on in a supply chain is an extraordinarily complex, time-consuming and resource-ridden process. The amendment recognises that, and seeks instead to provide civil servants with more tools to ensure better anti-slavery standards around disclosure and transparency of sourcing inputs.

I wonder whether the noble Lord has had it put to him that we are presuming the guilt of businesses by blacklisting entire countries or areas. No, the amendment does not presume that a business operating in a particular area is de facto guilty of perpetrating slavery, although this is the assumption of the United States legislation, which imposes a rebuttable presumption. I admit that that is something that I personally favour, but it is not what is in the amendment. In the United States, that targets goods produced in the Uighur region because it is assumed that they are tainted.

I was struck that the noble Baroness, Lady Stroud, referred to that word when discussing earlier legislation the House passed, the Health and Care Act, which includes the word "tainted". I think the Minister will forgive me for saying that that legislation was strengthened by civil servants from his department, who gave advice to the Department of Health. It would be absurd to have legislation that applies purely to the National Health Service, despite the fact that we spent £10 billion on PPE, but does not apply to other departments. You cannot have legislation, especially a procurement Bill, which is weaker than legislation already on the statute book. The amendment merely requires that the origins of goods and their constituent parts are disclosed.

What difference will this really make? Do we need more regulation? The Health and Care Bill was amended precisely because there was acceptance—the Government knew—that the existing regulation was not strong enough. It is to the credit of Sajid Javid that he recognised that and did something about it. The Government are widely suspected of procuring goods and services that may be tainted with slavery. In 2020, the *Daily Telegraph* reported that, for one contract alone, £150 million of PPE originated in factories in the Uighur region with a documented slavery problem. If stronger standards are good enough for the Department of Health and Social Care, they are surely strong enough for the whole of government, and this Bill gives us the opportunity to do something about it.

Finally, it is often said, "Not this Bill, not this time. There is a modern slavery Bill coming; why can we not just wait for that?" The amendment before your Lordships addresses government procurement and this is the Procurement Bill. It is entirely appropriate that an amendment seeking to improve certain standards regarding government procurement should be debated during the passage of this Bill. Moreover, we do not know what is likely to be in the modern slavery Bill; we were told a lot about it during the course of the Nationality and Borders Bill, which pre-empted its provisions then, but we still do not know what will be in it—and, after all, we are in the midst of a change of Government.

Engagement with the Government and this Secretary of State has been good and, as I finish, I pay tribute again to the noble Lord, Lord True, for his patience in putting up with representations constantly being made to him on this subject. But there is no guarantee that will continue. While Ministers smile on these efforts, we are keen to make the progress we can now, while Ministers such as the noble Lord are in place.

Baroness Noakes (Con): My Lords, I have two small amendments in this group, Amendments 330 and 332. I must say that this group contains far too many issues to be debated effectively. My own are minor, so I did not degroup them, but I hope that in future other noble Lords will exercise their right to degroup so that we have sensible groupings to enable a proper Committee debate. I will probably get into trouble with my Chief Whip for encouraging noble Lords in this direction, because I think there is a view that large groupings are more efficient. However, I do not believe that; I believe in effective scrutiny in your Lordships' House.

Amendment 330 probes the relationship between the mandatory exclusion of suppliers for improper behaviour in Clause 30 and the discretionary exclusion found in paragraph 14 of Schedule 7. I do not understand why the Bill has to have improper behaviour as an exclusion ground dealt with in two places. The definition of "improper behaviour" is virtually identical in each case, and they certainly seem to be aimed at the same behaviour. The processes are very similar, with rights given to suppliers in both cases, and they are both aimed at exclusion decisions. There are wording differences between the two parts of the Bill, but I cannot see anything of substance involved. It just looks as if two parliamentary draftsmen have been involved in different bits of the Bill and they have not known what was going on in the other bit.

Schedule 7 requires only that the decision-maker—which is usually the contracting authority, as in Clause 30—"considers" that there is improper behaviour, while Clause 30 requires a determination. However, in this context, I cannot believe that that is a distinction with any real difference attached to it. The main difference of substance is that Clause 30 results in mandatory exclusion, while paragraph 14 of Schedule 7 does not necessarily lead to exclusion. I hope that my noble friend the Minister can explain the subtleties of why improper behaviour has been dealt with in this way.

[Baroness Noakes]
My own view is that it would be easier to understand if Clause 30 were placed in the Schedules 6 and 7 structure of the Bill, since it deals with exclusion, and could have options of mandatory or discretionary exclusion. I certainly look forward to hearing what my noble friend the Minister has to say on that.

Amendment 332 is slightly different; it concerns paragraph 16 of Schedule 7, which itself sets out exclusions from the discretionary exclusions in Schedule 7. Under paragraph 16(4), there are four exclusions from some of the Schedule 7 things which have happened before the schedule came into force. It is my understanding that the existing procurement rules already contain three of the grounds for exclusion. So it does not seem logical that, when we shift to this new Procurement Bill, we disregard things that happened in the past that were exclusion grounds because they happened before the Act came into force—it seems to be an unnecessary discontinuity.

I believe that the new ground is "national security", under paragraph 16(4)(d). For that, it is probably reasonable to disregard behaviour that occurred prior to the Act coming into force. I invite my noble friend the Minister to explain the logic behind paragraph 16(4).

Baroness Smith of Newnham (LD): I will speak to Amendment 353, to which I am a co-signatory, and in passing to Amendment 331. Perhaps surprisingly, my first comment will be to agree with the noble Baroness, Lady Noakes. As we were listening to the various interventions and the introduction of various amendments, my sense was that we were trying to debate too many things in one group. In particular, when I listened to the noble Baroness, Lady Boycott, I thought that hers were very interesting amendments but that they were not really related to some of the issues associated with modern slavery, genocide and human rights that we were thinking about. I would also like to the irritate the Whips by suggesting that a little more degrouping might be beneficial in future.

The noble Baroness, Lady Stroud, introduced Amendment 353 in considerable detail, and my friend, the noble Lord, Lord Alton, then elaborated on it further. At this point, I do not want to go into further detail but to press the Minister on whether the Government would not see that it is appropriate to extend what the Department of Health and Social Care has done with the Health and Social Care Act to ensure that there is transparency in supply chains and that we do everything possible to ensure that genocide and modern slavery are excluded. Other noble Lords have provided the reasons why that is so important. I would hope to give the Minister plenty of time in which to respond.

8 pm

Baroness Neville-Rolfe (Con): My Lords, I have listened to the debate and rise to address the Question that Schedules 6 and 7 be agreed. I am grateful for the support of my noble friend Lord Moylan, although he cannot be here today.

As the Committee knows, I speak from the perspective of someone who has worked in business and as a company secretary and a chair of the compliance committee in a British multinational business employing half a million people in several regions of the world, as well as in smaller for-profit and not-for-profit operations. I have also worked in government as a civil servant and a Minister. I worry intensely about the perverse effects of these provisions. My fear is that they will exclude good, dynamic and honest operators from contracts and serving the public good through procurement. Some firms and social enterprises could be put out of business. Many others, especially SMEs, will be persuaded to have nothing to do with procurement; and of course this Bill is immensely wide-ranging and covers at least £300 billion-worth of UK value added, including most utilities, which I have argued against.

The lists in Schedules 6 and 7 are very wide. Some exclusions are entirely new compared to the EU law they replace. Others have been promoted from the discretionary category to become mandatory. The new mandatory exclusions include corporate manslaughter, theft and fraud, and failure to co-operate. Schedule 6 also brings into the Bill offences in areas including money laundering and competition law, which are dealt with perfectly well in existing and separate regulations. There have also been several extensions to the grounds for discretionary exclusions; for example, a breach of contract, poor performance and "acting improperly in procurement"—goodness knows what that means.

I ask the Minister to think again about every new item and consider whether this gold-plating is justified, as I think it may be in the case, for example, of national security, assuming that is not covered in other regulations. Each and every firm and social enterprise will be involved in more red tape in having to verify compliance with every item across their organisation.

Clause 54, defining excluded suppliers, is key, so I want to play devil's advocate. First, it gives contracting authorities a lot of discretion, so they can be difficult if they want to favour a particular bidder. Secondly, a mandatory exclusion applies to a supplier or an associated supplier, so compliance checks have to be spread into the nooks and crannies of their supply chains, over which prime suppliers have no direct control—that will help the French, by the way, who have more integrated supply chains. Finally, if there is a contravention such as a tragic manslaughter on a major building project, a theft or a fraud, a single conviction for modern slavery, or a tax or cartel offence a firm is pushed into settling by the regulators, that firm will then have to operate a tick-box system across all its operations to demonstrate in the words of Clause 54 that the circumstances giving rise to the application of the exclusion are not "likely to occur again". How will they be able to do that?

Of course, I am against most of the evils listed in the schedules, but they do not need to be in this statute. In trying to do the job of the policemen, we risk seriously undermining the procurement sector and choking it with red tape. If we want to nationalise procurement, we should be more honest about it.

For large companies in many climes, compliance with these two schedules will be a nightmare, so they could decide not to bid and stick to non-public sector activities. Firms focused on procurement alone will be in constant fear of a contravention which will write off

the value of their company, as they would be excluded from bidding in future, although officials reassured me that they would be allowed in again after five years.

This is not the public sector; a company cannot hang around for five years without any new business. I know from my own experience that small firms may be put off completely. We will see the loss of small suppliers to prisons, local authorities, transport systems and even defence, as we have already seen in the City and in housing because of complex regulation in financial services and delays in planning. Small firms do not have the risk capital needed to operate in such high-risk environments. This negative behavioural change is not costed in the impact assessment, although there is a brief non-monetised discussion on page 36. My concerns about Schedules 6 and 7 are not discussed at all; more unscrutinised guidance is suggested as the answer.

I feel that this is cross-compliance of the worst sort. It is inconsistent with a productive economy, and the people who will flourish will be lawyers and their counterparts in the public sector trying to apply these complex, wide-ranging regulations. I think that the schedules will have chilling effect. I ask my noble friend the Minister to look at both schedules again in the light of my comments on practicality, and devise arrangements that will avoid the perverse effects I have outlined.

As regards the other amendments, as I think I am speaking last, we had a good debate on small business last week, for which the noble Lord, Lord Mendelsohn, was sadly absent. I think we all agreed that it is an area that needs to be looked at again. However, for the reasons I have stated, I am a little nervous about a further exclusion to achieve the noble Lord's objective, as proposed in Amendment 174, but we must come back to this issue.

As to further extending exclusions by SI, as proposed in Amendment 184, this is far too wide-ranging and vague, and could be abused. It could also cast yet a further chill on procurement by honest and good organisations and lead to retaliation against our own UK exporters. The more political we make procurement, the less vibrant the sector will be, hitting our growth and productivity, which already sadly lags behind that of many other countries. I hope that the noble Lord, Lord Hain, can find another way forward at his prospective meeting with the Minister of State.

My questions about compliance and resources also apply to Amendment 353, however well intentioned. I worry a bit that we are over-influenced by our experience on PPE, which was poor. However, we are now looking forward, of course, not backward. I am sorry to be critical.

In conclusion, there are many problems with this Bill. The easiest and best thing would be for it to be withdrawn, to look at the various points that have been made in recent days, and for the new Government to think again. In the meantime, I stand by the points that I have made as a practitioner.

Baroness Stroud (Con): I just want to respond to my noble friend's comments about Amendment 353 and underline a comment that my noble friend Lord Alton made. Actually, this is something that has already been done in the United States of America; there is already an Act that has been passed there. There has no chilling effect at all on government procurement. In fact, their Act is significantly stronger than anything we are proposing here. I ask my noble friend to be mindful of that. Companies are appreciating more and more being able to be confident and to tell their customers that they are in fact free of slavery in their supply chains.

Baroness Neville-Rolfe (Con): The point is well made. I would be interested to know how long that Act has been in operation in the United States. One of the concerns I have had, looking at these various provisions in all their complexity, is that we are actually continuing relatively new EU requirements; they came into our law between 2014 and 2016 with a directive and a number of regulations. I am not clear to what extent they have been reviewed to be effective. You need them to be fair and effective, and you need to consider the people who are excluded as well as those who happily champion them—as one does if one works for a big multinational; I have worked for one. My comments are intended to encourage the Committee to look at the detail to ensure that perverse effects are minimised and excluded where they can be.

Lord Scriven (LD): My Lords, this has been a fascinating discussion on a number of amendments that are grouped around what I would call value-based procurement. The values should allow £300 billion of taxpayers' money to be used to create good business and a solid foundation. We wish to see public money spent in a way that is based on the values we hold as a nation, not just in the UK but elsewhere.

It was interesting listening to the noble Baroness, Lady Neville-Rolfe, who just said very distinctly that a value-based approach could have the effect of destroying competitiveness and productivity for certain companies and exclude them. All the businesses I have worked with—big ones, small ones, social enterprises, small and medium-sized enterprises—want a nudge from government at times to be able to do the right things. When the Government nudge in their procurement, they send a signal to the market that enables business to make decisions based on things other than the bottom line. I tend to find that that is a useful thing for them, rather than a negative thing. Therefore, I think that value-based procurement is really important.

I start by speaking to Amendment 331, signed by my noble friend Lord Fox—as you can see, I am struggling so I will not go on at great length, like the Minister did last week. Clause 59 creates a centralised debarment list that allows Ministers to prohibit suppliers from contracting with public bodies if they fall under the certain exclusionary grounds in Schedules 6 and 7. However, a supplier's involvement with serious human rights abuses is not listed even as a discretionary ground for exclusion. I am sure that that is an omission by the Government and not a deliberate exclusion. Human rights abuses should be on the face of the Bill as a reason for debarment. You can argue whether it should be mandatory or discretionary—personally, I would like it to be mandatory—but it has to be at least discretionary. The purpose of this amendment is to

[Lord Scriven]
allow Ministers to debar companies that have proven involvement with serious human rights abuses. I hear what the noble Lord, Lord Alton, said about listing genocide there.

I have a particular interest in Gulf states, particularly human rights abuses in Bahrain. I could keep the Committee for hours on the significant human rights abuses in that country. A number of companies in the UK, both large and small, trade with some of the organisations that are directly linked to human rights abuses in Bahrain. However, under this Bill on public sector procurement, there would be no way of debarring them, even though these companies are sponsoring or are directly involved in working with organisations that are implicated in death, torture and the deprivation of liberty—for at least 20 years, in some cases. So I ask the Minister: why is this exclusion there? Has there been an oversight in not having human rights abuses on the face of the Bill?

I come to a couple of the other amendments that noble Lords have addressed. Amendments 174 and 179 on payment are really interesting and quite important, because cash flow is king, particularly for small and medium-sized enterprises. Within the Bill are assumptions about 30-day payments to public sector organisations. There is an implied assumption in the Bill that the same subcontracting arrangements will take place between the major contractor and the subcontractor, but there is no mechanism for sanctions if that does not happen. That is why I think Amendments 174 and 179 are an interesting way of saying that there will be sanctions, in debarring people from getting public sector contracts.

8.15 pm

I also speak to the amendment that makes an environmental offence grounds for mandatory exclusion. Again, "mandatory" and "discretionary" are interesting, but when one of the major issues, if not the major issue, facing us is environmental, there needs to be something in the Bill about environmental damage. I am not sure whether the exclusion should be for any environmental breach, because some are minor—although I would not want to undermine their importance—but there are issues with companies that continually do not take regard of the environment and the effects of climate change. That is something on which the Government need to reflect before Report, in looking at a potential debarment for businesses that continually take no regard of their effect on the environment and on climate change.

These are value-based issues. I can see what the Government will say on some of them when the Minister speaks from the Dispatch Box, but others are significant exclusions on which the Government need to reflect before Report.

Lord Coaker (Lab): My Lords, I will try to be reasonably brief in summing up some of the points made. I start by welcoming my noble friend's Amendment 174 about late payment. It is a point he has made continually and this important amendment should not get lost in these great debates about serious international issues. His point about trying to support small and medium-sized businesses through dealing with late payments deals with the point that my noble friend Lady Hayman and I are also trying to deal with in Amendment 179. I would not want that to get lost.

In speaking to Amendment 329, in my name and that of my noble friend Lady Hayman, and Amendment 331, in my name and those of my noble friend Lady Hayman, and the noble Lords, Lord Bethell and Lord Fox, I want to wrestle with whether the group is too big or not. At its heart it has the discussion and debate we have had through the Committee—and no doubt will have again on Report, when there will be votes on it—which is on what the Government are trying to achieve through their procurement policy. We are saying that, as well as being efficient, effective, value for money and all those things, there are certain social, economic and other objectives that the Government should also pursue. When we look at this group of amendments, which is about exclusion grounds, a whole range of different issues can be raised to say that, if a firm or supplier does this, it should be excluded from consideration when the contracting authority comes to make its procurement decisions.

Maybe the Government will say that these amendments are not necessary and that they do not want to add them to the Bill. A question then arises for the Minister—I do not believe he believes in accepting serious human rights abuses. If that is not going to be put in the Procurement Bill, how will the Government pursue their objective of trying to do something about serious human rights abuses through the Bill or will they not? Will they just leave it to the market to do?

That is the point of Amendment 331, which my noble friend Lady Hayman, the noble Lords, Lord Bethell and Lord Fox, and I have put down. We have listed just some of the grounds, and we think that, if a supplier is guilty of those human rights abuses as listed in the amendment, and others, the contracting authority should not procure from them. If that is not the right way of going about it, how will the Government ensure that contracting authorities do not purchase from those who have been guilty of serious human rights abuses such as war crimes, crimes against humanity, genocide, forced sterilisation and so on? I take the point made by the noble Lord, Lord Alton, that perhaps genocide needs taking from that; that may be helpful and is obviously something that can be looked at.

It is not just us in this Committee; the Foreign Affairs Committee has also said that the Government and the contracting authority need to take these things into account when it comes to purchasing. The Government's response to the Foreign Affairs Committee's report, published in November, says:

> "The forthcoming Public Procurement Bill will further strengthen the ability of public sector bodies to disqualify suppliers from bidding for contracts where they have a history of misconduct, including forced labour or modern slavery."

There is a lot of pressure from lots of different bodies to do something about this.

I thought my noble friend Lord Hain made a brilliant speech on his Amendments 184 and 187. He talked about Bain with respect to South Africa. If his amendments are not the right way of going about things, what will the Government do about it? These are the Committee's questions.

The noble Baroness, Lady Boycott, made a very important point about environmental considerations in Amendment 310 and so on. The Government will say, "We are very concerned about the environment; we agree with the thrust of the amendment." If that is true, and the amendment is not going to be accepted and go into the Bill, how will that aim be achieved? That is certainly the frustration that I feel, and I want the Minister to answer on how it will be achieved if this is not in the Bill.

I come to Amendment 353 in the name of the noble Baroness, Lady Stroud, supported by the noble Lord, Lord Alton of Liverpool, the noble Baroness, Lady Smith of Newnham, and me. The noble Earl, Lord Dundee, also came in on that. I thank him for his kind remarks about my report at the Council of Europe; I appreciated that. That amendment is, again, about supply chains and how we ensure that contracting authorities do not contract with those who have modern slavery, exploitation and all those things that we would object to within their supply chains. If the Government do not agree with Amendment 353 and think it is unnecessary, how are they going to achieve what that amendment seeks to achieve? That is an important question for the Government to answer.

In other words, why are all the amendments in this group unnecessary? Why do they not matter? Why are they irrelevant? Why do we not need them in the Bill? How will the Government achieve all these objectives if they are going to say that all these amendments are not acceptable?

On the point that the noble Baroness, Lady Neville-Rolfe, made—she also picked up one or two of the points that the noble Baroness, Lady Noakes, made—Schedules 6 and 7 are massive. To be frank about it, whatever the rights and wrongs of those schedules, they have huge implications. All I want to ask the Minister is: how have the lists in Schedules 6 and 7 both been arrived at?

You could pick up a number of examples. Why, for example, does Schedule 7(15) set out a discretionary ground for exclusion for threats to national security? I find that quite difficult to understand. No doubt there is a good reason for it but you would have thought that a national security threat would be a mandatory ground for exclusion. The reason is probably in there somewhere but I could not find it. If you look at Schedule 7, there is a whole list of slavery and trafficking offences that are discretionary. It might be that they should be so but you would have to do a lot to convince the noble Earl, Lord Dundee, and me—let alone the noble Baroness, Lady Stroud—that they should be discretionary.

As the noble Baroness, Lady Neville-Rolfe, noted, whatever the rights and wrongs of these schedules and whether they should be there or not, how have the lists been arrived at? The purpose of Committee is to try to understand what the Government are doing so that, on Report, we can make our minds up on whether amendments that can be voted on should be taken forward.

Baroness Neville-Rolfe (Con): I thank the noble Lord for taking up the point about the extent of the schedules and the shared detail that people who are procuring—they are sometimes quite small organisations —will have to comply with. We have also heard that there will be guidance, so not only do you have the nightmare of a complicated Bill with rules that are different from the EU ones that, with great difficulty, people have become used to; you also have extra guidance that I do not suppose will be scrutinised by Parliament. That creates further difficulties for the people on the receiving end who are trying to do a good job. I emphasise that I am as keen as anybody to have companies doing the right thing but we have to find a way of getting this through, in not too complex a fashion, so that this can go forward smoothly.

Lord Coaker (Lab): That is a point well made. Indeed, the whole issue of the increase in the use of regulations by the Government is something that various Select Committees and other committees have commented on. It is a real difficulty because you do not know what the regulations will be. The legislation just gives the power to the Secretary of State to make regulations; you then wonder what they will be.

If I understood her amendment right, the noble Baroness, Lady Noakes, asked why some provisions in the schedules, perhaps really important ones, do not apply if a supplier contravenes them before the Bill becomes an Act. It strikes me that the self-cleansing we talked about earlier would have to be pretty dramatic if, on 26 February 2023, a firm was found guilty of breaking some of the mandatory conditions laid out in Schedule 6 then, on 3 March, it said it had dealt with those but you could not take into account the five days before when it had broken a lot of the conditions because it was before the Bill become an Act. Is that really what the Government intend? I am not sure because, when I read it, I could not quite make this out. I think that the point of the amendment from the noble Baroness, Lady Noakes, is to try to understand exactly what the Government are getting at. What does "before" mean? There are a range of things in that.

The central point I want to make in speaking to our various amendments is that, if all these things are unnecessary around all these things that are really important, how are the Government going to achieve these objectives, many of which are part of their own policies? Many of us wish to see the Procurement Bill used as the vehicle to achieve that but the Government are resisting, and will resist, that. How will they be achieved if not through this Bill?

Lord True (Con): My Lords, there is a wide gamut of public policy that enables a Government to achieve the objectives on which they stood for office; that is a broader philosophical argument. I am not certain whether the noble Lord opposite wishes to have more in Schedules 6 and 7—he has certainly mentioned one aspect—or whether he makes a plea that something should be taken out. If the Labour Party wants to make a submission to change things and excise individual aspects of Schedules 6 and 7, no doubt we will look at that as our discussion advances in Committee.

8.30 pm

I have been asked before about how we achieved the list. The noble Lord must understand that, although I accept the responsibility to answer for the Government

[Lord True]
and seek to do so, this pudding was mixed before I became responsible for this Bill; I was not there when it was decided which raisin and which sultana should be put into the pudding. None the less, a rational, serious and thoughtful process went into this. The Green Paper featured seven questions on exclusions. Together, they attracted a total of 2,603 responses. In addition, a series of workshops was held with internal and external stakeholders, including SMEs and strategic suppliers, to test the details of the proposals. So it is not that something just came out of the air.

Where the noble Lord is absolutely right, as other noble Lords have said, is that the grounds for the exclusion of suppliers are some of the most important elements of the Bill. I am not surprised that there has been such a high level of interest in them; I have listened carefully and will examine carefully the wide range of points put forward. It is because the grounds are significant that it is important that we have the process of review and challenge, which the noble Lord spoke about in our debate on a previous group.

Exclusion and debarment are different processes, obviously: exclusions are applied by individual contracting authorities in each procurement that they undertake whereas debarment, which is quite draconian, is where the Minister decides that a supplier must or may be excluded by all contracting authorities. Both are assessed against the same range of circumstances, as set out in Schedules 6 and 7, but the debarment list is intended for only the most serious cases whereas exclusion must be considered for all suppliers on all procurements.

I referred to the review process in our debate on an earlier group in relation to the exclusion process. So far as debarment is concerned, when a Minister decides to investigate a supplier—I have been asked in this Committee whether the Minister will and should investigate suppliers—the supplier will be notified and invited to submit the self-cleaning evidence and other representations. The Minister then considers whether the exclusion ground applies and whether self-cleaning has been sufficient such that the circumstances are unlikely to occur again. They then decide whether to add the supplier to the debarment list. A report is published, with a summary of the case and reasons for the decision. The supplier is added to the debarment list and may then appeal to the courts, as I explained earlier on the exclusions regime. The supplier can also ask for a review if its circumstances have changed, for example if it has undertaken new self-cleaning activities.

Before I come on to the main points made in the debate, I ought briefly to address the government amendments in this group. Amendment 302 would ensure that any reference to the debarment list in the entire Bill, rather than just this section, is to mean the list kept under Clause 59.

Amendment 303 would remove from the exclusion grounds offences relating to notification in Section 54 of the Counter-Terrorism Act 2008. This is to ensure that only substantive terrorism offences are captured.

Amendments 304 and 305 would ensure that the equivalent offences in Northern Ireland and Scotland to those specified in Schedule 6 are covered by the mandatory exclusion grounds.

Amendment 309 would replace the tax evasion offences specified in Schedule 6 with a broader concept that covers these but also any other offences involving tax evasion. This will ensure that all tax evasion offences are caught by the mandatory grounds for exclusion, including any tax evasion offences that might be created in future.

Amendments 311 to 314 are technical amendments to ensure that the mandatory exclusion grounds on misconduct in relation to tax align with the relevant finance legislation.

Amendment 316 would ensure that the exemptions to the competition-related mandatory exclusion grounds apply only where appropriate. The provision exempts from exclusion individuals in receipt of a "no action" letter from the Competition and Markets Authority. These individuals do not need the exemption since the mandatory exclusion ground to which it relates can apply only to undertakings. Only undertakings that were themselves an immunity recipient should benefit from an exemption.

Amendments 324 and 325 are technical amendments which are necessary to ensure the clause reads appropriately. My noble friend Lady Neville-Rolfe, towards the end of the debate, put in a sort of counterpoint to some of the other requests that were put in by other noble Lords who spoke. Indeed, I think the noble Lord, Lord Coaker, and I are on the same page in understanding there is a difference here in terms of the philosophical approach to the Bill and whether the Bill should be encrusted with an even wider range of provisions.

My noble friend set out her concerns about adding to the existing exclusion grounds transposed from the EU directive. The exclusion grounds in Schedules 6 and 7 are the product of extensive consultation, as I said at the outset, and the consensus was clear that the scope of the exclusion grounds needed to be clearer and more consistent. We believe that we have achieved both of these objectives. Where we have introduced new exclusion grounds or widened the scope of certain grounds, it is in order to address more consistently the risks faced by contracting authorities. Clause 55 provides that remedial evidence demanded from suppliers must be proportionate to the issues in question.

However, I point out to my noble friend that we have also narrowed the scope of certain grounds where appropriate. For instance, the current discretionary ground for violations of applicable obligations in the fields of environmental, social and labour law is so broad that suppliers face exclusion for relatively trivial breaches. We have boiled this down to target the most serious cases of labour and environmental misconduct. That may not please all, but the Government are seeking to find a balance. Overall, Schedules 6 and 7, in our submission, represent a significant refresh of the grounds in the EU directive, and we contend it was a much needed one. However, I say to my noble friend that we are obviously ready to engage on the details in the schedule between now and Report.

Baroness Neville-Rolfe (Con): As it is still Committee, can I just ask a question about tax and competition offences? I am not clear whether those are forward-looking or backward-looking, so if you are a company that,

for example, has had a competition or a cartel offence—a minor offence in a subsidiary—are you saying that those groups will be on a debarment list and can no longer be engaged? Similarly, if somebody has had a tax argument, which people have had in the past, and that has been settled—I think there have been some big brands in the past, not that I have been involved, that have had such settlements—are we somehow now saying that those are pariahs, and they are not allowed to engage in procurement for the future? I would just like to be clear about this because my worry is about the perverse effects of this debarment list you are going to have.

Lord True (Con): My noble friend makes an important point. There are elements in here which are looking back and there are elements which are about the present. Legal issues are raised here, and it is important that I come to my noble friend and the Committee with a very specific definition and response to her question in relation to tax and finances.

Amendments 174 and 317 proposed by the noble Lord, Lord Mendelsohn, and Amendment 179 from the noble Baroness, Lady Hayman, seek to bring matters related to prompt payment performance into scope of the supplier exclusion regime. Prompt payment is important; it is lifeblood, in many cases, to small enterprises. The Government are committed to ensuring prompt payment of suppliers, and there are a number of ways in which the Bill does this. For example, 30-day payment terms will apply throughout the public sector supply chain, regardless of whether they are expressly written into the contract. In addition, payment performance can be assessed as part of the award criteria, providing it is proportionate and relevant to the contract.

The Government encourage suppliers to sign up to the Prompt Payment Code. However, we submit that requiring every potential bidder to become a signatory to the Prompt Payment Code is too onerous on some suppliers and would discourage them from bidding, undermining the ability of contracting authorities to achieve value for money.

The noble Lord, Lord Hain, with support from others, proposed Amendments 184 and 187, which seek powers for Ministers to exclude suppliers which have acted in any way unlawfully or unethically. The noble Lord was abundantly clear about what he had in mind when he spoke to his amendments, although he did not stop there; he made broader points about multinational behaviour which I also listened to and took in. We believe that, in the way the proposal is drafted, the threshold is too low for such a serious measure of acting in any way unlawfully or unethically. Exclusion should be reserved for suppliers which pose a serious risk to contracting authorities or the public. We believe that it is also appropriate that the decision to exclude suppliers falls in general to the contracting authority running a procurement.

However, the exclusion grounds cover unethical conduct. Any serious breach of ethical or professional standards applicable to a supplier is deemed to be professional misconduct, whether or not those standards are mandatory. The noble Lord will be pleased to know that professional misconduct is a ground where a debarment case could be made, as drafted in Schedule 7, paragraph 12(1), although I make it clear that I am not commenting on any individual case. As the noble Lord, Lord Hain, told the Committee, I understand that he is meeting my right honourable friend the Minister to discuss this issue. The review led by Cabinet Office officials into the case that he asked for—and indeed the Prime Minister instructed to be done—is now complete and is currently being considered by the Minister. Unfortunately, I cannot say any more at this stage.

Lord Hain (Lab): I am grateful to the Minister. I will not detain the Committee, except to say that I find it hard to understand that a company that has clearly acted unlawfully, let alone unethically, in another country simply lines up with the rest for government tenders. I do not understand how that is consistent with honest business practice, let alone honest government practice.

Lord True (Con): My Lords, the noble Lord made a strong case on this before. He has repeated it in a shorter version. I have told the Committee that the review has been conducted, as he—and the Prime Minister—asked. That is now complete, so let us see what happens. I cannot give any more detail because I simply do not know it as I stand here. The new debarment list will allow Ministers to debar suppliers in the most serious cases and therefore there is no need to make the additional provision.

Amendments 310, 318 and 322 tabled by the noble Baronesses, Lady Boycott and Lady Young, seek to add conviction of any environmental offence as a ground for mandatory exclusion. The mandatory grounds for exclusion are by nature a blunt instrument. They require the supplier to face exclusion from every public contract for five years, as my noble friend Lady Neville-Rolfe pointed out, unless and until the risk of the issues reoccurring has been addressed. For this reason, they are reserved for the most serious forms of misconduct.

The inclusion of environmental offences in the discretionary ground reflects the fact that, for offences where a range of misconduct may be involved, it may be appropriate to take into account factors such as the nature of the contract being tendered or the level of environmental harm caused, before deciding to exclude a supplier. There is guidance from the Environment Agency on what constitutes environmental harm.

The noble Baroness, Lady Hayman of Ullock, and the noble Lord, Lord Coaker, proposed Amendment 329, which seeks to introduce a discretionary exclusion ground where a supplier's tender violates applicable obligations in the fields of environmental, social and labour law. I have already explained why we elected to narrow the exclusion ground relating to breaches of such law.

8.45 pm

Amendment 330 tabled by my noble friend Lady Noakes—a narrow amendment and a welcome one in that respect—probes why there is a discretionary ground for exclusion on acting improperly in procurement when a similar provision appears to be made in Clause 30. These two provisions are different: the discretionary ground for exclusion at paragraph 14 of Schedule 7

[Lord True]
applies to behaviour which occurred in a past procurement; the provision at Clause 30 applies only where the behaviour occurred in the procurement in question. It is important that both situations are provided for, but different considerations apply in respect of self-cleaning and unfair advantage, and this is why the provisions appear separately.

Amendment 331, proposed by the noble Baroness, Lady Hayman, and spoken to by the noble Lord, Lord Coaker, introduces a new discretionary exclusion ground in relation to human rights abuses. I assure noble Lords that the United Kingdom has a strong history of protecting human rights and promoting our values globally—of which this Government are no less jealous than their predecessors. However, the protection of rights in this country is also underpinned by due process of law. The exclusions regime is not a substitute for a judicial process, despite the remedies system I described earlier. It cannot function like a court in delivering a full and fair trial.

The ground for "professional misconduct" is clear that this can include

"a serious breach of ethical or professional standards applicable to the supplier."

This ground may well be met where a supplier has committed many of the acts referred to by noble Lords, but many contracting authorities will not be prepared or equipped to consider human rights violations more broadly, and we should not force them to do so. We must avoid imposing unreasonable burdens on contracting authorities which already struggle to apply exclusion grounds. This is why most of the exclusion grounds require a criminal conviction or regulatory decision, and why they focus on the risks which are most relevant to a procurement context.

Amendment 332, tabled by my noble friend Lady Noakes, addresses the time periods that apply when considering the discretionary exclusion grounds. This is a transitional regime; it allows for consideration of past events only in respect of grounds which exist under the current regime, but not for new or substantially changed grounds. This maximises the immediate impact of the new regime while avoiding unfair outcomes for suppliers. My noble friend questions why labour market misconduct, environmental misconduct and poor performance which occurred prior to the Bill coming into force are not considered. These grounds are, in certain respects, broader in scope than the existing regime. It would be unfair to impose exclusion on suppliers for events which occurred before this was set in law.

Amendment 340 requires publication of statutory guidance on the application of the exclusion grounds. As I said in response to an earlier group, I accept the need for more detailed guidance on self-cleaning; I addressed the matter in the previous debate on the exclusions process.

Finally, I turn to the very important Amendment 353 on supply chain resilience against economic coercion and modern slavery put forward by my noble friend Lady Stroud. I listened most carefully to the impassioned and heartfelt speeches made by many noble Lords on all sides. I appreciate my noble friend's dedication and commitment to these issues. On both issues in question, the Bill already provides for much of what she seeks to achieve. On resilience, the Bill requires contracts to be awarded to the most advantageous tender. This allows for a holistic assessment of value for money which could, if relevant, take into account long-term supply chain resilience against geopolitical instability. Of course, there is no place for modern slavery in any supply chains. There is already comprehensive guidance for contracting authorities on assessing and addressing modern slavery risks in supply chains.

As my noble friend knows, we are not only strengthening the grounds for exclusion in relation to modern slavery, but introducing, for the first time in the UK, a debarment list of suppliers. For the first time, we are making explicit provision to disregard bids from suppliers known to use forced labour or perpetuate modern slavery themselves or in their supply chain. I concede that the current rules are too weak in this regard: they require the supplier to have been convicted, or for there to have been a breach of international treaties banning forced labour, or they require evidence of grave professional misconduct.

We recognise that modern slavery often occurs in countries which are not party to international treaties on forced labour and which are unlikely to prosecute the perpetrators, and where there may be no relevant national laws. Paragraph 3 of Schedule 7 allows authorities to exclude suppliers and disregard their bids where there is sufficient evidence of modern slavery—

Lord Scriven (LD): I have listened very carefully to the description the noble Lord has given. Exactly the same kind of provisions exist in states which do torture, where there are no laws or treaties that those states uphold. So, what is the difference between modern slavery and torture when they take place in a state where the laws and the regime that rules that state do not protect its citizens from either?

Lord True (Con): My Lords, I referred to the position where there may be no relevant national laws. The Government's submission is that this Bill greatly strengthens the defences we have against modern slavery and the vile abuse of individuals in these circumstances. As I said, this will apply whether or not there has been a conviction or a breach of an international treaty.

Baroness Neville-Rolfe (Con): On modern slavery, the Minister is surely saying that there has to have been a conviction for somebody to be on the debarred list. The first person prosecuted under the Modern Slavery Act—I almost hesitate to say this—was Sainsbury, so they had a case against them. Sorry, I am just trying to understand this; is the Minister saying that they would therefore be on the debarment list? I do not think that is the intention.

Lord True (Con): No: I said that the current rules are too weak. They do require the supplier to have been convicted. I am saying that we are moving beyond that to a different evidential base and test. I recognise the strength of feeling among noble Lords on this issue. I commit to engaging further with my noble friend and other Members of the Committee on this prior to Report. On that basis, I respectfully request that these amendments are not pursued.

Lord Mendelsohn (Lab): My Lords, that was the very definition of a wide-ranging debate. I do not want to delay the Committee for too long, but I must just say that I appreciate the difficult hand that the Minister is having to play at this stage. I reflect on the fact that I have been in this House for just over eight years, and during that time, there is not a single piece of legislation I have been involved with that has been delivered with the intention that the Ministers wanted. All have failed for one reason or the other, and all are coming up for some form of revision at different points. It seems to me that yet again we have a problem in drafting and delivery that will bedevil this Bill as it goes on.

I also have to say that I do not really think it is that radical a Bill. As the chairman of a public limited company, I think that the Government, who have been pressing the corporate sector to take ESG and other matters more seriously, have been leap-frogged by the private sector and are quite behind. There can be a better process in thinking this through to delivery—one that either takes a different form of comply or explain, or other sorts of things—but the Bill is starting to get to the point where it does not really address the issues or create good behaviour. In the end, we are going to end up with an overreliance on decisions made by people who I suspect have not really seen how these things work in real life. So, while I beg leave to withdraw my amendment, I think it is important to understand that over time we may live to regret quite a few of the provisions we have put in this Bill.

Amendment 174 withdrawn.

Amendments 175 and 176

Moved by ***Lord True***

175: Clause 30, page 19, line 17, leave out from "must" to end of line 18 and insert "in relation to the award—

(a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 18, and

(b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure."

176: Clause 30, page 19, leave out line 23 and insert "In subsection (1), the reference to a supplier acting improperly is reference to a supplier—"

Amendments 175 and 176 agreed.

Committee adjourned at 8.55 pm.