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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

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

House of Lords

Thursday 5 September 2024

11 am

Prayers—read by the Lord Bishop of Southwark.

Introduction: Lord Elliott of Ballinamallard

11.07 am

Thomas Beatty Elliott, having been created Baron Elliott of Ballinamallard, of Ballinamallard in the County of Fermanagh, was introduced and took the oath, supported by Lord Rogan and Lord Empey, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Brady of Altrincham

11.13 am

The right honourable Sir Graham Stuart Brady, Knight, having been created Baron Brady of Altrincham, of Birch-in-Rusholme in the County of Greater Manchester, was introduced and took the oath, supported by Lord Howard of Lympne and Baroness Williams of Trafford, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

11.17 am

The Marquess of Lothian took the oath, and signed an undertaking to abide by the Code of Conduct.

Online Safety Legislation: Abuse on Social Media

Question

11.18 am

Asked by ***Baroness Ritchie of Downpatrick***

To ask His Majesty's Government what assessment they have made of the ability of current online safety legislation to regulate abuse, including racism, Islamophobia, homophobia, and sectarianism, on social media platforms.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Baroness Jones of Whitchurch) (Lab): My Lords, as my noble friend will know, we take these issues very seriously. The Online Safety Act will tackle illegal abuse, protect children and empower users. Regulated providers, including social media companies, must implement systems to reduce the risk that their services are used for illegal activity, including illegal abuse. Under the Act, stirring up hatred is a priority offence, requiring providers to proactively combat illegal racism, Islamophobia, homophobia and sectarianism.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank my noble friend the Minister for her detailed Answer. What consideration have the Government given to the flourishing of hate content on smaller online platforms, which they have the power to regulate under the highest tier of regulation: category 1 under Schedule 11 to the Online Safety Act? Are the Government minded to reject Ofcom's advice not to use the powers available to them under the Act to do so?

Baroness Jones of Whitchurch (Lab): My Lords, we share my noble friend's concern about the flourishing of hate crime on these sites and particularly on smaller online platforms. The Secretary of State for DSIT is carefully considering Ofcom's categorisation recommendations and will make regulations as soon as reasonably practical. He can decide to proceed with Ofcom's advice or divert from it. If the latter approach is taken, a statement must be published explaining why.

Lord Browne of Ladyton (Lab): My Lords, it was reported today that the United States, the EU and the UK are all expected to sign the Council of Europe's convention on AI, which emphasises human rights and democratic values in its approach to the regulation of public and private sector systems. The convention, which is legally enforceable, requires signatories to be accountable for any harmful or discriminatory outcomes of AI systems and for victims of AI-related rights violations to have legal recourse. In addition to the offence of sharing, is now not the time to consider criminalising the creation of sexualised deepfake images without consent? The noble Baroness, Lady Owen, called for this on 13 February in your Lordships' House, and described deepfake abuse, which is almost wholly misogynistic and now epidemic. It is the new frontier of violence against women.

Baroness Jones of Whitchurch (Lab): My Lords, my noble friend will know that, in addition to the implementation of the Online Safety Act, we already have plans to bring forward a new data Bill where some of these issues can be debated. We also have ambitions to bring forward a further piece of AI legislation, on which we will have the opportunity to talk about those issues in more detail. He is absolutely right: these are serious issues. They were debated at length during the passage of the previous data protection Bill, and we hope to return to them again.

Lord Watts (Lab): My Lords, is it not the case that Ofcom is letting down the public? What we need is to review the role of Ofcom and other regulators and, if they are failing to do their duties for the public, they should be removed from office.

Baroness Jones of Whitchurch (Lab): My Lords, Ofcom has a very wide-ranging and serious set of responsibilities. There is no suggestion that it is not carrying out its responsibilities in the run-up to the implementation of the Online Safety Act. We are working very closely with Ofcom and believe that it will carry out those additional functions that we have given it with proper scrutiny and to high standards. Yes, there is a case for looking at all regulators; we have a debate on this on Monday in the House, and I am looking forward to that, but that is a wider issue.

[Baroness Jones of Whitchurch]
For the moment, we have to give Ofcom all the support that we can in implementing a very difficult set of regulations.

Baroness Kidron (CB): My Lords, the crafting of the Online Safety Act was fraught with exceptions, exclusions and loopholes, the most egregious of which is that regulated companies get safe harbour if they comply with Ofcom's codes, but Ofcom has provided us with codes that have huge gaps in known harms. What plans do the Government have to fulfil their election promise to strengthen the OSA by ensuring that it protects all children effectively, even the very young, and that it has adequate mechanisms to act swiftly in a crisis, or with an evolving new risk, to stop abuse being whipped up algorithmically and directed at minority groups?

Baroness Jones of Whitchurch (Lab): My Lords, I think that we are in danger of downplaying the significance of the Online Safety Act. It is a trail-blazing Act; the noble Baroness was very much involved in it. Our priority has to be to get that Act implemented. Under it, all user-to-user services and search providers, regardless of size, will have to take swift and effective action against illegal content, including criminal online abuse and posts of a sexual nature. We should get behind Ofcom and the Online Safety Act, and we will then obviously have to keep that Act under review, but we have the tools to do that.

Baroness Hussein-Ece (LD): My Lords—

Lord Howell of Guildford (Con): My Lords—

Lord Kennedy of Southwark (Lab Co-op): My Lords, we will hear from the Lib Dem Benches and then from the Conservative Benches.

Baroness Hussein-Ece (LD): I thank the noble Lord. Does the Minister agree—

Noble Lords: This side.

Baroness Hussein-Ece (LD): I am getting used to being heckled.

Lord Kennedy of Southwark (Lab Co-op): My Lords, we will hear from the Lib Dem Benches now and then from the Conservative Benches.

Baroness Hussein-Ece (LD): Does the Minister agree that digital literacy is crucial, so that people are better able to identify often damaging misinformation and fake news? What is the Government's strategy in that respect?

Baroness Jones of Whitchurch (Lab): The noble Baroness makes an important point. Part of Ofcom's responsibility is to heighten the role of media literacy. We are talking to the Department for Education, and obviously there is a role for schools to be involved in all this—but parents also have to take responsibility for their children, and for their access to these sites. The media literacy role that we have to play goes right throughout society; it is the responsibility of all of us to make sure that people understand, when they access these sites, what they are able to see and how all that can be moderated. Again, the social media companies have a particular responsibility to play in all that. We expect them to uphold their terms of service to make sure that children cannot access the sites that are inappropriate, and we will work with them to make sure that this happens.

Lord Parkinson of Whitley Bay (Con): I hope that the Government will look with sympathy at the Private Member's Bill being brought forward by my noble friend Lady Owen of Alderley Edge, which the noble Lord, Lord Browne of Ladyton, mentioned. It deals with very important issues.

The Minister will be aware of the arrest of Pavel Durov in France—the founder and chief executive of the messaging application Telegram. I do not expect her to be able to comment on an ongoing investigation, but can she tell your Lordships' House whether His Majesty's Government have had any contact with the Government of France in relation to this matter and whether British law enforcement agencies have been involved in the investigation? I appreciate that she may need to write after checking with them.

Baroness Jones of Whitchurch (Lab): I pay tribute to the noble Lord for all the work that he did in getting the Online Safety Act on to the statute book. With regard to Telegram, obviously we cannot comment on issues in another country's jurisdiction. We have regular contact with all friendly nations dealing with those issues. I cannot comment on whether there has been specific dialogue on the issue of Telegram, but we would normally expect that to be something for the French Government to deal with.

The Lord Bishop of Leicester: My Lords, I recognise absolutely the urgency and importance of legislation in this area, but does the Minister agree that equally important is the work of tackling the prejudice that lies behind online abuse, and the important role therefore of intermediate institutions such as community groups and faith groups in tackling prejudice? What are the Government doing to support those groups in that work?

Baroness Jones of Whitchurch (Lab): The right reverend Prelate makes a very important point. I think that we were all pleased with the community reaction to the riots. It was very heartening to see that people were not prepared to have those abhorrent views coming to the fore in their communities. We need to do more to encourage that community response, and we need to work with all of civil society, including the Church, to make sure that happens. We also need to make sure that the police, as they play a community role, make clear what is illegal and take action when actions in a locality are illegal. This is a much broader issue about civil society, and I agree with him.

Ukraine
Question

11.30 am

Asked by ***Lord Campbell-Savours***

To ask His Majesty's Government what discussions they have held with European countries regarding Ukraine and its war with Russia.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office (Baroness Chapman of Darlington) (Lab): My Lords, Ukraine is defending itself against an illegal and unprovoked war launched by Russia, as per its right under the UN charter. UK support for Ukraine is ironclad. Ukraine was a key area of focus for the European Political Community summit at Blenheim, at which the Prime Minister brought leaders from across Europe together with President Zelensky. We are committed to working with our international partners to ensure that Ukraine gets the support that it needs to prevail.

Lord Campbell-Savours (Lab) [V]: My Lords, while I recognise the loyal support of Labour in opposition for the war but equally that it is for Members to question strategy where they disagree—in my case with regard to Ukraine in 21 debates over two and a half years in this House—is it not time for a strategy rethink, with new emphasis on conflict resolution, perhaps drawing on the developing relationship between China and Russia and the more opportunist relationship between China and America? With concerns in Europe over the war and the only talk of negotiation coming from a nightmare Trump, can we at least start to think out of the box? Ukraine's policy of last man standing is unsustainable.

Baroness Chapman of Darlington (Lab): My Lords, I completely accept my noble friend's right to challenge, disagree and ask questions, both in this Chamber and outside it. I am very glad that we live in a country where that is encouraged and is possible with no consequences. It is for Ukraine to decide when it wishes to negotiate and on what terms.

Lord Stirrup (CB): My Lords, does the Minister not find the wording of this Question rather odd, referring as it does to Ukraine and "its war with Russia", as if there were some moral equivalence between the two? Further, in any discussions that the Government have with other European countries, will they please stress that, in combat, the only real alternative to dominant firepower is to throw more bodies into the battle? Restrictions for whatever reason on the nature and scale of weaponry supplied to Ukraine will not only imperil its tactical situation but will almost certainly ensure that even more of its citizens are killed in Russia's war of aggression.

Baroness Chapman of Darlington (Lab): I share the noble and gallant Lord's thoughts on the wording of the Question from my noble friend. I too noted the emphasis on Ukraine's "war with Russia" and I disagree with that way of looking at this conflict. The UK has provided £7.6 billion-worth of support, including £3 billion for 2024-25, and we are proud to stand alongside Ukraine as it defends its territory.

Baroness Goldie (Con): My Lords, our support for Ukraine must be unwavering, unflinching and demonstrable. The Minister has just referred to the element of support under military assistance provided by the United Kingdom to Ukraine, but will she commit to this House that the support provided to Ukraine by the Government will, at the very least, be maintained at the same levels as that provided by the previous Government?

Baroness Chapman of Darlington (Lab): I thank the noble Baroness for her question but also for the work that she did in government on Ukraine. It is respected, and we wish to continue to support Ukraine both militarily and with non-military assistance. We have £242 million in bilateral, non-military assistance earmarked for 2024-25.

Baroness Smith of Newnham (LD): My Lords, in her initial Answer, the Minister mentioned the Blenheim discussions, which the Government hosted. That is a very welcome forum, but will His Majesty's Government also move forward with closer co-operation with the European Union on security and defence? That would be another way for us to work effectively with our neighbours to support Ukraine, which Members around the House, with the exception of the noble Lord asking the Question, all support.

Baroness Chapman of Darlington (Lab): The noble Baroness is correct to highlight the need for the United Kingdom to work closely with all our allies, and we do so particularly with our European neighbours and partners.

Lord Cromwell (CB): My Lords, a Ukrainian drone pilot told me recently that, when they shoot down a Russian drone, they take it to bits and analyse the components. They are finding components that are manufactured in countries allied to Ukraine, including this one. Is that something that the Minister feels we should investigate further?

Baroness Chapman of Darlington (Lab): We are of course interested in all such reports, and they will be considered fully.

Lord Skidelsky (CB): My Lords, will the Minister assure the House that, before permission is given for British-made missiles to strike targets deep in Russian territory, Parliament is given an opportunity to debate the future British policy towards Ukraine? That policy has profound implications for our national security and ought therefore to be the object of proper scrutiny and debate.

Baroness Chapman of Darlington (Lab): The United Kingdom Government have been steadfast in their support for Ukraine. We understand that, in order to defend itself, Ukraine has needed to strike inside Russian territory on occasions—we accept and support this. It is unrealistic to think that none of those weapons or their components could have originated here. The situation as regards the limitations placed on what weaponry is given to Ukraine and what it can do with that remains consistent with the position of the previous Government.

Lord Forsyth of Drumlean (Con): My Lords, further to the question from the noble and gallant Lord, Lord Stirrup, how can we expect the Ukrainians to fight with one hand tied behind their back? Will the

[Lord Forsyth of Drumlean]
Government allow them to use the weapons that we have supplied to the best of their ability to defeat this evil Putin regime?

Baroness Chapman of Darlington (Lab): We are completely committed to supporting Ukraine to defend itself. I just point to our commitment to provide £3 billion per year every year until 2030-31, or for as long as is necessary.

Lord Anderson of Swansea (Lab): My Lords, we should give President Zelensky the long-range weapons that he needs, but surely we cannot give him a blank cheque politically. The war has entered a phase of attrition. Surely now we must ask ourselves: to what extent is it realistic to expect Russia to have a policy where it leaves entirely both Crimea and the rest of Ukraine? Otherwise, the war of attrition and stalemate will continue indefinitely.

Baroness Chapman of Darlington (Lab): My view, and that of the Government, is that that assessment is for President Zelensky and the Ukrainians to reach. It is their country that has been invaded and it is for them to say on what terms, if any, they wish to negotiate.

Lord Purvis of Tweed (LD): My Lords, there are signs that the most recent American sanctions are having an impact on the Russian dark fleet, which the Minister has previously mentioned in the House. Will the Government give an assurance that, when it come to the operation of the dark fleet or shadow fleet for oil or LNG, that there are no UK links with this, either through London, through insurance or brokering, or for landing licences or any flagging? This can have an impact on Russia and we need to make sure that no parts of the UK or overseas territories are associated with it.

Baroness Chapman of Darlington (Lab): The noble Lord is correct to raise the issue of the shadow fleet. The UK has so far sanctioned 15 ships of the Russian shadow fleet, which is enabling Russia to evade international sanctions, as the noble Lord knows. In the margins of the European Political Community summit, 44 countries and the EU signed our call to action to tackle this specific issue.

Lord Hamilton of Epsom (Con): My Lords, following the question of my noble friend Lord Forsyth, the Government have risked the wrath of the United States by restricting sales of arms to Israel; why do they not risk the wrath of the United States by allowing Storm Shadow to be used on Russian soil in the conflict with Russia?

Baroness Chapman of Darlington (Lab): I am afraid the noble Lord is wrong about the wrath of the United States and the characterisation he has just relayed. In fairness, some of what I have seen reported in some elements of the media is not correct and that is not the nature of the discussions that the UK has had with the United States on this issue or the other issue he raised.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, with respect to my noble friends Lord Anderson and Lord Campbell-Savours, I reassure my noble friend on the Front Bench that it is my view that the vast majority of Labour Members in this House and in the other place strongly support the Government on their unqualified support for Ukraine against the aggressor, Russia. Ukraine is fighting not just for its own territorial integrity but for all of us in democracies.

Baroness Chapman of Darlington (Lab): I thank my noble friend for ending this Question and summing it up quite so well. I agree with every word.

Emergency Alert Service

Question

11.40 am

Asked by ***Lord Harris of Haringey***

To ask His Majesty's Government how many alerts have been sent using the Emergency Alert service since the national test in April 2023; and when the next national test of the system will take place.

Lord Harris of Haringey (Lab): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I refer to my interest as chair of the National Preparedness Commission.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Baroness Twycross) (Lab): Since the launch of the UK Government's emergency alert system, the capability has been deployed twice: in February in Plymouth to aid an evacuation effort following the discovery of an unexploded World War II bomb; and in April this year as part of flood mitigation in Cumbria. At present, a second national test is not scheduled; however, the Government will continue to ensure the resilience of the system through regular technical testing and consider national tests as appropriate.

Lord Harris of Haringey (Lab): My Lords, I am grateful for that Answer. I am sure that a further national test would be useful, both because there were one or two problems identified first time round and because it would help habituate the general public to these alerts. I am pleased to hear that there have been two cases where the emergency alert system has been used in localised areas. It could, for example, have been used with benefit to inform residents of Grenfell Tower about the change in evacuation policy had it been available at that time. What progress has been made in developing local protocols to ensure that fire services, local police services and maybe local authorities and others are ready to use that system? How quickly can the Cabinet Office authorise those?

Baroness Twycross (Lab): Our thoughts go to everyone touched by the Grenfell Tower inquiry phase 2 report yesterday into the 72 victims of the Grenfell Tower fire. I am sure all noble Lords across the House share the determination expressed by the Prime Minister yesterday that nothing like this must ever happen again. My noble friend will be aware that alerts can currently be targeted down to electoral ward level and

that, therefore, in a future incident akin to the horrific events at Grenfell Tower, the emergency alerting tool could now be an important aspect of the emergency response. I reassure him and Members across the House that all local resilience forums can both request an emergency alert and receive extensive training on this capability, which has been made available through the ResilienceDirect website. The Cabinet Office has also worked with the College of Policing's multi-agency gold incident command programme to integrate awareness of emergency alerts.

Lord Wallace of Saltaire (LD): My Lords, when the UK Government's resilience framework was launched two years ago, one of its three core principles, as announced, was:

"Resilience is a 'whole of society' endeavour, so we must be more transparent and empower everybody to make a contribution".

Since then, there has been remarkably little publicity, let alone any attempts to engage "the whole of society" in this endeavour. Given the likelihood of flood emergencies, heat emergencies, more pandemics and terrorist emergencies, we ought to be engaged. Will the new Government attempt to engage all of us, not just local government resilience frameworks and others, in making sure that the country is informed about and ready for these sorts of emergencies?

Baroness Twycross (Lab): As noble Lords are aware, the Chancellor of the Duchy of Lancaster will chair a dedicated Cabinet committee to oversee the Government's review of national resilience and preparedness. As part of this, there will definitely be a focus on this whole-society and whole-system resilience and how we can improve it. It is part of the suite of measures that the previous Government were looking at. I think it could go a lot further but it was essentially the correct idea.

Lord Cromwell (CB): Can the Minister tell the House which companies have the contract for this service? Is Fujitsu one of them?

Baroness Twycross (Lab): Fujitsu does have a role in the development of the UK's emergency alert system and continues to play a small role in system maintenance. The maintenance contract is scheduled for renewal in October 2025, with the commercial process beginning in the summer of next year. At the time of retender, any potential supplier would need to bid via the Government's procurement protocols.

Lord Hogan-Howe (CB): My Lords, I think that the noble Lord, Lord Harris, should be commended on his promotion of this system and on making sure that it has been pursued by various Governments. I was disappointed to hear the response that the system is not to be tested regularly and frequently, not least for the reason he gave, which is that people may not understand what these texts are about. There are more likely, frankly, to believe they are being defrauded than they are being provided with genuine information by the state in the middle of an emergency. Are the Government prepared to reconsider the frequency of that testing, to make sure that people are included and understand what the system is about?

Baroness Twycross (Lab): I will feed that point back to the department, but I did not say there will not be further testing. I said that one is not scheduled currently, but the point was very well made.

Viscount Stansgate (Lab): My Lords, I do not know whether the House is aware that there is increasing scientific interest in the effect of heat on human beings. We are living in a world that is getting hotter, and recent studies such as that produced by the Physiological Society indicate that measures will need to be taken. Will my noble friend the Minister undertake to ensure that this Cabinet sub-committee considers the question of heat resilience and whether emergency responses of the kind we have been discussing in this exchange can be applied to situations where heat is the issue, rather than some other cause?

Baroness Twycross (Lab): My noble friend rightly highlights the danger of heat in terms of its potential impact on the public. As he and other noble Lords will be aware, the summer of 2022 saw the highest ever recorded temperature in the UK. The capability was not in use at the time, but this is an example of the type of event in which an alert would be considered. More recent summers have been somewhat milder, but this is the type of incident that would be appropriate for the use of emergency alerts.

Lord Stirrup (CB): My Lords, does the Minister agree that one way to ensure that the systems are effective would be to have a proper national resilience command and control structure that carried out policy development, gaming, resilience and stress testing, and ensured not only that the technical systems work but that the personnel involved in them were familiar with all the challenges that would face them in the real event?

Baroness Twycross (Lab): Some of the issues the noble and gallant Lord refers to were highlighted by the Covid inquiry module 1. The Government have committed to respond to that within six months and I anticipate that the very valid point he makes will be addressed in that response.

Lord Harris of Haringey (Lab): My Lords, if I might come back, following on from the noble and gallant Lord's question, can my noble friend give us some indication as to how quickly a localised emergency alert can be authorised? I understand that a whole series of processes has to be gone through, including finding the Cabinet Office duty officer, potentially in the middle of the night. I am sure they are constantly available, but the question is: can it be done in real time, quickly? Obviously, an emergency situation develops very quickly.

Baroness Twycross (Lab): All local resilience forums can request an emergency alert. In my experience, having chaired the London Resilience Forum, the duty officers from the Government are indeed available and able to respond and carry out this type of action very quickly, as would be appropriate given the speed of some incidents that might occur.

Lord Taylor of Holbeach (Con): I have the good fortune to have a house in France in a small village where the mayor has collected all the mobile numbers of everybody in the village and as a result I can sit here and, were I looking at my phone—of course I am not looking at my phone when I am in the Chamber—I could tell there was a heatwave in the part of France I am living in and that I should take the following remedial steps. Does the Minister agree that perhaps one way the Government could deal with this would be by asking people to join these groups locally?

Baroness Twycross (Lab): The noble Lord makes a valid point and what he describes is a good example of community resilience and how communities can best prepare to support each other during an emergency or an incident such as a heatwave. The Government are committed to community resilience and will consider this further as part of the wholescale review of resilience that will commence, potentially later this year.

Israel: Arms Sales

Question

11.50 am

Asked by ***Lord Bellingham***

To ask His Majesty's Government what representations they have received following their announcement to restrict certain arms sales to Israel.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office (Baroness Chapman of Darlington) (Lab): My Lords, as was expected and as is understandable, the range of reactions to our suspension of some export licences to Israel illustrates the depth of feeling about the conflict. Our licensing criteria state that the Government will not issue export licences if there is a clear risk that they might be used to commit or facilitate serious violations of international humanitarian law. We have concluded that there is a clear risk. Our priority remains achieving a ceasefire in Gaza with hostages released, civilians protected and aid flooding in.

Lord Bellingham (Con): My Lords, I am grateful to the Minister for that reply, but will she reflect on the fact that this announcement coincided with the cold-blooded and barbaric murder of six Israeli hostages by Hamas? What sort of message does this send to Hamas and its backers in Iran? Also, what does it say to Israel, a democratic ally, which is basically being accused by us of being a rogue state when it is defending itself against terror?

May I ask the Minister a question about licences? Out of 350, only 30 have been suspended, on the grounds of humanitarian problems and the treatment of detainees, but surely if there was a serious legal problem, they would have all been suspended. Can the Minister confirm to the House that this decision was based specifically on legal advice and not on internal Labour politics?

Baroness Chapman of Darlington (Lab): If the noble Lord wants to talk about internal Labour Party politics, he has come to the right place. I have spent a lot of time on this topic, and I can assure him at this Box—and he must hold me to this—that this decision had nothing to do with internal Labour Party politics, and neither should it.

On the 30 licences, as the noble Lord is probably aware, there are a number of licences. Not all the items the licences are subject to could be used either in Gaza or for actions that might compromise international humanitarian law, such as food-testing kits. That is the reason why 30 specific licences have been dealt with as they have.

Lord Blunkett (Lab): My Lords, had all the licences been suspended, the accusation from the Benches opposite would have been valid. It is because those 320 licences have not been suspended that we are assured that we are prepared and willing to help Israel defend itself against Iran or Hezbollah, or whatever external forces may be intent on destroying the State of Israel. Does my noble friend not agree that that confirms that this process has been entirely proper?

Baroness Chapman of Darlington (Lab): This decision came at the conclusion of a process which the Foreign Secretary initiated upon his appointment, where a review was commenced. The earliest opportunity to make both Houses aware of the conclusion of that review was on the first day we returned, earlier this week, and that is the reason for the timing of the announcement.

Baroness Deech (CB): My Lords, yesterday the House debated a new Holocaust learning centre in Westminster and much was made of the vacuous statement "never again". Today we hear of support for arms for Ukraine. We supply them to Turkey, Saudi Arabia and other countries that kill their opponents. Why do the Government undermine protection for a state that needs them for self-defence to combat murderous terrorists whose avowed aim is to kill Jews? Has she read the American book? Everyone loves dead Jews; the living, not so much.

Baroness Chapman of Darlington (Lab): My Lords, the UK remains and will always be committed to supporting Israel's security and wider regional stability. The Foreign Secretary reaffirmed this with his Israeli counterparts on a recent visit to Tel Aviv on 19 August with the French Foreign Minister, and our position has not changed in this respect. We continue to support Israel's right to defend itself and to take action against terrorism, provided it does so in accordance with international law.

Lord Howard of Lympne (Con): My Lords—

Lord Purvis of Tweed (LD): My Lords—

Lord Kennedy of Southwark (Lab Co-op): My Lords, we will hear first from the noble Lord, Lord Howard, and then from the noble Lord, Lord Purvis.

Lord Howard of Lympne (Con): I am grateful to the noble Lord. The Foreign Secretary in his Statement said that the commitment to comply with international humanitarian law is not the only criterion in making export licensing decisions, and he justified the decision

to exempt the F35 equipment on other criteria. So does it not clearly follow from that the Government could, had they wished, have decided against a ban on the ground that Israel is acting in self-defence against an organisation committed to its destruction and recognised by our own Government as a terrorist organisation? In the light of that, will the Minister now accept that when she told your Lordships' House on Tuesday that the Government were required to suspend certain export licences, what she said was both factually inaccurate and grossly misleading?

Baroness Chapman of Darlington (Lab): No, I do not accept that. The legal test we have is that there is a clear risk, and the advice we received was that in the case of these 30 licences it could present a clear risk—not that it has done, not that there is a breach, but that there is a clear risk. This is not an embargo on sales of arms to Israel. I am fairly confident that the noble Lord will know that the case of the F35s is different. We supply components which are part of a global supply chain, and stopping those components being provided could cause very difficult disruption and there would be an impact on global security.

Lord Purvis of Tweed (LD): My Lords, we support the Government's moves regarding the situation in Gaza, but I hope all parts of the House have been shocked by the extreme violence of the outpost settlers in the West Bank. The outpost settlers are acting contrary to international law but also to Israeli law. Shin Bet's director said in August that the violence was being provided to support legitimacy and praise by extreme elements of the Israeli Government. Will the Government assure the House that they are looking at potential restrictions of licences and sanctions of those parts of the Israeli Government which are actively, under the decision by the internal security service of Israel, facilitating the outpost settler violence?

Baroness Chapman of Darlington (Lab): All I am going to say on that for today is that we recognise Israel's need to defend itself against security threats, but we are deeply worried about the methods that have been employed and by reports of civilian casualties and the destruction of civilian infrastructure, and by the ongoing military operation in the West Bank and the attacks there. It is in no one's interest for further conflict and instability to spread in the West Bank. The risk of instability is serious; there is a need for de-escalation and that need is urgent.

Lord Turnberg (Lab): My Lords, I am sure that the decision to reduce arms supplies to Israel will offer great encouragement to Hezbollah, Hamas and Iran. In view of the importance of that decision, can we see the full details of the advice that the Government received which led them to this very unfortunate decision?

Baroness Chapman of Darlington (Lab): My Lords, I encourage my noble friend to read and consider the summary published alongside the Statement on Monday. That will probably answer many of his concerns.

Baroness Goldie (Con): My Lords, further to my noble friend Lord Howard's question, I recall, when I was a Minister in Defence, having to look at export licence applications and requests. You had to determine what was being supplied, make a linkage to where it was going and then make a reasoned assumption as to what it might be used for. To the best of our ability, we tried to apply these tests objectively. I do not recall any reference to other criteria entering that assessment process. When did this change?

Baroness Chapman of Darlington (Lab): The assessment process has not changed; this assessment was made on the basis of clear risk and our ability to have sight in theatre of what was being done, alongside reports about issues of aid and treatment of detainees. I believe this is consistent with the approach taken by the previous Government. We have not had sight, rightly, of the legal advice provided to them and their decisions are for them to comment on—we make no criticism of or comment on that. The decision we made was based on the advice we received.

House of Lords: Composition

Private Notice Question

12.01 pm

Asked by ***Lord Strathclyde***

To ask His Majesty's Government (1) what plans they have for the removal of excepted hereditary peers from the House of Lords and (2) whether they plan to keep the House informed on any proposed changes to its composition before the publication of relevant legislation.

Lord Strathclyde (Con): My Lords, I beg leave to ask a Question of which I have given private notice, and I declare my interest. The question is as follows: to ask His Majesty's Government, first, what plans they have for the removal of excepted Peers from the House of Lords and, secondly, whether they plan to keep the House informed on any proposed changes to its composition before the publication of relevant legislation.

The Lord Privy Seal (Baroness Smith of Basildon) (Lab): My Lords, I think the noble Lord's Question referred to excepted hereditary Peers. Today, probably as we speak, the Government are introducing a Bill in the other place to deliver on our clear manifesto commitment to bring about immediate reform by removing the right of the remaining hereditary Peers to sit and vote in the House of Lords. The Bill was included in the King's Speech, which was debated at length in your Lordships' House. It will complete the process started a quarter of a century ago to remove hereditary Peers from Parliament. The Government are keen to maintain an ongoing dialogue with your Lordships about this legislation and our other manifesto commitments on reforming this House.

Lord Strathclyde (Con): My Lords, I thank the noble Baroness the Leader of the House for that Answer, but is it not a bit shoddy that she was prepared to speak to the press yesterday and had to be summoned to the Dispatch Box today rather than make a Statement to the House about one of the most important issues

[LORD STRATHCLYDE]
facing this House—namely, its composition? This is a high-handed, shoddy political act, removing some of our most senior and experienced Peers, such as the Convenor of the Cross Benches, the noble Earl, Lord Kinnoull, the Deputy Leader of the Opposition, the noble Earl, Lord Howe, and many others who have held some of the most senior positions in government and commerce.

Why have the Government and the noble Baroness not sought any discussions or consultation among the parties? Twenty-five years ago, countless debates and questions took place in the House and, ultimately, we finished up with a consensual way forward agreed among the parties. Why are there no proposals to remove those Peers from the House who very rarely come, rather than those who have shown an active commitment over many years? I hope that the noble Baroness will now engage with the usual channels to find a suitable day for a debate on the Floor of the House to discuss proper reform of the House of Lords.

Baroness Smith of Basildon (Lab): I have always admired the noble Lord's ingenuity, and never more so than today. It is a bit of a reach to say that a Statement should have been made to this House first. This was first debated around the hereditary Peers by-elections, it was debated following the Labour Party's manifesto commitment, and I have had numerous conversations since the election and will continue to do so. A Bill has been introduced in the other place today; it will come to your Lordships' House and we will have our discussions in the normal way. The noble Lord says that there was agreement previously. It was because there was no agreement during the passage of that Bill that further discussions took place and temporary arrangements were made on a transitional basis to exempt some hereditary Peers from the legislation. This will complete that process. I remind the noble Lord that my comment to the press about the Bill's introduction—made in the normal way—started by recognising the valuable contributions that many hereditary Peers have made to Parliament.

Lord Wallace of Saltaire (LD): My Lords, I remind the House that my party is committed to further reform of this House, including the introduction of an elected element, which we first declared as party policy in 1911. I also remind the House that, during the last Parliament, a number of Conservatives—who know very well who they are—spent a great deal of time complaining that the Liberal Democrats were overrepresented in this House because of our small numbers in the Commons. It is now quite clear that one of our most immediate problems is the overrepresentation of Conservatives compared to their small numbers in the Commons. Can the Leader of the House tell us whether there have been any discussions so far about a voluntary reduction in the number of Conservatives in this House to reflect the new situation since the election?

Baroness Smith of Basildon (Lab): I have had no approaches from the party opposite about its numbers. On the noble Lord's point about wider Lords reform, for the last 25 years one of the arguments has been that nothing should be done until everything can be done—but no one agrees on what "everything" is. A piecemeal approach is by far the better way. The party opposite complains about Lords reform, but in the years that it was in government the only proposal it came forward with was to move the House of Lords to York.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, could the Leader of the House advise me whether this was included in the Labour Party manifesto, what the result of the general election was and what majority was achieved by the Labour Party? On a more serious note, can she confirm that, if any hereditary Peers were thought fit to be appointed as life Peers, that could be done?

Baroness Smith of Basildon (Lab): This was part of the Labour Party manifesto at the last election. Noble Lords may recall that the passage of my noble friend Lord Grocott's Bill to end the hereditary Peers by-elections was blocked. Perhaps 10, 15 or 20 years ago that might have been a better way forward, but that opportunity has now passed. The election result was quite clear. I can confirm that, if Members leave this House as hereditary Peers, there is no block at all to them coming back as life Peers if their party wishes to introduce them.

Lord Forsyth of Drumlean (Con): My Lords, on the commitments in the manifesto and what the party opposite said about House of Lords reform, what has happened to the proposal to expel everyone after they reach the age of 80? Why has that been dropped from the Bill? Is not the answer that this is a naked attempt to disable opposition in this House from a Government who have a majority in the other place, although this place is the only part of Parliament which properly scrutinises legislation? The Government are undermining our ability to carry out our duties effectively.

Baroness Smith of Basildon (Lab): Again, the noble Lord's ingenuity is always impressive. He knows that that is not the case. He also knows that the Labour Party manifesto at the last election was the only one I have seen in recent years that praised the work of this House—we continue to do so—and recognised the valuable work that it has done. In my answer to the noble Lord, Lord Wallace, I said that one of the important things in this House is incremental reform. As I have said before—I think the noble Lord was present when this was repeated at least twice in debate on the King's Speech—the House will be consulted on the manifesto commitments on retirement age and participation.

The manifesto also talked about immediate actions on particular issues. The other commitments of course remain, and they will come forward in due course, after discussions and dialogue across the House.

Lord Howell of Guildford (Con): My Lords, although the Minister is very good on these matters, she does not quite seem to understand that her party is dabbling with constitutional reform. Surely she, among many others, agrees that when it comes to constitutional reform it is absolutely essential that there is agreement

between all parties, otherwise we spend years and years in useless argument, getting nowhere. Does the noble Baroness not accept on this issue, as she has just learned from some of the responses she has just had, that once you touch on constitutional issues, the time has come to try to work out a common way forward—the future common ground—in a sensible, mature and adult way, and not get lost in party ding-dong?

Baroness Smith of Basildon (Lab): The noble Lord is being a little patronising in saying that I do not understand constitutional issues. I will be happy to reach consensus, where it is possible. As the noble Lord, Lord Strathclyde, said, a quarter of a century ago there was eventually a consensus that transitional arrangements would be made for the remaining hereditary Peers.

Baroness Deech (CB): Would the Minister use this opportunity to end another long-standing anomaly whereby the wives of Lords and Barons have the title "Lady", which confuses them with those who have earned the title? This should end, or change so that our husbands, or the partners of women Peers, also get some sort of honorific title.

Baroness Smith of Basildon (Lab): I think there are mixed views across the House about this issue—I have to say that Mr Smith might not appreciate having a title. It does seem an anomaly, although not one that overly concerns the House. However, I note the noble Baroness's comments.

Baroness Symons of Vernham Dean (Lab): My Lords, can my noble friend remind the House how many from the hereditary Peerage in this House are women?

Baroness Smith of Basildon (Lab): I recall the Countess of Mar from some years ago, and there may have been one other Member of the House of Lords who was a female hereditary Peer. There is none currently and, as far as I am aware, none is eligible for election in the hereditary Peers by-elections.

Lord Moylan (Con): May I return to the extraordinary decision to use the standing orders of this House in order to avoid our statutory obligations in relation to the holding of excepted Peers' by-elections? When I raised it before, the noble Baroness the Leader of the House said that she was confident that that move did not breach the law. However, it has since been suggested to me that the legal advice she received was more ambivalent on the matter. Is she willing to publish the legal advice on which that extraordinary decision to avoid our statutory obligations was based and, in doing so, show respect for the rule of law?

Baroness Smith of Basildon (Lab): When that decision was taken, it was entirely and completely within the rule of law. The legislation states that the House should hold by-elections. How it holds them is a matter for this House. I was approached by Members from across the House, including from Front Benches, who said that they wished that those by-elections would not take place during the passage of the Bill. Therefore, the House made the decision, under its Standing Orders, to pause the by-elections for a period of 18 months. That is entirely within the law and was done with the full agreement of this House.

Lord McNally (LD): My Lords, one of the benefits of this House is that some of us have been around a long time. I was much involved in the decision 25 years ago. The truth was that Viscount Cranborne, now the Marquess of Salisbury, had tied the Labour Government up in knots. The decision to allow hereditary Peers to remain was a way of untying that knot, with a solemn promise that legislation would be brought forward for proper reform of the House of Lords. I am afraid that simply to abandon the deal made 25 years ago without that substantial reform of the Lords is a sham.

Baroness Smith of Basildon (Lab): I disagree with the noble Lord on his final point, but I would expect him to make it because he is committed to an elected House. It is interesting that, when the debate was going through the House of Lords a quarter of a century ago, there was concern from a large number of hereditary Peers who were in your Lordships' House at the time, and in order to smooth the passage of the Bill, arrangements were made that 92 hereditary Peers would remain on a hereditary basis. On that basis, Lord Cranborne was sacked from his job as Leader of the Opposition, and I think it was the noble Lord, Lord Strathclyde, who was put in his place—he was perhaps a beneficiary of that. The noble Lord, Lord Howell, made the point that constitutional reform should be made with care and consideration, and 25 years seems a fair amount of care and consideration.

Lord True (Con): My Lords, for the avoidance of doubt I should say that I was the one who proposed that we look at the by-election matter. I have repeatedly made clear, both from that Dispatch Box as Leader and since, that I believe the best way forward for this House certainly in areas of constitutional change is by consensus, and not on the basis of divisive and partisan legislation.

There is a further and wider point. It is a courtesy and a duty to Parliament for Ministers to come to Parliament, and certainly to an affected House, to make a Statement on novel legislative matters before they are spewed out in the *Guardian*, the *Times* and other media. I do not know whether it was a decision of the noble Baroness that the pre-spin be done in this way; perhaps she was instructed by No. 10 not to make a Statement in this House. However, it was unlike her and not typical, and the misjudgment not to make a Statement in this House did not reflect her normal courtesy. I welcome some of the things that she said, so will she repeat her undertaking to enter into discussions now in the spirit of consensus? My door is open, as is, I am sure, the noble Earl's.

Baroness Smith of Basildon (Lab): I thank the noble Lord for his comments on hereditary Peers' by-elections; both he and the noble Earl, Lord Kinnoull, have approached me. In terms of constructive debate, I spoke to the Cross-Bench Peers yesterday and I would welcome an invitation to speak to the Conservatives. I do not

[Baroness Smith of Basildon]
think the noble Lord can do so as a matter of course, as it is by invitation, so I would welcome an invitation too.

There was a bit of faux anger on his part about a Statement to this House. This issue was in the Labour Party manifesto. During the King's Speech debate, it was the subject of almost the entire content of the noble Lord's response to my comments in the constitutional debate. When a Bill is introduced into either House, it is normal for a comment to be made. I wanted to ensure that it was on the record that we welcomed and appreciated the contribution made by hereditary Peers, and that is why it is in the Statement. It is a perfectly normal way of doing things. It did not come as a surprise to the noble Lord. It has been debated in this House on many occasions and I am sure the dialogue will continue.

Arrangement of Business

Announcement of Recess Dates

12.18 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, when I became Government Chief Whip eight weeks ago, I was pleased to be able to announce so soon after my appointment the recess dates up until we return after the Christmas Recess in January 2025. I am now going to announce the remaining recess dates up until we return after the Summer Recess next year. This, I believe, will be helpful to Members of the House and the staff who work here. As ever, they are subject to the progress of business. There is no need to write them down; my office has made the usual notice available in the Royal Gallery, and I will shortly email a note to all noble Lords in their parliamentary inboxes.

As I have said, I have already announced the recess dates up until the end of the Christmas Recess. If business runs as expected, the rest of the planned recess dates will be as follows. We will rise for the February Recess at the end of business on Thursday 13 February and return on Monday 24 February. We will then rise for the Easter Recess at the end of Thursday 3 April and return on Tuesday 22 April. I expect the Whitsun Recess to start at the conclusion of business on Thursday 22 May, with the House returning on Monday 2 June. Finally, I anticipate that the Summer Recess will start at the end of business on Thursday 24 July, and that the House will return on Monday 1 September next year. In future I will of course give noble Lords as much notice as I can of recess dates, but I hope noble Lords will appreciate that I have gone quite far in announcing them a year in advance.

Before I sit down, I also want to highlight the time limits for today's debates. Given the large number of speakers for both debates, the time limits are tight for individual Back-Bench contributions. The first debate, in the name of the noble Lord, Lord Carrington, is limited to one and a half hours, and Back-Bench contributions are limited to two minutes. The second debate, in the name of the noble Lord, Lord Lexden, is limited to three and a half hours, and Back-Bench contributions should be limited to four minutes.

All noble Lords should adhere to these absolute time limits. When the clock shows two minutes and four minutes respectively, their time is up. This will ensure adequate time for Opposition Front-Bench and ministerial responses. I have asked the Whips to intervene if contributions are exceeding these limits to protect the time for the Front-Bench responses. I am sure that noble Lords will be mindful of that in their speeches.

Lord True (Con): My Lords, we are very grateful to the noble Lord for giving early notice of these matters. I assume that there will be no fixture for Millwall in the first week of September next year.

The noble Lord sent out a recent letter about misinformation. I will not repeat what we have said about lack of information and the lack of a Statement—the *Hansard* record on that stands—but it would be informative and helpful in terms of building consensus if the noble Lord could consider very positively an early debate on the matter of reform of the House of Lords, which might actually inform discussions in the other place.

Lord Kennedy of Southwark (Lab Co-op): I thank the noble Lord very much for his comments and for those points. We have just had the PNQ where we discussed reform of the House of Lords. I am sure that the House has heard the Leader; we have heard the requests, and we will obviously consider those and come back to the noble Lord through the usual channels.

Home School Education Registration and Support Bill [HL]

First Reading

12.22 pm

A Bill to require parents who choose to home-educate their children to register with the local authority; to make provision about the maintenance of registers by local authorities of children in their area who are not full-time pupils at any school; to make provision about support by local authorities to promote the education and safeguarding of such children; and for connected purposes.

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

Listed Investment Companies (Classification etc) Bill [HL]

First Reading

12.23 pm

A Bill to make provision about listed investment companies; the classification and characteristics of those companies; and for connected purposes.

Baroness Bowles of Berkhamsted (LD): My Lords, I declare my interests as a non-executive director of the London Stock Exchange and an investor in funds holding listed investment companies.

The Bill was introduced by Baroness Bowles of Berkhamsted, read a first time and ordered to be printed.

Budget Responsibility Bill
First Reading

12.24 pm

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

Joint Committee on Consolidation etc. Bills

Joint Committee on Human Rights

Joint Committee on the National Security Strategy

Joint Committee on Statutory Instruments
Membership Motions

12.25 pm

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

Joint Committee on Consolidation etc. Bills

In accordance with Standing Order 50 that, as proposed by the Committee of Selection, the following Lords be appointed to join with a Committee of the Commons as the Joint Committee on Consolidation etc Bills:

Andrews, B, Bridgeman, V, D'Souza, B, Eames, L, Eccles, V, Hanworth, V, Mallalieu, B, Razzall, L, Rowlands, L, Seccombe, B, Thomas of Cwmgiedd, L (*Chair*), Thomas of Winchester, B.

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chair;

That the Committee have power to send for persons, papers and records;

That the Committee have leave to report from time to time;

That the reports of the Committee be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee be published, if the Committee so wishes.

Joint Committee on Human Rights

That a Select Committee of six members be appointed to join with a Committee appointed by the Commons as the Joint Committee on Human Rights:

To consider:

(1) matters relating to human rights in the United Kingdom (but excluding consideration of individual cases);

(2) proposals for remedial orders, draft remedial orders and remedial orders made under section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and

(3) in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order 74 (Joint Committee on Statutory Instruments);

To report to the House:

(1) in relation to any document containing proposals laid before the House under paragraph 3 of the said Schedule 2, its recommendation whether a draft order in the same terms as the proposals should be laid before the House; or

(2) in relation to any draft order laid under paragraph 2 of the said Schedule 2, its recommendation whether the draft Order should be approved;

and to have power to report to the House on any matter arising from its consideration of the said proposals or draft orders; and

To report to the House in respect of any original order laid under paragraph 4 of the said Schedule 2, its recommendation whether:

(1) the order should be approved in the form in which it was originally laid before Parliament; or

(2) the order should be replaced by a new order modifying the provisions of the original order; or

(3) the order should not be approved; and to have power to report to the House on any matter arising from its consideration of the said order or any replacement order;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Alton of Liverpool, L, Dholakia, L, Kennedy of The Shaws, B, Lawrence of Clarendon, B, Murray of Blidworth, L.

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chair;

That the quorum of the Committee shall be two;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have power to meet outside Westminster;

That the Committee have leave to report from time to time;

That the reports of the Committee be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee in the last Parliament be referred to the Committee;

That the evidence taken by the Committee be published, if the Committee so wishes.

Joint Committee on the National Security Strategy

That a Committee of ten members be appointed to join with a Committee appointed by the Commons as the Joint Committee on the National Security Strategy, to consider the National Security Strategy; and that, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Browne of Ladyton, L, Butler of Brockwell, L, Crawley, B, Dannatt, L, Fall, B, Robathan, L, Sarfraz, L, Snape, L, Stansgate, V, Tyler of Enfield, B.

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chair;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have power to meet outside Westminster in the United Kingdom;

That the Committee have leave to report from time to time;

That the reports of the Committee be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee in the last Parliament be referred to the Committee;

That the evidence taken by the Committee be published, if the Committee so wishes.

Joint Committee on Statutory Instruments

That in accordance with Standing Order 74 and the resolution of the House of 16 December 1997 that, as proposed by the Committee of Selection, the following members be appointed to join with the Committee of the Commons as the Joint Committee on Statutory Instruments:

Beith, L, Chartres, L, Haselhurst, L, Meston, L, Sahota, L, Sater, B, Watson of Wyre Forest, L.

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chair;

That the Committee have power to send for persons, papers and records;

That the Committee have leave to report from time to time;

That the reports of the Committee be printed, regardless of any adjournment of the House.

Motions agreed.

Ofsted

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 3 September.

"As the Government explained in the Written Ministerial Statement that was laid yesterday, and as was outlined in our manifesto, single headline grades will no longer be issued by Ofsted when it inspects state-funded schools. Our landmark reform will drive high and rising standards for children, and will increase transparency for parents.

Today Ofsted published the outcome of its Big Listen consultation exercise, the largest engagement with parents, children and professionals in its history, which, as the right honourable Member for East Hampshire (Damian Hinds) will know, began under the last Government. The Big Listen contains some difficult messages. It is clear that significant change is needed, and Ofsted has responded by committing itself to improvements.

Holding schools accountable for children's education is vital, but single headline grades are low information for parents and create high stakes for schools, so this Government are acting, making inspections both more powerful and more transparent. For this academic year, parents will continue to see four inspection grades for the existing subcategories, and from September 2025 the introduction of school report cards will provide a more complete picture of a school's performance. We will develop those over the coming months, working closely with parents and schools.

We want high and rising standards for every child, and we will act decisively when those standards are not being met. We will continue to intervene when performance is a serious concern. Ofsted's legal duty to identify schools causing concern will remain. It will still be required to notify the Secretary of State of these inspection outcomes, and she will retain her legal duty to issue an academy order to local authority-maintained schools when that is required. However, we will change the way in which schools are supported to help them succeed. From early 2025, we will introduce regional improvement teams, which will partner with struggling schools to drive improvement quickly and directly. This marks the beginning, not the end, of our journey towards an accountability system that is fit for purpose and will help to break down the barriers to opportunity for every child throughout the country".

12.25 pm

Baroness Barran (Con): The improvement in our schools under the last Conservative Government reflected a combination of high autonomy—we trusted our school and trust leaders to know the answers for their school and their community—and high accountability, so that the interests of children are protected and clear action is taken if a school is underperforming. That action is led by our best school trusts, and that is why our international rankings in England in reading, maths and science have all risen, while in Labour-run Wales they have sunk. It feels like these principles, which have driven success and opportunity for our children, are being eroded, and the changes being proposed to Ofsted inspections require further explanation.

I acknowledge that the Government say standards will rise as a result of the changes they are proposing, but school leaders and parents need to know how. Can the Minister explain what will actually be new on the new school report cards? There is an enormous amount of information and publicly available data on schools, and there is obviously a great deal of detail in the existing Ofsted reports. What is the gap that the Government have identified and what is the problem they are trying to solve? What evidence does the Minister have that the regional improvement teams

proposed by the Government will be more effective than strong academy trusts in turning around underperforming schools? Finally, how will decisions on interventions in underperforming schools be taken between now and September 2025?

The Minister of State, Department for Education (Baroness Smith of Malvern) (Lab): In response to the noble Baroness's first remarks, I agree that teachers and school leaders deserve enormous congratulation on the improvements that they have made in schools, and this Government are committed to supporting them to achieve even higher standards for all our pupils.

The announcement that the Government have made alongside Ofsted is the removal of the single headline grade for Ofsted inspections, something that provided a relatively low level of information but of course had enormously high stakes for schools. In doing that, we are absolutely committed to ensuring that parents have the information they need to be able to make decisions for their children, and that schools have the information to enable them to improve. That is why we will work with schools, parents and young people themselves, and Ofsted will lead this to help to develop the report cards that will provide more useful information.

The noble Baroness was, understandably, particularly interested in the impact on intervention. To be absolutely clear, where Ofsted identifies serious concerns with a school, the current situation whereby the Secretary of State can ensure that a maintained school becomes an academy or a failing academy is forced to become part of an academy trust remains. There is no change there but where schools could benefit from improvement, the development of regional improvement teams, apart from an early structural intervention in the management of schools, gives us an additional way to promote improvement in our schools and make sure that all children, wherever they are learning, are gaining the highest standards and schools are being held to account for delivering those.

Lord Storey (LD): My Lords, these Benches welcome the changes to Ofsted inspections and applaud the Government for the speedy way they have acted. Following the tragic suicide of Mrs Perry, noble Lords will recall that the review of what happened found that Ofsted had acted in a way that was

"defensive and complacent rather than reflective and self-critical".

For us, school improvement is not about wielding a big stick—it is about collaboration, support and valuing schools and helping them to get better. How does the Minister see well-being and mental support of staff being provided during an inspection?

Baroness Smith of Malvern (Lab): The noble Lord is right to outline the comments made by the coroner in the case of the tragic death of Ruth Perry and by the Education Select Committee in another place about the impact of the single headline grade in those circumstances. That is part of the reason for the Government's decision to remove that single headline grade, while maintaining a wealth of information from the Ofsted inspection in the report card that is being developed.

I will be frank with the noble Lord. Having been on the receiving end of an Ofsted inspection both in schools and children's social care, I think the inspections will always bring pressure on to schools and other settings, and so they should. The point is whether they are bringing pressure to good effect. During its Big Listen process, Ofsted has also had the opportunity to consider how to maintain that rigorous inspection and accountability process but to do that in a way, as the noble Lord says, that focuses on accountability and improvement but does not put undue stress on to schools and head teachers.

Baroness Blower (Lab): My Lords, does the Minister agree that considerable good practice is available internationally on how best to inspect and evaluate schools and that there is enormous understanding within the profession about how best to improve our schools? On that basis, I congratulate my Government on making this early decision. In response to the noble Baroness opposite about what question the Government are trying to answer with this, I think they are trying to answer that question of unrealistic, unreasonable pressure on individuals in schools from that headline judgment. If it did nothing else other than prevent any other head teacher taking their own life, it would be absolutely worth doing.

Having been a teacher myself, I know that all teachers welcome engagement with those authorities which seek to assist them to improve in their practice. I am confident—and I hope the noble Baroness agrees—that a move towards a balanced scorecard, engaging the profession and looking at best practice internationally is absolutely the way to ensure that we have an increasing number of self-improving schools for all our young people.

Baroness Smith of Malvern (Lab): I strongly agree with my noble friend, particularly on the points about how very good existing school leaders can support school improvement more widely and about learning from international experience. I know that Ofsted, in its consideration of improvement of the education inspection framework, will reflect on that, as will the Government. One reason for saying that it is a good idea to introduce the regional improvement teams in the way in which the Government are suggesting is because that enables us to build on the expertise of leaders in academies and other schools to support those schools which need to improve to be able to do so. In some cases, it will be necessary to change the management arrangements of schools but, short of that, much can be done to bring good practice to bear on those schools that need improvement, and we should make use of that capacity across the system.

Lord Deben (Con): Does the Minister agree that sometimes too much information makes it very difficult for people to understand what the situation is? I am not particularly one way or the other about a single word, but I think it is very important for parents to see in very short terms what they can help with. I have to say to the previous questioner that I do not believe that all teachers are always happy about pressure to improve the circumstances. Can the Minister assure me that the reports will now be written in such a way

[Lord Deben]
that there will be a couple of lines which emphasise the things that need to be done; otherwise, I fear we will be messed up by too many words?

Baroness Smith of Malvern (Lab): The noble Lord is absolutely right, and I suspect Members of this House understand the danger of being messed up by too many words. This is the beginning of a process, so the removal of the single headline grade still leaves four subheadings in the important areas of quality of education, behaviour, personal development, and leadership and management. The process for developing the single report card will, as he rightly argues, involve parents alongside teachers and others in determining the information they really need and how it is presented in a digestible and understandable way. I can assure the noble Lord that this will also, as will Ofsted's broader reports, include areas where the school needs to improve so that everybody can be clear about what needs to happen and there is that maintained accountability for schools to continue improving.

Housing: Modern Methods of Construction

Motion to Take Note

12.37 pm

Moved by ***Lord Carrington of Fulham***

That this House takes note of the role of Modern Methods of Construction in the housing construction sector.

Lord Carrington of Fulham (Con): My Lords, it is a great pleasure to introduce this debate and to propose this Motion. As many noble Lords will be aware, my noble friend Lord Moylan won the ballot for this debate, but he has been appointed to the Opposition Front Bench and so is unable to stand where I am standing. Fear not: he is on the list of speakers so he will get his two minutes' worth to say what really should be said by me standing where I am. He is chairman of the Built Environment Select Committee and chaired our inquiry into modern methods of construction. I had the pleasure of serving on the committee during that inquiry, which is one of the reasons he asked me to speak today.

This debate comes at a time when our country is in desperate need of more housing. The previous Government had a target of 300,000 homes per annum. As I understand it, the new Government have a target of 1.5 million homes over the term of the Parliament, which noble Lords with a ready reckoner will quickly work out is the equivalent of 300,000 per annum, possibly back-loaded. There is considerable doubt, given the demographics of our country, whether either figure—300,000 or 1.5 million—is enough. It is certainly the minimum we need, but even so it has not been achieved in recent years. We got over 200,000 recently, but it looks as though this year the figure will be nearer 150,000. There is a strong case that we need an increase of 400,000 homes a year.

The problems in achieving this target have bedevilled housing Ministers for generations: our planning system, skills shortages in the building trades, and sometimes violent local opposition to new housing. MMC, as I shall call modern methods of construction for speed, could have a role in solving at least some of those problems. With MMC homes can be built fast, or faster than using traditional methods on-site, and it would go a long way towards resolving the dire shortage of skilled construction workers, whether they are bricklayers, plumbers, electricians, roofers or carpenters.

Perhaps I ought to explain what MMC is. Those of us of a certain age will remember prefabs, which after the Second World War were used to urgently house people made homeless by the Blitz. They were factory-built homes that could be transported on the back of a lorry to parks and open spaces, where they were then connected to the services—drains, water, electricity and gas. I remember many of them in Chiswick, where I was brought up. They were much loved by the tenants who lived in them, possibly because they were placed on public open spaces and had small gardens.

MMC is a modern version of that idea. The homes, or the components that are assembled to make up a home, are factory-built and then transported to the building site, which is preprepared with services such as foundations, sewerage, water and electricity. There are seven categories of MMC, and in ascending order they require increasing amounts of assembly on-site. I propose to concentrate only on types 1 and 2. The first is when the unit or home is fully finished in the factory and needs only to be lowered on to the foundations at the site and connected to the services. Type 2 is best described as a flat-pack version of type 1—or an IKEA tribute act—where the components of the structure are stuck together on-site. The other five MMC types have some benefits but require much more work to assemble them.

The advantages of MMC over traditional building methods are essentially that less skilled work is required on the site because the building work is done in a factory-controlled environment. This has major quality-control advantages, and therefore less snagging after completion, which is the curse of the building industry. The people building the home in the factory can be trained and supervised to a much higher standard, and use can be made of modern production techniques such as 3D printing. There are of course logistical benefits: building materials can be delivered in bulk and stored at the factory to be used as required.

However, there are problems. It requires a lot of capital investment to build the factory, train the workforce, establish reliable supply chains and buy the high-tech equipment required. If the factories can attract only small numbers of orders and no long-term commitments to place more, the unit costs of the homes are high—certainly as high as building homes in the conventional way. It is a bit of a vicious circle: high prices lead to few orders, and few orders lead to even higher prices. So it is perhaps not surprising that many of the companies that entered into this market have gone bust or just packed up and gone away.

The only way of solving this problem is to guarantee the suppliers of MMC homes a sufficiently large order book. Then we might end up with a virtuous circle, of

full order books leading to highly competitive unit prices, giving speed of construction and higher quality. Why has that not happened? There has been resistance from planners, resistance from insurance companies and warrantee providers, and, in many cases, resistance from the big housebuilders. Last but not least, there has been vocal opposition from local communities concerned at dozens or hundreds of identical box homes being foisted on them.

Planning consent seems to be a major problem in some parts of the country. MMC should not find it more difficult to get planning permission than traditional housing, but there may be resistance by planners to new ideas, concern about ease of maintenance or worries about design quality. Perhaps building blocks of flats in urban areas using MMC should not cause a concern to planning authorities or to local residents, but, after Grenfell, the industry will need to demonstrate that MMC is as safe as, or safer than, conventional building methods.

The image and anticipation of tower blocks made up of factory-built units, identical and slotted together, is off-putting, so quality of design is vital for getting public acceptance. Even tower blocks need to be well designed. A beautiful tower designed by a talented architect can be a delight—you have only to look at some of the commercial and residential blocks designed by Mies van der Rohe—but, equally, housing estates or new towns of identical or near-identical homes are guaranteed to raise objections and opposition, which slows the planning process and, in worst cases, can blight a whole district. Good design makes getting planning consent easier and community acceptance more likely.

Variety of design is also important. The Built Environment Committee was told that MMC could be adapted to any finish. That may well be so, but the same unit with a brick finish, or tiles or wood cladding or whatever, will still be the same unit—rather like, in the immortal words of Sarah Palin, putting lipstick on a pig. What is needed is to incorporate brilliant design, with a wide variety of styles and floor-plans, as well as finishes, that respect the traditional materials of the region, to gain acceptance by planners and local communities.

We know from experience with MMC that the problems are not going to solve themselves, but solving them could bring massive benefits, with well-built, well-designed, varied houses and flats fitting into their communities, providing much-needed homes at a smaller price than traditional building methods and delivered much faster. It is worth noting that both the Netherlands and Germany use MMC extensively and with considerable success, so these problems can be resolved.

However, the industry cannot solve the problems on its own, nor can local authorities, with the budget and planning constraints they have. It will take a concerted effort by the Government, and perhaps Homes England, to ensure that the flow of orders for these homes allows for the capital investment required in the factories. Budget constraints must not be allowed to lose design quality and variety of floor-plan and materials, all of which will push up the cost. That will guarantee failure, through both the bankruptcy of the MMC companies and rejection by the local communities.

I guess the real question of this debate is whether the new Government are committed to acting as a midwife for this industry, helping it into the brave new world of rapid, cost-effective homebuilding, with all the financial support, design encouragement and tearing up of red tape that that entails. I look forward to this debate and, in particular, to the Minister's reply, which I am sure will lay out the Government's policy towards MMC.

12.48 pm

Baroness Warwick of Undercliffe (Lab): My Lords, the housing sector is struggling. It is universally acknowledged that the country does not have enough affordable homes. This Government have committed to solve the housing crisis for good, but how best to do that where previous Governments have failed? The shortage of labour supply means that traditional building methods cannot deliver housing targets, and traditional private builders have shown that they cannot meet the need.

There is a consensus that MMC must be a major part of the solution, but delivering MMC has been challenging. Some companies have gone bust. Against a backdrop of insolvencies across the construction sector, the perception of MMC has suffered disproportionately. There has been a lack of clear strategy surrounding MMC. A long-term housing plan could provide the certainty to invest in MMC and deliver the Government's ambitious housing targets.

Social housing must clearly play a central role. Housing associations are planning to build, via MMC, about 10% of the new build currently forecast by the regulator. With the right mix of low-cost incentives and support, that proportion could double.

The recent National Housing Federation survey found supplier insolvency to be the biggest risk to uptake. The Government underwriting risk contracts would have an immediate effect on MMC delivery.

The House of Lords Built Environment Committee's inquiry into MMC urged the Government to step back and set achievable goals and develop a coherent strategy. The noble Lord, Lord Carrington, gave a thorough and fair picture of what we found. The previous Government committed to a £10 million-backed MMC task force, but it never met. Will the Minister commit the new Government to a central body dedicated to research, training and promotion that will allow MMC to flourish. Will the newly established New Towns Taskforce embed MMC in its delivery plans? At the next spending review, will my noble friend press for a long-term plan for new and existing social homes, including specific policy steps to increase the use of MMC in the social housing sector?

12.50 pm

Baroness Brinton (LD): My Lords, I declare my interests as a vice-president of the LGA and vice-chair of the All-Party Group on Fire Safety and Rescue. I congratulate the noble Lord, Lord Carrington, via the noble Lord, Lord Moylan, on securing this important debate and on his excellent speech. I note that MMC are already used successfully in student and hotel accommodation in this country.

[Baroness Brinton]

I shall focus on two things, the first of which is fire safety. Yesterday, the Grenfell inquiry final report was published. From these Benches, our hearts go out to those who lost family members and friends and, of course, their homes and everything in them. Fire safety standards must be at the heart of modern building methods. As importantly, the recommendations of both the Grenfell inquiry and the Hackitt report should be implemented, so that maintaining and adapting all buildings is always done in the context of fire safety.

Secondly, all new homes from now on should be built to M4(2), or lifetime, standards. This is not just about disabled people, although we certainly need to be able to live in and visit homes, whether owned or rented, that meet our needs. Shockingly, well over 90% of homes do not. I am talking about the homes we need to have as we get older. Habinteg Housing Association's research shows that M4(2) significantly reduces the cost of care assistance, because people can manage for much longer in their own homes with level access, grab rails, wet rooms et cetera. But there is a further benefit too: staying in your own home, which is what people really want to do, delays the need for expensive residential care. There are typical savings of over £20,000 for basic home care services in unadapted homes, and considerably more in residential care. Lifetime standards would save substantial public money in the NHS, and in welfare too. The extra cost for building is well under 10% yet the quality of life and lifetime savings to individuals and the state make it an obvious thing to do.

12.52 pm

Lord Mair (CB): My Lords, I declare my interests as a civil engineer, both in practice and as an academic, at Cambridge University, and as a consultant to Laing O'Rourke, the company that pioneered MMC in the construction industry. I am currently a member of the House's Select Committee on the Built Environment; I was not a member when that committee, chaired by the noble Lord, Lord Moylan, undertook its short inquiry on MMC for housing, culminating in its excellent letter to the Government.

However, I was a member of the Select Committee on Science and Technology, which in 2018 undertook an inquiry highly relevant to today's debate, its report being entitled *Off-Site Manufacture for Construction: Building for Change*. That report concluded that off-site manufacture, synonymous with MMC,

"provides clear and tangible benefits which make a compelling case for its widespread use".

Recognising these benefits, in the Autumn Budget of 2017 the Government announced a "presumption in favour" of off-site manufacture for five specific government departments: transport, health and social care, education, the MoJ and the MoD. Significantly, that presumption in favour was not stated as applying to MHCLG. For infrastructure generally, there have been many success stories: high-rise buildings, hospitals and schools are increasingly being built with MMC, demonstrating excellent design, significantly faster and higher-quality construction, and less waste.

The Science and Technology Committee heard that a significant barrier to MMC for house construction at scale was the need for longer lead times: the housebuilder has to commit to a production schedule well in advance of actual unit sales, risking that market conditions might deteriorate. This and other barriers could be overcome if there were a substantial guaranteed pipeline of MMC housing across the country—the point made by the noble Lord, Lord Carrington of Fulham. My question for the Minister is therefore this: should not MHCLG—and Homes England—confirm its wholehearted support and announce forthwith a presumption in favour of MMC, as five other government departments have done?

12.54 pm

Lord Rooker (Lab): My Lords, I support modern construction methods. In February 2003, Lord Prescott published a seminal document, *Sustainable Communities: Building for the Future*. Ministers would be well advised to look at this, rather than trying to reinvent the wheel. We then in ODPM promoted off-site construction and committed to encouraging the private sector to invest in factories and new techniques.

In an Oral Question I asked on 8 June 2023, I made the point that you cannot switch factories on and off, and a stable demand is a prerequisite. What stops a big uplift? Both off-site and onsite require new skills and techniques; they are not separate.

I once visited a factory in Birmingham and three weeks later visited a site in Stratford-upon-Avon to see the construction of what I had seen in a factory. It was made clear to me that techniques on both the site and the factory are linked. The Government need to ensure that the new skills are developed, and they need to create demand. Perhaps a density directive, which Lord Prescott used, to stop wasting land could help.

My final point concerns the Building Research Establishment. Lord Prescott and I visited it in its early years of being a Tory privatised body to see examples of modern methods. I had visited one in opposition, when it was government-owned. Given the Grenfell report, the BRE should no be longer be involved in certifying modern methods of off-site construction techniques or products. Such work should be seen to be fully independent and professional.

12.56 pm

Lord Banner (Con): My Lords, I declare my interest as a King's Counsel practising in planning law. I have many clients in the housebuilding and construction sector. I am also chair of the advisory group at the property developer SAV.

There is widespread recognition that MMC have a range of important benefits, including, in particular, faster and greener construction of the new homes this country desperately needs. It is therefore both curious and regrettable that this widespread recognition has not yet translated into widespread uptake. I draw attention to the role that the planning system could play in stimulating the critical mass of pipeline and demand necessary for the MMC market to flourish.

By that I do not mean greater planning regulation; there is arguably enough of that already. Instead, I encourage the Government to look to how the

planning regime has encouraged greater uptake of custom and self-build housing in recent years, through a combination of legislative targets for local authorities to deliver specific levels of custom and self-build housing; a favourable planning policy climate for that kind of housing; and relief from the community infrastructure levy and VAT for those who develop them. Those measures are generally judged to have been successful in stimulating greater uptake of custom and self-build housing over the past decade. A similar package could help do the same for MMC.

There are also good reasons for inferring that variations between local authority development plans in relation to the standards required of new housing development are having a repressive effect on MMC, the business model of which requires greater consistency. National standards, for example, through national development management policies, may be a solution to this. Such ideas would need to be worked and consulted on thoroughly. The committee's letter has flagged that there are significant gaps in the understanding of the MMC market, meaning that rushed solutions risk unintended consequences. But there is, in my view, undoubtedly a case to answer for the planning system playing a role, and I encourage the Government to consider it.

12.58 pm

Lord Thomas of Gresford (LD): My Lords, I have personal experience of building and owning two houses of non-traditional construction. One was built in 2006 of larch, pine and oak with a green roof, solar panels, hemp insulation of the external walls and an internal wall forming a heat sink built of granite recovered from the burnt-out cottage it replaced. Large south-facing windows maximise solar gain and ground-source heating is carried under the floor.

Labour costs were saved by assembling large sections, built to size by expert workmen in comfortable factory conditions. Although the noble Lord, Lord Carrington, referred to the difficulty in obtaining a warranty and insurance as a barrier to the uptake of MMC, I had no problem in that regard. As Peers for the Planet pointed out in its briefing for this debate, a fireproofed wood construction brings a 25% reduction in embodied carbon emissions.

The other house, built in 2016, is a Passivhaus—the gold standard of energy-efficient construction—and there were no difficulties with a warranty or insurance. The block-built walls have an external thick layer of high-density expanded polystyrene coated with render. It looks like a traditional house, and blended without objection into a highly prized conservation area. The insulation is under the floor as well as in the walls and roof. The windows and doors are triple-glazed and there is active filtered ventilation. South-facing large windows and smaller windows facing north result in a warm house with no need for heating of any sort for eight months of the year. The solar panels take care of the hot water. The lesson, as the noble Lord, Lord Carrington, pointed out, is that modern design and innovation is everything, and the sooner the planners and builders get the message, the better.

Baroness Twycross (Lab): My Lords, the speaking time in this debate is two minutes. I apologise for being hard on this, but it is important that we allow everybody the opportunity to speak without cutting short the Minister's response.

1.01 pm

Lord Best (CB): My Lords, as a member of the Built Environment Committee under the able chairmanship of the noble Lord, Lord Moylan, which investigated this matter, I thank the noble Lord, Lord Carrington of Fulham, for introducing this debate so helpfully. Deploying modern methods of construction is obviously the way forward, yet the industry has recently been characterised by a succession of business failures and even bankruptcies. Can we still expect the modern methods of construction sector to fulfil its clear potential?

I suggest three prerequisites for success. First, the MMC industry needs a more certain and consistent pipeline of orders. The important stipulation of Homes England and the GLA that a proportion of the affordable homes they fund must be built using MMC techniques needs to be refined to provide greater certainty for the manufacturers. Will the Government's agencies be more specific as to the appropriate categories of MMC—and, indeed, the systems that have the lowest embedded carbon emissions, such as prefabricated timber frame construction?

Secondly, to comply with the new future homes standard, developers and social landlords will be propelled into using prefabricated homes, because of the greater precision achieved in factory settings. Will the Government be firm in ensuring enforcement of the new standards that will inevitably mean more use of MMC? Thirdly, will the new Skills England give priority to workforce skills for MMC in its much-needed reforms of apprenticeships and training for the construction industry?

With attention to these issues, modern methods of construction can indeed make possible the quantity and quality of new homes this country desperately needs.

1.03 pm

Baroness Wilcox of Newport (Lab): My Lords, the Government have promised 1.5 million new homes for England over the next five years, which will see the biggest increase in social and affordable housebuilding in a generation.

When leader of Newport City Council, I held meetings with many MMC companies to examine how we could determine a solution for the acute social housing shortage we faced in the city. Last year the council secured Welsh Government phase 2 homelessness grant funding to increase the supply of affordable social housing, and a development of 12 new ultra-low-carbon high-quality homes on an underused council-owned car park was opened using MMC.

Linc Cymru, Newport City Council and ZEDpods developed a unique low-energy, low-carbon affordable housing scheme for the area. His Royal Highness the Prince of Wales visited the housing development in Hill Street, Newport. It was in support of Homewards, a new five-year project from the Royal Foundation of The Prince and Princess of Wales. I am pleased to

[Baroness Wilcox of Newport]
inform the House that Newport is one of the six flagship locations across the UK working in partnership with Homewards to tackle homelessness and make it rare, brief, and unrepeated.

His Royal Highness said:

"In a modern and progressive society, everyone should have a safe and secure home, be treated with dignity and given the support they need".

We now have a real opportunity to develop housebuilding at pace, supported by a Government in Westminster who fully believe in a modern and progressive society and will serve the needs of the people across the UK by fixing the foundations for a better future.

1.05 pm

Baroness Eaton (Con): My Lords, I thank my noble friend Lord Carrington for his insightful introduction to the debate, and declare my interest as a vice-president of the Local Government Association. The previous Government rightly identified MMC as a potential game-changer in addressing our housing needs. As their 2021 commitment to the MMC Taskforce highlighted, there was recognition that MMC could significantly improve the quality, energy efficiency and speed of housing delivery, while reducing waste and addressing the skills shortage within the sector. MMC offers numerous benefits, as we know.

However, while the recognition was there, the execution fell short. The Government's approach to MMC was marred by a lack of co-ordination and coherent strategy. As highlighted by the House of Lords Built Environment Committee, of which I am a member, public funds were invested, but without a clear plan, measurable objectives or sufficient understanding of the challenges faced by the industry. This disjointed approach led to missed opportunities and the financial collapse of several MMC firms—firms that could have played a pivotal role in addressing our housing needs. The committee's findings reveal a troubling picture of an industry that has not been given the support or clarity it needs to succeed, particularly in securing insurance, warranties and the necessary regulatory approvals.

Thus far, we have heard little about the detail from the Government, and I hope that the Minister, when she responds, will tell us clearly just how they will address all the particular difficulties with MMC.

1.07 pm

Baroness Wheatcroft (CB): My Lords, I thank the noble Lord, Lord Carrington, for his introduction to the debate, and the Committee on the Built Environment for its hard work on this important issue. Clearly, MMC is the way ahead for building, and it has been for a long time. Given the climate in this country, apart from anything else, getting as much done as possible under the cover of a factory makes sense. But, as we have heard today, there are many obstacles to making this the way in which so much building should be done.

The noble Lord, Lord Best, outlined three areas where the Government could move quite quickly to make a difference. I would add another area, and that is public confidence. There was always a potential problem over the image of prefabricated housing, but gradually that has changed. Not everybody had quite the romantic view of the noble Lord, Lord Carrington, but now prefab houses—HUF HAUS, in particular—have become much sought after. Now the biggest problem will be public confidence in modern methods of building, which will be at an all-time low after the publication of the latest Grenfell inquiry report.

I second the noble Lord, Lord Rooker, in looking for a replacement for the Building Research Establishment. The Grenfell report dismissed the BRE as

"marred by unprofessional conduct, inadequate practices, a lack of effective oversight, poor reporting and a lack of scientific rigour".

Who is going to feel comfortable being asked to buy, or live in, a property that has been overseen by such an organisation? Can the Minister assure us today that the Building Research Establishment will no longer have a role in establishing what materials are safe and what properties are okay for people to live in?

1.09 pm

Baroness Uddin (Non-Afl): My Lords, I thank the noble Lord, Lord Carrington, for the details that he alluded to. I begin with my thoughts and prayers to all who perished in Grenfell Tower and I pay respect to their loved ones. Grenfell is the context of continuous neglect in social housing provision. With two major fires only last week, we may not be learning the lessons quickly enough, with thousands of family homes remaining unsafe. If we utilise MMC, it must be using material tested to the highest safety standards. Since the 1980s, thousands of homes have been built in Canary Wharf and elsewhere without proper consideration of family needs, so a national housing plan is essential. If MMC meets industry standards, we should utilise it while mandating the strictest regime for the safety and well-being of family homes.

We can look at some of the challenges. Models exist in Japan, Sweden, the Netherlands and China using MMC building cost effectively with energy-efficient homes. Housing is not a building or buildings. It is homes for families across the generations. How will the Government use a national planning framework to secure the highest-quality MMC standards if we are to use it continuously for the well-being of a cohesive community?

1.11 pm

Baroness Miller of Chilthorne Domer (LD): My Lords, I am very pleased to have joined your Lordships' Built Environment Committee, but I was not a member for this report.

The noble Lord, Lord Mair, has reminded us that this is not the first report that your Lordships' House has done into MMC, and spelled out what the 2018 report from the Science and Technology Committee concluded. There was also a 2019 report from the other place on modern methods of construction. It seems very strange that the Government did not take up any of the lessons of either of these reports. I am sure that this Government will do better.

The noble Baroness, Lady Wheatcroft, referred to one of the big problems—confidence—and I agree with her. This was absolutely underlined by the

Competition and Markets Authority, which did a market study into the housebuilding sector, concluding in February 2024. On MMC, it concluded that there is a "lingering negative stigma amongst consumers, builders, investors, and insurers".

What will the Government do to overcome this lingering negative stigma? Without overcoming it, MMC will always be dragged down by it.

1.12 pm

Lord Horam (Con): My Lords, we all know that we have a serious housing problem in this country. Any serious attempt to increase supply should include modern methods of construction. They do get over the problem of a shortage of traditional skills. They do save time. They improve precision and quality, and they improve productivity. As the noble Baroness, Lady Warwick, said, they are already used extensively in Germany and the Netherlands. As the noble Baroness, Lady Brinton, said, they are used in this country in student accommodation.

I was therefore extremely disappointed to find that in the list of measures on housing in the Labour Party manifesto—a commendably long list of measures on the supply side—there was no mention of modern methods of construction. It ought to look at this again, particularly because its avowed intention is to get the private sector and the government sector working together. That is what it should do, particularly in this area.

1.13 pm

Lord Griffiths of Burry Port (Lab): My Lords, the noble Lord, Lord Horam, has just made precisely the points that I wanted to make. The time has come for these discordant experiences, this diffuse energy, to be pulled together. The Government must surely accept the role of ringmaster—or whatever other metaphor you want to use—pulling all this together, achieving a foreseeable path forward. I know nothing about building but I do know about homes, and it is urgent and of vital necessity that we crack this one and soon.

I am hoping to hear the Minister say what the noble Lord, Lord Horam, said was not in the manifesto, namely that as part of the solution that has to be worked out, an energetic and investing commitment to the MMC aspect of a housebuilding scheme is part of the thinking of the present Government. On the present evidence, I am hoping to hear it in order to resolve a disappointment. The noble Baroness, Lady Kennedy of The Shaws, the noble Lord, Lord Robertson of Port Ellen, and I have been working with John McAslan + Partners on a very ambitious scheme from the private sector that would provide a real, focused attempt across the country to use, among other ways, these traditional methods. We submitted a lavish document and, more than a month later, have not even had a reply of acknowledgement. Those little things that are lacking need to be made good and a positive way forward, led by the Government, needs to ensue.

1.15 pm

Lord Fuller (Con): My Lords, I have been talking to a number of builders and they all say the same thing: "When we build a home, standard build is cheaper, while meeting the complexity that often comes with awkward and constrained sites". Steel frames, precast floors and other off-site techniques can speed certain aspects. Pre-manufacture always has a role in high-rise situations, where space is constrained on inner-city sites. MMC is best introduced in institutional settings such as hotels and care homes, where identikit standardisation has value. But when all is said and done, they tell me that MMC is more expensive. Let us not kid ourselves that it is cheaper; it is not.

We must not ignore cost. To meet our national targets, we need to recognise that layering ever more well-meaning but expensive burdens on building, such as CIL, GIRAMS, SANGS, nutrient neutrality, BNG, water neutrality, MVHR and EV—all worthy things in themselves—has cumulatively added £40,000 to the cost of a new family home, before we even start to consider the proposed 50% affordable housing targets on grey belt that will push housing costs even further out of reach. We must have limits on cost.

We will make rapid progress if we prevent the mortgage, warranty and insurance companies discriminating against modern rather than traditional builds. We must make it easier for smaller, family firms to finance perhaps a dozen homes a year using materials sourced locally, and we must roll back the regulatory creep from self-serving national agencies such as Natural England, not councils, that layer ever more onerous, overlapping regulations and undermine the equality of the three levels of sustainability—economy, environment and society—in pursuance of their own judicial activism.

These are the basics to focus on before we spend disproportionate attention on the shiny MMC thing, which diverts focus from getting Britain building.

1.17 pm

Lord Teverson (LD): My Lords, MMC can make a big difference in energy efficiency and embodied carbon in buildings. I will give a quick bit of history for 15 seconds. The previous Labour Government, and indeed the coalition Government, had targets for net-zero buildings for homes for 2016. That legislation was about to be enacted when the Government changed and George Osborne, as Chancellor of the Exchequer, stopped that process. In the meantime, we have had 1.5 million homes built below that standard that need not have been and will have to be retrofitted. That was a national disgrace and probably one of the largest bits of environmental vandalism that we have had in recent years.

The Labour manifesto says two things around this. On page 56, on fuel poverty and net zero, its "Warm homes plan", which I hugely welcome, says:

"The energy shock of recent years has highlighted the urgent importance of improving energy efficiency in British homes".

Page 38, on housebuilding, says:

"Labour wants exemplary development to be the norm not the exception. We will take steps to ensure we are building more high-quality, well-designed, and sustainable homes and creating places that increase climate resilience".

I welcome that and all the aspiration behind it. We have for next year the future homes standard that has been mentioned, but that is not a net-zero commitment in terms of housebuilding. Will that aspiration be improved to return us to what we should have been doing in 2016?

1.20 pm

Lord Birt (CB): My Lords, we have paid a very heavy price indeed as a country for the combination of the 2008 economic shock, the pandemic and the monumental distraction of Brexit. Thus preoccupied, we have failed to grip many areas of national policy, but housing has been our most grievous and pernicious failure. We now need a holistic framework, an action plan covering every aspect of housing policy, involving all relevant departments.

First and foremost, we need once again to make a substantial investment in social housing, publicly procured. We obviously need a new building standards framework, inter alia embracing 360-degree insulation as well as fire safety. We need to embrace modern construction methods: as in other industries, modularisation and off-site construction has to be more efficient and cost effective. In 2015, China built a 57-storey skyscraper in 19 days. In under 20 years, embracing streamlined processes, China has built 45,000 kilometres of high-speed rail. A modern methods of construction taskforce was announced in the 2021 Budget; can the Minister confirm that it has never met?

We need a national plan to build homes where they are needed, with social and other infrastructure as part of the plan, but there are some don'ts. We must not in any way sacrifice the UK's precious areas of natural beauty—and please let there be no more featureless box-houses, a hallmark of the most recent past and devoid of any aesthetic. Let us act quickly but with care.

1.22 pm

Lord Jamieson (Con): My Lords, I thank the committee for its report and my noble friend Lord Carrington for his introduction. I also declare my interest as set out in the register as a councillor and, previously, a member of the previous Government's London housing task force.

As with so many issues in the development and housing market, the key is providing confidence to investors, suppliers and prospective workforce that there is a long-term market. Currently, everyone in the housing market lacks certainty, most particularly that they will be able to access land upon which to build. This is exacerbated by the ever-changing regulatory and planning environment. It is no wonder that companies seek to maximise value in the short term and are unwilling to invest in technology and training when they have no long-term visibility.

MMC has significant potential, particularly in our cities, but adoption has been limited to date and tends to focus on the limited area of timber-frame open-panel houses. To really move forward, an investor in MMC will need to be confident that there is a market, which means they are no longer hamstrung by a lack of sites and the delays and unpredictability of the planning system.

It is not that this nor the previous Government do not recognise the need for site availability. However, it is crucial that the detail of government planning proposals delivers sufficient viable sites and gives the industry confidence this will continue. I ask the Minister: how will they ensure that mandatory targets are delivered, particularly in urban areas that have previously delivered so little?

1.24 pm

Viscount Hanworth (Lab): My Lords, the recently elected Labour Government have proposed that there should be mandatory targets for housebuilding that local authorities must adhere to. The ambition is for 1.5 million houses to be built in the current Parliament, with annual targets of 370,000 units.

This target, which far exceeds recent levels of housebuilding, is comparable to what was achieved in the early post-war years. A large proportion of those houses were council houses, and they were subject to direct procurement, financed by local authorities. They were built mainly by small local building firms, which typically employed their labour on a permanent basis. Nowadays, a few large firms build most of the residential accommodation. They hire their labour on a temporary basis. However, the supply of such skilled labour has shrunk drastically. Moreover, the big firms do not undertake to train their workforce.

It has been widely proposed that, in order to accomplish a revolution in housebuilding and to meet the targets, it will be necessary for builders to adopt modern methods of construction. These will involve a substantial proportion of off-site construction in factories with assembly lines. Contemporary methods of housebuilding are slow and wasteful of materials. They also make inordinate demands on a scarce labour force. It is doubtful whether, if such methods were used preponderantly, any of the targets could be met.

The houses that are so urgently needed must be subject mainly to direct public procurements. Much of the new housing stock would therefore remain in public ownership, albeit that the right of the occupants to buy their houses should be preserved. It was an ideological aversion to public ownership that inspired the Thatcher Governments to promote the right to buy, while preventing councils from investing the proceeds from the sales in replacement buildings. This has been a major factor in creating the current housing crisis.

1.26 pm

Lord Moylan (Con): My Lords, I thank my noble friend Lord Carrington of Fulham for introducing this debate, especially when I had to withdraw due to a change of circumstances. It was a privilege for me to chair the short inquiry into modern methods of construction, undertaken by the Built Environment Select Committee. I add a word of thanks, although time precludes me from naming them all, to the clerks and the team that supported that inquiry when we undertook it.

Ten years ago, modern methods of construction were the future, particularly the top level of MMC, which is modular construction, where a whole unit—a whole home—can be built off-site, more or less, and be delivered to the site. However, in the last couple of years, most of the firms engaged in that activity have either withdrawn from the market or closed. The purpose of our inquiry was to try to find out why.

Time precludes me from explaining at great length why that is, but we certainly found disarray at the heart of government. The policy was good, but the implementation was almost totally absent. Reference has been made to the committee that never met. I also refer to the strange attitude of Homes England, which claimed that it had a strategy in the shape of the five Ss—five words that all began with S—but when we asked for the document that underlaid the strategy, it was not able to produce it. I hope that the new Government will look very carefully at that.

What is the role of government in this? It is very important for the Government to have a regulatory role that unblocks some of the things identified by my noble friend when he introduced the debate. I would be very cautious on one matter: I agree with the noble Lord, Lord Rooker, that you cannot switch a factory on and off. Many of these firms are demanding a pipeline but, as he said, every factory needs a pipeline. Why is it that the Government should supply the pipeline in this case, rather than encouraging these firms to go out and find and create their own market?

1.28 pm

Baroness Thornhill (LD): My Lords, I say at the outset that I am really grateful that, yesterday, the Government Whips' Office gave the winders some extra time, but I feel that two minutes for a speech is not making use of the expertise in this Chamber. That said, all the two-minute contributions have been insightful and informative and have, amazingly, captured all the issues around modern methods of construction—and the debate has definitely bounced along. What is striking is that there is a consensus that there is a role for modern construction and agreement about the challenges and barriers to MMC but plenty of suggestions for improvement, which I hope the Minister will take back to her department.

I, too, was a member of the Built Environment Select Committee, which carried out the inquiry, ably chaired by the noble Lord, Lord Moylan, whose contribution it is a pleasure to follow today. It was a wide-ranging, if frustrating, inquiry, as the noble Lord, Lord Carrington, accurately outlined.

It was not that the Government were not putting money into tackling the problem—our usual complaint—but that they had done so in an undirected and haphazard way without a coherent strategy and measurable outcomes, although I am certain that the noble Baroness, Lady Scott, will put up a spirited and informed defence of the previous Government's advances in modular build, and I genuinely look forward to her contribution.

I turn to the consensus that we have a housing crisis and that modular build could and should be a way to build more homes, more quickly and, more importantly, to the future homes standard. It will add diversity to provision, which is at present monopolised by the big builders.

The number one issue for the industry is the supply chain, which was mentioned by several noble Lords. There are clearly real issues of business survival when you have inconsistent and insufficient demand for your product, unpredictable delays and workforce challenges. In this climate, we have unfortunately had recent experiences of companies going out of business or struggling to continue in business. I really have only one question for the Minister: what is going to change and what plans do the Government have? Will they consider incentivising builders to use MMC by offering tax breaks, reducing VAT on modular homes, or giving tax credits to companies that invest in modular construction? We hear excellent mood music from the Deputy Prime Minister about a revolution in social housing. Will the Government consider setting targets for the construction of modular homes within public housing projects? Will the Government actively use their own land as part of a deal to create more public/private partnerships to build more modular homes and encourage and incentivise councils to do likewise?

The regulatory framework mentioned by the noble Lord, Lord Banner, and others is designed with traditional construction methods in mind, making it more difficult for MMC builders to navigate the approvals process. The regulatory maze can deter builders from opting for modular approaches, even when they might wish to use them. This applies particularly to SME builders. Could the Government consider a fast-track approval process for modular housing developments to encourage quicker construction? Creating a streamlined process aided by national policies specifically for modular homes, as mentioned by a noble Lord—I apologise for forgetting his name—would encourage plans to come forward, reduce delays and overcome the bureaucratic hurdles that are currently faced.

As we heard in the contributions by my noble friends Lord Teverson and Lady Brinton, we feel that the Government should use the future homes standard to ensure that modular-built homes are built to high environmental and safety standards and provide for more lifetime M4(2) homes. In that regard, we disagree with the remarks of the noble Lord, Lord Fuller, about building to a lower quality.

There is some disagreement about the overall costs of MMC build versus traditional build but from the perspective of housing associations, which was touched on by the noble Baroness, Lady Warwick of Undercliffe, the upfront costs are more expensive than traditional build. The upfront costs are more pertinent to housing associations than the lifetime costs as they are under considerable financial pressure now and, regrettably, environmental standards are often reduced to keep costs down. Additionally, as more accessible homes take a larger floor plan you get fewer homes for your money, a realistic dilemma that targeted grants could help to solve.

As the noble Lords, Lord Rooker and Lord Best, pointed out, there is a skills shortage in construction in general and in MMC specifically. The skill sets and technological challenges are different. The Government should encourage more investment in research and development in MMC technologies to improve efficiency, reduce costs and enhance design options. There are still too many stories of poor construction and construction failure. As we know, this does not need to be the case; we can only envy my noble friend Lord Thomas's tenants. The risk aversion of warranty and insurance providers plus the reluctance of lenders to provide

[Baroness Thornhill]
mortgages on homes built by MMC are further barriers. These issues need unpacking and only the Government can do that and offer strong clear guidance about what will be expected in future.

Finally, to make this shift needs radical change, and the current system is not being sufficiently incentivised to change. We have a risk-averse culture and are cautious in trying new methods. Therefore, the Government have a real role in being the driving force for change. I do not think we can wait for demands from clients and homeowners because for me the other significant barrier, mentioned by the noble Baroness, Lady Wheatcroft, and my noble friend Lady Miller, is public perception and the stigma left over from the prefabricated homes of the past. I remember visiting my Auntie Marion's prefab in Tenby, south Wales. She lived in it happily until she was forcibly evicted. These two things—cautiousness and public stigma—act as barricades to change.

It seems from the debate that MMC is part of the housing crisis solution, but nobody is dewy-eyed about this. It is certainly not a silver bullet. It could contribute significantly but it needs political will and leadership to create a whole-market approach to ensure that consumers, manufacturers and lenders are all aligned in their aim of embracing MMC to create sufficient demand in the market to grow the approach. Without this alignment and subsequent demand there is no clear catalyst to drive the change needed. Will the Government provide that catalyst and be the ringmaster? If the answer is yes, how and when?

1.36 pm

Baroness Scott of Bybrook (Con): My Lords, the final report of the Grenfell inquiry was published yesterday. With the leave of the House, I take this opportunity to send my condolences again, and my thoughts and prayers, to a very brave and courageous community in London.

I thank my noble friend Lord Carrington of Fulham for bringing this Motion to the House, and my noble friend Lord Moylan for his chairmanship of the committee and for chairing this short inquiry. On every side of this Chamber, we know that more homes are desperately needed across the country and that it is crucial that we deliver the right homes in the right places. Ministers should consider carefully whether modern methods of construction have a greater role to play in delivering the homes we need. The Opposition want the Government to deliver enough homes to enable the next generation to get on to the housing ladder, and we will hold Ministers' feet to the fire on the pledges they made in their manifesto at the last election.

In approaching this debate, it is important to note that we have made significant progress on housing delivery in recent years. Successive Conservative Governments have delivered 2.5 million more homes since 2010 while respecting local communities and ensuring that those homes were built in the right place. We hope that the Government will build on our success and continue to respect local people while prioritising developments on brownfield sites, as we did in government.

At the last election, the Labour Party made a solemn pledge to the British people that it would deliver 1.5 million homes over this Parliament. In doing so, it has set itself a target that people across the country are relying on. We need more homes, and Ministers need a clear plan to deliver them. We on the Opposition Benches will be watching the Government very closely, as they watched us, and pressing for the right homes in the right places, as we delivered in government.

The Labour Party manifesto focuses almost entirely on planning reform to deliver more homes, but industry experts are clear that the challenges we face go well beyond the question of planning law. One crucial challenge is labour supply. The Construction Industry Training Board states in its report *Focusing on the Skills Construction Needs* that the sector

"needs to recruit the equivalent of 251,000 extra workers over the next five years",

based on existing predictions. That number is likely to rise if the Government are serious about hitting their targets.

The simple fact is that, if we want to build more homes, we will need hundreds of thousands more construction workers. Even as the party that helped 4 million more people into work since 2010, it is clear to those of us on the Opposition Benches that the supply of labour in the construction sector will be a challenge for the Government. This is where Ministers should perhaps take note of the arguments from the noble Lord, Lord Carrington, today.

In the face of labour supply challenges, modern methods of construction, which encompass a range of techniques, including off-site fabrication and the use of on-site robots in the construction process, could have an important role to play in housing delivery. Homes England has concluded that modern methods of construction are capable of driving greater efficiency and productivity, which the Built Environment Committee noted in its letter to the department.

One stark example of the impact that modern methods of construction can have is the delivery of the Grange University Hospital, in south Wales. The £350 million hospital building project was completed four months ahead of schedule—which is unusual—with parts of the hospital completed a year ahead of the projected completion date, in large part thanks to the use of modern methods of construction.

Modern methods of construction could have a bright future and an important role in housing delivery, but, as the Built Environment Committee has referenced, the sector has seen a number of businesses fail in recent years. This may be a result of those businesses not benefitting from the necessary economies of scale that other large housebuilders benefit from. Ministers should look at this closely to see whether the Government can support the sector so that it can play a full role in driving efficiency and boosting the delivery of more homes.

I have a number of questions for the Minister, which I hope can be addressed in her speech, though I am happy for her to write if not. What assessment have the Government made of the role that modern methods of construction might play in speeding up

the delivery of the homes that we need? Do the Government anticipate hitting their housebuilding targets early if modern methods of construction are harnessed effectively? Will the Government consider actively supporting the modern methods of construction sector as part of their housebuilding programme? What other steps will the Government be taking to overcome the labour supply challenges faced by the construction sector? Do Ministers anticipate labour supply becoming more of a problem in the light of their new housebuilding targets?

The modern methods of construction sector is interesting and it is growing. Ministers should watch the sector closely, so that innovations can be harnessed to the benefit of the British people.

1.42 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government (Baroness Taylor of Stevenage) (Lab): My Lords, I am pleased to respond for the Government on this important issue. I am conscious that the debate takes place following the publication yesterday of the report on Grenfell. Our huge sympathy is with the relatives and friends of the 72 people who lost their lives in that incident, and with the brave communities that have waited seven years for that report. We will consider the issues of safety that relate to this topic very carefully, and we will learn all the lessons of the Grenfell report as we go through the further development of MMC.

I thank the noble Lord, Lord Carrington, for leading the debate, and the noble Lord, Lord Moylan, and his committee for the work they did in the inquiry into the role of modern methods of construction, which concluded earlier this year. It was a very thorough inquiry, and I am grateful for the work that was done.

I should declare an interest, having used MMC for a Housing First homeless project in my borough when I was leader of the council, and for a further affordable housing project with a housing association. Both of these were very successful, very quick, and delivered on time and to budget.

I am grateful to all noble Lords for their contributions to today's debate. I recognise the expertise in the House—that is quite nerve-wracking for a Minister, but I am grateful for it, nevertheless. I will try to respond to the points that have been raised. I have been variously described as a ringmaster and a midwife in this debate, so I will do my best to fulfil those roles.

I start with the role of MMC in meeting housing supply, an issue rightly raised by a number of noble Lords, including the noble Lords, Lord Fuller, Lord Banner, Lord Carrington and Lord Best, and the noble Baroness, Lady Wheatcroft. As noble Lords will be aware, this Government were elected on a decisive mandate of change and national renewal, with an overriding mission to deliver economic growth and the higher living standards, good jobs, stronger public services and greater opportunities that go with that, for all parts of our country.

Getting Britain building again and tackling the housing crisis we inherited will be critical to achieving our ambition of building 1.5 million homes over the course of the next Parliament—a target referred to in the opening speech of the noble Lord, Lord Carrington, by the committee chaired by the noble Lord, Lord Moylan, and by the noble Baroness, Lady Warwick of Undercliffe. We agree with the noble Lord that modern methods of construction have an important role to play in this endeavour.

Innovation has revolutionised so many sectors and transformed the way we live, with incredible gains in productivity and living standards, yet much of the housebuilding industry continues to build in the same way it has for hundreds of years. Of course traditional build has, and will continue to have, its place. The noble Lord, Lord Carrington, referred to the historic use of prefabs, way back when, and mentioned Chiswick, where my grandmother lived, so I remember that well. The noble Viscount, Lord Hanworth, also referred to this. The noble Baronesses, Lady Wheatcroft and Lady Bowles, and others, referred to the public perception of this issue, which is vital to our consideration.

The serious challenges we face, not least in meeting our net-zero goals, demand that we take a much more ambitious and innovative approach, which is why I believe it is time to realise the great potential of modern methods of construction. That relates to the point of the noble Lord, Lord Mair, about being committed and having the commitment to drive this forward.

I am delighted to see a number of MMC firms succeeding, such as Vision Modular building Europe's largest residential modular tower in Croydon, or a number of manufacturers delivering affordable modular homes on challenging brownfield sites. The noble Baroness, Lady Scott, referred to Grange University Hospital being built with these techniques.

The benefits MMC brings are truly impressive. It can help to deliver high-quality greener homes more quickly than traditional methods, which is good news for boosting supply and for the environment. I agree with noble Lords' comments about the importance of good design and a variety of design, all of which are possible with MMC. It is therefore no surprise that an increasing number of housebuilders are already using off-site construction methods. Last night, I met with one who was talking to me about their innovation in this area.

MMC can help to create new well-paid jobs, attracting a wider pool of talent than traditional construction work. I recognise the challenges in the skills area, but this can attract a new cohort of talent, meaning that housing delivery is no longer held back by housing challenges. The noble Lord, Lord Best, referred to the involvement of Skills England. The noble Baronesses, Lady Thornhill and Lady Scott, and the noble Lord, Lord Carrington, all referred to skills, and I assure them that colleagues in MHCLG take that issue incredibly seriously.

MMC offers a broad range of technologies and approaches and, while much of the committee's work focused on the category 1 market, we welcome the housebuilding sector's increasing adoption of category 2 MMC, such as timber frame and panelised systems. Timber frame is already used in over 90% of new homes in Scotland, and a growing number of developers—such as Barratt, Vistry and Persimmon—are investing in and expanding their factories. That is in

[Baroness Taylor of Stevenage]
addition to both long-standing and emerging category 2 suppliers, such as British Offsite and Donaldson, investing in their manufacturing facilities to provide greater capacity and productivity. So there are reasons to be very optimistic about the future of MMC and what it could contribute to our housing and growth options.

That said, it has also undoubtedly been a challenging period for the low-rise modular market, with a number of high-profile exits over the last two years, as referred to by the noble Baronesses, Lady Warwick and Lady Eaton, and the noble Lords, Lord Carrington and Lord Moylan. This was not entirely unexpected: all innovative sectors experience failures as they develop and refine their business models, and the traditional construction sector has also been hit by a few failures over the same period.

What has happened in the MMC sector illustrates some of the key challenges of wider MMC adoption, many of which the committee considered. First and importantly, it illustrates the need for a steady pipeline of demand, which many noble Lords referred to, including the noble Lords, Lord Rooker, Lord Mair and Lord Jamieson. Large-scale MMC manufacturers will require that steady pipeline of demand, which is currently hampered by a lack of certainty in the planning system and the cyclical housing market.

The noble Lord, Lord Moylan, and the committee were also right to reflect on the significant role of warranty and insurance providers, and other noble Lords referred to the finance sector. There needs to be clarity for manufacturers and developers on requirements to ensure that they can deliver high-quality homes without stifling innovation. The closures over the past two years have demonstrated the supply chain risk that manufacturer-specific systems create, should those firms exit the market, leaving purchasers unable to complete their homes. So we need to tackle the interoperability to help restore market confidence, and we must ensure that manufacturers have access to finance to ensure that viable firms can invest and grow in the market, as referred to by the noble Lords, Lord Carrington and Lord Griffiths.

Tackling these barriers will be challenging, and it will be for both developers and government to help drive the wider adoption of MMC. The noble Lord, Lord Carrington, referred to full order books, which is what they are looking for, and we need to build the confidence to create that. But many in the sector are not letting this stand in their way, and they are blazing a trail to making MMC more mainstream. We want to accelerate that journey, and we have lost no time in getting that work going, starting with significant steps to reintroduce mandatory planning targets and release grey-belt land for development, thereby driving demand across the country and giving developers and MMC manufacturers the certainty and stability they need to invest confidently and increase their capacity.

The sector is already stepping up, with a very public commitment from 43 housebuilders to utilise, and expand their use of, MMC in response to the planning reforms we set out in July. The committee highlighted the role that the affordable homes programme plays in providing a pipeline of demand for MMC manufacturers, while also improving awareness among social housing providers. I appreciate the key point of the noble Baroness, Lady Brinton, about specialist housing provision—I will take that back.

We have clearly heard this message from manufacturers. The current £12.5 billion AHP is being implemented, and we will set out details of future investment in social and affordable housing at the spending review. Our aim is to deliver the biggest increase in social and affordable housing for a generation, and we truly believe that MMC will very much contribute to this.

The department is working with the British Standards Institution and the sector to deliver a new publicly available specification for MMC. This will bring greater clarity on the important issue of warranty and insurance providers, hopefully without squashing innovation in the sector. We are considering further options for greater standardisation, not only reducing the supply chain risk for customers but supporting suppliers to yield greater benefits from the manufacturing process, as well as protecting innovation and intellectual property. In addition, financial support is available to MMC manufacturers wanting to grow and expand through the £1.5 billion levelling-up home building fund. This is just the start; we recognise that there is a lot more to do, and we will set out further details in due course.

Our approach will be informed by support for different construction methods, in recognition of the fact that we need a diverse number of approaches to deliver on our housing targets. Not all parts of the sector will require the same types of support, and we must make sure that we do not focus simply on picking winners. This is about removing the sector-wide barriers to adoption, so that we have an MMC market that can deliver the decent homes and strong communities we all want to see. We will continue to engage with key stakeholders to develop the right approach for the sector, and I look forward to sharing more details about that in due course.

I will pick up some of the individual issues that noble Lords have raised. The publishing of an MMC strategy and the task force was raised by a number of noble Lords—the noble Baronesses, Lady Eaton and Lady Warwick, and the noble Lords, Lord Mair and Lord Birt, talked about this, as well as cross-government work on the issue. The Government are committed to delivering 1.5 million homes, and we view the adoption of MMC as key to that. We are reflecting on the committee's recommendations and views from across the sector to establish how best to increase the use of MMC in housebuilding as part of the wider housing strategy.

Noble Lords talked about the comparative cost of MMC, including the noble Baroness, Lady Thornhill, and the noble Lords, Lord Fuller and Lord Carrington. Some stakeholders report that MMC has a higher upfront cost than traditional build, although others note that it is achieving cost parity or better. We anticipate that this will change as MMC demand and capacity continues to increase—it is a virtuous cycle. It is important to consider the whole-life cost of a building and the wider benefits that MMC can bring to a project.

I have already spoken about the affordable housing programme, and I hope that answered Members' questions about how we will engage our own funding to drive this market forward.

On supporting supply, we are working to establish how best to address the strategic barriers to further uptake of MMC, including improved supply chain confidence, clarity for the warranty and insurance markets, and planning reform. The noble Lord, Lord Banner, raised an important point about custom-build and self-build, which I will take back to the department and let him have a written answer on that.

Before I run out of time, I want to address the issue of safety, because I recognise the concerns there will be following the Grenfell report. Many noble Lords referred to this issue. The Government take very seriously their responsibilities for ensuring that homes are safe for people. Building under factory conditions has the potential to improve consistency of finishes and details, but the level of quality achieved in both on-site and off-site construction depends on what is designed, specified and constructed. Building regulations—and this is really important—apply equally to homes built using MMC as to those built using traditional methods. Buildings must meet the safety and performance requirements in the building regulations, no matter how they are constructed or what materials are used. MMC developers and manufacturers are responsible for ensuring compliance with the regulations for any construction project, including ensuring that new techniques are used correctly.

The noble Lord, Lord Rooker, and the noble Baroness, Lady Wheatcroft, raised issues around the BRE, and I shall reply to those points in writing.

We share the sector's ambition, and the ambition that we have heard today, for it to grow and succeed and play its part in getting Britain building, delivering the jobs, growth and opportunities that our country needs and deserves. We are hugely thankful to the sector for its support in getting us this far, for the continued efforts to realise its potential and for the exciting gains to come.

1.57 pm

Lord Carrington of Fulham (Con): My Lords, I am very grateful to everybody who has participated in this debate. It has been an extremely useful debate. I particularly commend the response of the noble Baroness, Lady Taylor, which answered most of our points and showed clearly that this is not a party-political issue; it is one on which there is consensus on both sides of the House. We all wish this industry to develop well. The points made in the debate highlighted the challenges that everybody involved in providing homes in this country will face to meet the demand that is there already.

I was deeply impressed by the quality of this debate and of the contributions to it. It is very sad that everybody except me and the Front-Bench speakers were limited to two minutes. The quality of the debate that we got in two minutes would, I believe, have gone up exponentially if we had had five or even 10 minutes for contributions.

With that, I thank everybody. It has been a good debate, and one that has taken forward the cause of revolutionising housebuilding in this country.

Motion agreed.

Vaginal Mesh Implants: Compensation

Question for Short Debate

1.58 pm

Asked by ***Baroness Cumberlege***

To ask His Majesty's Government what progress they have made in ensuring that those who have suffered complications following vaginal mesh implants receive financial compensation.

Baroness Cumberlege (Con): My Lords, I am grateful to all noble Lords who have decided to speak in this short debate. I thank them for taking part and look forward to their contributions, as well as to the Minister's reply. This is a subject that I feel very passionate about, and I welcome any support that your Lordships choose to give.

I was delighted to read that 140 mesh-harmed patients have received some redress, for it is long overdue. However, there are thousands of others harmed by mesh, still suffering, who are not included in the settlement. It is not just about mesh. In our report *First Do No Harm*, we recommended that those harmed by vaginal mesh, but also by the use of sodium valproate and by Primodos, should also receive redress.

It took me and my team two and half years to travel the country and gather the evidence, in the course of which we heard so many terrible stories of women who had been avoidably harmed. I have shared many of these stories with noble Lords during previous debates. Our report was published in July 2020, and I am sorry to say that I am still receiving emails today from women who are suffering so dreadfully, some of whom have now been diagnosed with post-traumatic stress disorder and are not being offered the support that they need. I have listened to women who have had to borrow money to have failed mesh implants removed privately and are now in considerable debt. Women who were prescribed sodium valproate and Primodos have children, many now adults, who will never be able to live independent lives after being exposed to the harm done by these drugs. These mothers bear great sadness from mis-prescribing. However, I am delighted to see that the current data indicates that there is almost no prescribing of sodium valproate during pregnancy. I hope that this means an end to ongoing harm, but there are so many who have been harmed and still need our help.

It is important to recognise that there was a failure on the part of the NHS to stop doctors prescribing sodium valproate immediately that the risks were known. I believe that the NHS must bear some of the responsibility for this. The same goes for those who were given Primodos.

The Hughes report, published in February 2024, had 10 recommendations, the first being that the Government had a responsibility to create an ex-gratia redress scheme. I believe that scheme needs to be put in place now, with interim payments being made as

[Baroness Cumberlege]
soon as possible. I was delighted to see how quickly the system was able to respond to the Infected Blood Inquiry. I therefore fail to see why these avoidably harmed people should be made to wait any longer.

Can the Minister say whether the Government have reflected on the role of the manufacturers of these medical interventions? The Government should shoulder the responsibility for redress and then pursue the manufacturers for their share of these catastrophes. I am pleased to see that the subject of redress is on the agenda of the noble Baroness, Lady Merron, and that she met the Patient Safety Commissioner at the beginning of August.

I am determined that all those affected by mesh, and the many others whose lives have been shattered by the effects of sodium valproate and Primodos, should receive the redress that they so richly deserve. These people have suffered enough; surely we should not be forcing them down such an adversarial route as taking action against the manufacturers when the damage done is so clear. The great majority of women cannot afford to bring lawsuits against the mighty drug companies; too many of them fail, and this was not their fault. They are not being offered the support they need.

2.10 pm

Baroness Sugg (Con): My Lords, I am grateful to my noble friend Lady Cumberlege for her significant work on highlighting the issues around vaginal mesh implants that have impacted at least 10,000 women, probably many more, and for her continued efforts to make some progress, in particular in tabling this Question for Short Debate. The evidence that your Lordships will have seen of women reporting severe complications from mesh implants, including chronic pain, infections, organ perforation and, in some cases, permanent disability, underlines how crucial it was that her work led to the pause on the use of vaginally inserted surgical mesh in 2018.

As my noble friend has set out, establishing a compensation scheme for women affected was recommended by her independent review *First Do No Harm* in 2020 and that was echoed by the Patient Safety Commissioner, Dr Henrietta Hughes, in her report in February this year. It has been a long-running concern and all the while many women are continuing to suffer the consequences of this treatment. I welcome the positive steps that were made by the previous Government, including the appointment of a Patient Safety Commissioner, but there remain many issues that, sadly, they were not able to resolve. I know that the Minister, as Minister for Patient Safety, Women's Health and Mental Health, must have an overflowing in-tray, but I look forward to her response today in the hope that we will hear clear plans for progress.

As we heard, following a group claim, the financial settlement in August from three manufacturers of mesh implants was welcome news, but there is a clear argument that more needs to be done. Compensation is a tangible way to acknowledge the suffering of women and provide the support that they need to continue to live their lives. While that case in August was a success, and some women have pursued legal action individually, these cases have often been long, costly and emotionally draining. Many women do not have the financial resources or the legal knowledge to take on large medical corporations or hospitals.

In my research I was pleased to see that information on compensation was readily available on the NHS website, but it is clear that the existing approach is inconsistent and fragmented. Hundreds of women were prevented from making a claim due to the strict 10-year time limit that is in force from the date that the product was manufactured. I hope that the Government will consider looking at that. A national government-backed compensation fund would ensure a uniform and fair approach to dealing with claims, ensuring that all affected women have a fair chance of receiving the financial redress that they deserve without being forced into these lengthy legal battles.

I appreciate the complexities and the expense here and, of course, the importance of spending limited resources on improving health services. There are options for how compensation can be delivered and how it can be funded, and I know that other noble Lords will address that. Of course, financial compensation should go hand in hand with strengthening the regulation of medical devices and improving patient safety.

I pay tribute to the campaigners who have worked so hard to highlight this treatment over the years—the individuals, the women's health organisations, and in particular the campaign group Sling The Mesh. I know that this work can be frustrating, exhausting and often thankless, but thanks to them, this issue, which can sometimes be seen as taboo, has been highlighted. We have seen some progress and will continue to push for more and I hope that they realise the difference that they are making.

In addition to the compensation scheme, Sling The Mesh is calling for a number of actions, from raising awareness of implant risk to tougher approval systems, regulations and oversight to protect public safety. In her response, I hope the Minister will also find time to comment on its calls for better databases to track the long-term harm of medical devices, which would help spot trends of harm, and for a sunshine payment Bill to improve transparency in the UK health sector by ensuring that the pharmaceutical and medical device industries declare all the money given to doctors, researchers, lobby groups, health charities, surgeon societies and teaching hospitals. That is not to stop that money being invested, just to be clear and transparent about what is happening.

I support my noble friend Lady Cumberlege's call for action on implementing the recommendations in her *First Do No Harm* report and the more recent Hughes report. I look forward to the Minister's response.

2.15 pm

Baroness Berridge (Con): My Lords, I too thank the noble Baroness for securing this debate and the panel for its review and tenacious follow-up of remaining recommendations, particularly recommendations 3 and 4 on financial compensation.

I am a member of your Lordships' Select Committee on the Inquiries Act. With recent reports from statutory public inquiries on Grenfell and Covid-19, non-statutory inquiries such as this can be overlooked. While Grenfell

and Covid-19 clearly needed the statutory model, it often comes with unhelpful TV images of banks of lawyers, looking like a courtroom. I do not want to pre-empt the publication of our report in the next few weeks, but it seems that both the noble Baroness and Bishop James Jones, who led the non-statutory Hillsborough review, managed to obtain the trust of victims' groups, which is essential to that model. Along with my noble friend Lady Sugg, I too applaud those groups who were maturely able to see the advantages and merit of the non-statutory process and, I hope, found it less arduous than the courtroom-type hearings.

A number of recent inquiries—into the Post Office, Grenfell and infected blood—have led to the establishment of compensation schemes. Given the systemic failures outlined so clearly in this review and the avoidable harm caused, I would be grateful if the Minister could outline fully what distinguishes this request from those of the other schemes, if His Majesty's Government's position has changed since 4 July. Now that His Majesty's Government are overseeing a number of these schemes, I hope there is co-ordination over the levels of compensation given, for instance over the costs of care in the home, so that there are comparable tariffs across the schemes. But the request for a redress agency, and the three separate schemes in advance of this, sits in a landscape of similar medical schemes—on variant CJD, vaccine damage and thalidomide, to name just a few. Why are these three schemes not just as worthy as those other medical schemes? I hope the Minister can justify this distinction.

In relation to vaginal mesh, will His Majesty's Government not have had to consider how to justify on objective, reasonable grounds a decision that looks, prima facie, like indirect discrimination against women? I suspect that, more tellingly, the reason will be to do with the costs. As the review outlines, in other countries big pharmaceutical companies and the suppliers of devices contribute. Will the Minister undertake to meet these companies and ask them to bring a full assessment of the costs to them of litigation, both successful and unsuccessful? Could she also prepare a full assessment of the cost to the public purse of leaving this just to litigation?

By a full assessment I mean, inter alia, the legal costs and compensation paid out by NHS trusts in successful claims, the costs not recovered from the other side even in successful cases, the often unrecoverable lost time of medical staff having to attend court and prepare witness statements, and the costs of court time and of class actions being brought against the Secretary of State. Even if the HPT class action has been discontinued, what was the civil servant time, ministerial time, and Government Legal Department time involved in the case—and the cost to the public purse of debates and Questions in Parliament, including the private office time preparing the Minister and sitting in the Box? Could the companies and public purse assessments be compared to the costs of running a scheme similar to those I have outlined?

There are also non-financial costs borne by the victims and society. The awful testimonies of the debilitating effects of surgery are harrowing—I am so grateful that my loved ones have always had amazing NHS care. But perhaps there are women struggling with their disabilities who think, "If I had a bit extra to buy some help, I could get back to work, maybe just part-time", or women who are managing their lives and thinking, "I could do some work, but now I have to take on litigation. That is really the final straw".

The country needs as many people as possible in the workforce. Can the noble Baroness request any relevant information that the DWP holds in relation to these women? For instance, how many are in that situation? Would the noble Baroness be content for women who might be listening today to write to her to outline such situations—and, of course, add the civil servant cost of replying to that correspondence to the full assessment I outlined above?

2.19 pm

Baroness Bennett of Manor Castle (GP): My Lords, I join what I am sure will be a chorus of praise for the noble Baroness, Lady Cumberlege, both for securing this debate and for her brilliant work over many years on these issues, particularly that of vaginal mesh. I started working with the noble Baroness during the passage of the Medicines and Medical Devices Act. If we think back, many of the things the noble Baroness was pushing for have since been achieved. However, today we are addressing some of the things that still desperately need to be dealt with.

One of the noble Baroness's achievements was the appointment of a Patient Safety Commissioner. Dr Henrietta Hughes is doing a brilliant job and, as has already been referred to, brought out a report in February urging that the compensation schemes for both sodium valproate and vaginal mesh be brought in as soon as possible. I will just do a little bit of advertising for Dr Hughes. She still has a consultation open on the principles of better patient safety and there is one more day for a chance to respond to that, if anyone would like to do so. It is such important work that it deserves to be highlighted.

I want to put this in the broader context of where we are now. We seem to be hearing weekly about a cascade of official and government failures: the Grenfell Tower tragedy, the Horizon scandal, the infected blood disaster and the Hillsborough tragedy. Obviously, we have a new Government and they do not bear direct responsibility for any of those circumstances, but it presents them with an enormous challenge: the challenge to respond sensitively, appropriately and at sufficient speed to do everything possible to ameliorate the circumstances of the victims.

These cases also throw up the challenge of acknowledging that the talk about "cutting red tape" that we have been hearing for so many years is a deeply dangerous approach. We need rules, regulations and controls to keep us safe. As the noble Baroness, Lady Sugg, drew attention to, we need to keep under control what those who make profits are doing to increase them.

We also need to listen to the people who are adversely affected when things start to go wrong. The reality is that so often—we know this is particularly the case with female patients—for years and years people said, "There's a problem here", and officialdom said, "No, nothing to see here; it's all fine", sometimes even saying that it was all in their head. The Government really need to stamp on that tendency.

[Baroness Bennett of Manor Castle]

I understand that it is early days for the new Government, but I have noticed—this is not directed at the Minister in particular, but at the Government more generally—that when I put down Written Questions and get the Answers, I seem to get essentially the same Answers as I got a few months ago under the previous Government. I urge Ministers, both individually and collectively, to please be curious and challenging. If an Answer was given six or 12 months, or two years, ago, ask if it is still the right one, if indeed it was the right one in the first place.

I have some specific points. A number of people referred to the recent settlement in the court case against the manufacturers. One of the issues that raised was the fact that hundreds of women were unable to make a claim due to a strict 10-year time limit from the date that the product was manufactured. Are the Government planning to do something about that?

I join the noble Baroness, Lady Sugg, in paying great tribute to Sling The Mesh and other similar campaigners. Is the Minister ensuring that her door is open not only to that group but to many other campaigning groups? It would be great to hear that that is the case.

A further point is that Dr Hughes recommended at least an interim payment scheme for vaginal mesh and sodium valproate. The question everyone is asking is, when are we going to hear about that?

The *Independent* reports that June Dunne, a 64 year-old, has been waiting for corrective surgery since 2019. What are the waiting lists now like?

Finally, the official government figures say that there are 127,000 mesh implants. The campaigners say there may have been many more. Are the Government looking into making sure that they have the proper records of all people affected?

2.24 pm

Lord Mancroft (Con): My Lords, I join other noble Lords in congratulating my noble friend Lady Cumberlege on securing this short debate on this important and increasingly troubling subject. I also want to take this opportunity to recognise the extraordinary work my noble friend has done, first in making her report and secondly, for following it up in so many ways.

One of the features of this terrible saga that has horrified me most is the way in which the health service has responded. Too many women, in seeking help, have been met not with sympathy and care but with indifference, denial, defensiveness and arrogance from those whom they believed would help them.

This is not my area of expertise, but I have been drawn into it by the experience of someone very close to my family who has suffered intolerably, has been treated appallingly when she should have been helped and has had to fight to have her health issues addressed. Following a referral in November 2014, she underwent an operation to insert mesh in December 2016. Subsequently, the mesh from her bowel travelled from her rectum to her fallopian tubes and ovaries. She has had countless infections and suffered ongoing severe discomfort and pain.

She has been pushed from pillar to post and seen four different specialists in four different hospitals. One urologist at the Royal United Hospital in Bath declined to examine her physically, as apparently, he could see simply by looking at her that she was fine. He categorically said that she did not have bad mesh. Had he taken the trouble to undertake even a cursory examination, he would have found that the mesh had perforated her vaginal wall, but he did not bother. She subsequently had to endure four operations to remove the mesh, ending with a stoma, which has recently been reversed.

Her current consultant has described hers as one of the worst cases of mesh damage she has ever seen. As far back as March 2021, this woman received a letter from the medical director of the North Bristol NHS Trust, in which he described her care and went on to write:

"I am very sorry to tell you these factors suggest the LVMR",

the operation she underwent,

"was not clinically indicated at the time of the surgery in December 2016. … Undergoing an operation that may not have been required … is considered harmful".

He went on to say:

"I sincerely apologise on behalf of the North Bristol NHS Trust that your surgery was not clinically indicated. This is unacceptable and we are taking this situation extremely seriously".

Apart from the physical pain and suffering, there are practical consequences to consider. She was a fit, active, extremely competent and positive woman with a full family life and a thriving career at the top of her profession. Her condition was so debilitating that she was forced to give up her job. She lost her career and has been unable to work since 2016. The financial consequences are that she has lost her home, her savings, and now lives on disability benefits. She therefore has no credit rating, which means that the landlords she relies upon regard her as an undesirable tenant. She is unlikely ever again to have a partner or a personal relationship. That, I am sure your Lordships will agree, is a pretty horrific list of life-changing consequences.

As the trust conceded in its letter in March 2021, three years ago,

"This is unacceptable and we are taking this situation extremely seriously".

I do not know exactly what "taking this situation extremely seriously" means, but after a period of legal wrangling, this woman has been offered compensation of £25,000, less costs of £2,500. That is compensation for pain, suffering, five operations over eight years, loss of home and career and substantial and catastrophic financial loss, leading to a life on benefits. No reasonable person could possibly conclude that this is adequate redress.

We spent the summer in this House debating the compensation to be paid to the victims of the infected blood scandal, and we are all familiar with the appalling injustices of the Post Office scandal and the levels of compensation those victims are rightly due to receive. The Government said they had no plans to set up a compensation scheme for the victims of mesh implants, but in light of the damage that has been caused to what could be as many as 25,000 women—it may be

fewer, it may be more; we are going to hear from the Minister—and with the examples of the infected blood scandal and the Post Office scandal, I hope the Minister will tell us that the Government will revisit the decision not to set up a compensation scheme and will be able to tell us today how they plan to compensate these women, and within what timeframe.

2.29 pm

Baroness Wyld (Con): My Lords, in preparing for this debate, I went back to *First Do No Harm*, the original report from my noble friend Lady Cumberlege. I had read it before and I pushed the previous Government to up the pace on the appointment of the Patient Safety Commissioner because that dragged, but we got there in the end. I found the report's contents no less shocking than they had been on the first reading. If anything, I found the testimonies of those living with harm from mesh even more upsetting this time, because these women and their families have been in limbo. I give my strong support to the call for redress from my noble friend Lady Cumberlege, and pay tribute to her work and that of the excellent Patient Safety Commissioner, Henrietta Hughes.

This was systemic failure, and we have heard a pattern of women not being listened to when they go for help, of being dismissed. Someone who gave evidence to the Hughes report said:

"I am a woman of a certain age, I'm slightly overweight, I'm a mum, not working, so I'm not given credibility".

Let us remember exactly what happened. *First Do No Harm* describes women reporting excruciating chronic pain that feels like razors inside their body, damage to organs, the loss of mobility and sex life, and depression and suicidal thoughts. The report found:

"Some clinicians' reactions ranged from 'it's all in your head' to 'these are women's issues' or 'it's that time of life'".

Despite all this—or because of it—*First Do No Harm* sets out the burden of guilt felt by many women affected by mesh; risks they did not know about at the time they consented to their procedures; procedures they did not always need to have, given the degree of their incontinence or prolapse condition. As the report so sensitively said to the women at the time,

"it was not your fault".

We should say that over and again to all the women who bravely came forward and exposed this scandal and had to talk about their most intimate and painful experiences. We should thank them.

There are three main things I want the Minister to comment on today. I would like her to set out, as others have said, the timetable for a response to the redress recommendations. I have witnessed her excellent command of her brief in opposition and now as a Minister—I will get told off for being too nice—and I have no doubt that she will put patients at the heart of her own work. Naturally, there has been some light-hearted banter in her first few weeks about timelines, and I am sure we have all been guilty of being creative with seasons and deciding when autumn might start and end, but in this context none of us can fall into that trap. It is perfectly correct for the new ministerial team to take the time properly to review this, but it is my job to push on behalf of the victims. I will not play politics, but I will push the Minister in that spirit. I have read the redress report in full, and while it acknowledges a range of complexities, it also has a range of very well-developed options, so I hope she will be able to set out a timetable.

I also want to talk about future services. The previous Government are to be commended for progress on the specialist vaginal mesh centres, but the Minister will want to focus on continuous improvement and will note that satisfaction levels are not consistent. Can she comment on what steps she will take to ensure that patient experience is captured? More widely, will she ensure that she pushes for the highest standards of maternity care for women, which, specifically relevant to this issue, must include postnatal pelvic floor rehabilitation? My noble friend's report recommended the French model and access to specialist pelvic floor physiotherapy as soon as required. These are not niche healthcare issues; they go to the heart of how we as a society allow women to be treated at one of the most major events in their lives.

Lastly, I would like the Minister's reflections on the experience of so many women being dismissed and not listened to. One quote in particular stuck with me:

"They would tell you there is nothing wrong with you and that you are just a hysterical woman".

I was not surprised by that and many similar comments. Like many millions of women up and down the country, I have had excellent care in the NHS, but these testimonies reminded me powerfully of my own experience of injury as a result of childbirth. Luckily for me, it was nowhere near the scale of those suffered by these women—I would not pretend it was—and I recovered, but I was told that I could not be in any pain when I had never felt any pain like it. I was a fit and healthy young woman but I asked my husband if he could speak to someone and explain that I really was in pain because I thought they might listen to a man. I am sorry to resort to anecdote, but one hears this over and again.

I have run out of time, but I push the Minister to respond on these issues.

2.35 pm

Baroness Brinton (LD): My Lords, I thank the noble Baroness, Lady Cumberlege, for securing this debate and for her unstinting commitment to ensuring that victims of vaginal mesh, sodium valproate, Primodos and other medical problems and scandals continue to have their voices heard. Her report for the last Government, *First Do No Harm*, published five years ago now, was extraordinary and impossible to ignore, and those of its recommendations that have been implemented have started to change the way that support for patient victims is delivered. I hope—and I will come back to this later—that it is also starting the change in culture that we need to see inside the NHS. We all love our NHS and sometimes it can be hard to admit that some of the senior doctors within it are not the best people to support patients and ensure that patients feel they are getting the right help they need when things go wrong.

I am particularly pleased about the role of the Patient Safety Commissioner, which I remember us debating in 2020. Dr Henrietta Hughes is making a

[Baroness Brinton]

brilliant start, and I thank the noble Baroness, Lady Bennett, for the comments that she made about that. However, I repeat a question I asked when the post was first set up: is the office of the Patient Safety Commissioner getting enough resources to do the job that she so clearly has to? I have no doubt that she is a very able woman but I am concerned about the volume that her office is dealing with.

I pay tribute to the victims of not just vaginal mesh but sodium valproate and Primodos, who have continued to tell their stories. We know that repeatedly telling your story is painful too, but we need to hear them. I thank the noble Baronesses, Lady Sugg and Lady Wyld, and the noble Lord, Lord Mancroft, who told his friend's personal story, all of whom reminded us of how dreadful the position is. While the difference between these problems and the infected blood scandal is that we are not seeing fatalities, we underestimate the long-term life changes that all these victims have faced, some of them the children of those who were fed medicines during pregnancy, not one of them at fault at all in any way.

There is one voice that we have not heard: that of the NHS whistleblowers. I shall mention one person of whom I had not been aware until there was an article about her in the *British Medical Journal* earlier this year. Sohier Elneil is a urogynaecological surgeon and an expert in women's pain. She is the founder of the first NHS vaginal mesh removal centre and a tireless champion of supporting the victims and sorting out the problems. I was shocked to read that, after she started talking about this issue in 2005, she was excluded from events by doctors, then personally attacked and reported to the General Medical Council multiple times, mainly by fellow consultants—those who were the biggest implanters of mesh. She said:

"I was very upset. It felt like a war. They were saying I was removing mesh and harming patients unnecessarily".

Professor Elneil continued with her campaign, and I have to say that her story did not stop there. She also uncovered some of the doctors being encouraged with financial incentives from the providers of vaginal mesh. It is good that both Henrietta Hughes' report and that of the noble Baroness, Lady Cumberlege, said that things needed to become transparent. The last Government refused to allow those records to go on to the register at the GMC but they should be on that register, not kept elsewhere, because if a member of the public wants to find something out, the GMC will be the first place they go. Can the Minister say whether that will happen?

Others have already talked about the time limit. I shall make brief mention of the issue relayed by the noble Baroness, Lady Berridge, about the type of inquiry and the ability to make effective reports. In my portfolio I have covered virtually all these inquiries over the past 18 months, and I have heard every single group of victims say that another inquiry has provided the right response for them. None of the inquiries has yet been resolved—even those, such as the Post Office Horizon inquiry and the infected blood inquiry, which we think have been resolved. If the Government will not revisit the deadline, they will be dragged kicking and screaming into a higher level of inquiry as more cases are revealed. Please can the Government, preferably via the Cabinet Office, bring together the learning from all these inquiries about what goes wrong in government to make these things happen?

2.40 pm

Lord Evans of Rainow (Con): My Lords, this has been an excellent debate. I thank my noble friends Lady Sugg, Lady Berridge and Lady Wyld, the noble Baronesses, Lady Bennett and Lady Brinton, and my noble friend Lord Mancroft, who all made very powerful points in their speeches. I congratulate my noble friend Lady Cumberlege on securing this important debate. I pay tribute to her work on this issue over many years and her leadership on the *First Do No Harm* report of the Independent Medicines and Medical Devices Safety Review, as well as to her team of Sir Cyril Chantler, Simon Whale and Dr Valerie Brasse, and the patient groups.

Simply put, victims have suffered as a result of two medications and one medical device. The medications are: hormone pregnancy tests such as Primodos, which were later withdrawn due to concerns over birth defects and miscarriages; and sodium valproate, the anti-epileptic drug which was later found to cause physical malformations, autism and developmental delay in children after being taken by pregnant mothers. The medical device is the pelvic mesh implants which were used to repair pelvic organ prolapse and address urinary incontinence. Their use has been linked to crippling, life-changing complications.

My noble friend Lord Kamall tells me that when he was a Minister in the department he was horrified that progress for helping the poor women who had suffered from these two medications and one medical device was far too slow. Fortunately, the then Minister, Maria Caulfield, asked the Patient Safety Commissioner to explain what the Government should do to meet the needs of individual patients who had suffered these avoidable harms.

In government, we completed four of the initial recommendations in the report of my noble friend Lady Cumberlege, and another three were in progress in March 2024. The most important of these is the setting up of nine specialist centres which can provide the support needed in terms not just of redress surgically or treatment-wise but of the support that people need to help them cope with the issues. We expect the Government to deliver financial compensation for those affected by these treatments as soon as possible.

My noble friend Lady Cumberlege has said that after "first do no harm" should come

"and now do some good".

As other noble Lords have referenced, the Patient Safety Commissioner's report, published earlier this year, states that

"there is a clear case for redress based on the systemic healthcare and regulatory failures"

for women and children affected by the issues in England.

There is agreement across this House that Governments of all political colours have been too slow in delivering justice and financial compensation to victims of scandals in the past. We need mention only the Post Office

Horizon scandal to remind ourselves of the importance of delivering justice to those who have been wronged. When these problems come to light, it is essential that we help the victims of these scandals as quickly as possible. Too many people suffered over the Horizon scandal and too many people and families suffered due to delays in helping victims of the infected blood scandal. Likewise, too many women, children and families have suffered as a result of women being prescribed Primodos, sodium valproate and pelvic mesh implants. The Government must act urgently to help those women who have suffered, so will the Minister give an undertaking today to make this a priority?

On 23 July, my noble friend Lord Kamall submitted a Written Question to the Minister asking when the Government intend to respond to the Hughes report and when they anticipate making the first payments under the recommended redress scheme. I thank the Minister for replying within three days, saying:

"The Government is considering the recommendations of The Hughes Report, and to prevent future harm, the Medicines and Healthcare products Regulatory Agency, NHS England, and others have taken action to strengthen oversight of valproate prescribing and mesh procedures".

My noble friend Lord Kamall followed up on 29 July to ask the Government

"by which date they expect to issue a response to the Hughes Report, and whether they plan to offer compensation as the report recommends".

Again, the Minister responded promptly with the Answer:

"The government is carefully considering the valuable work done by the Hughes Report and will respond in due course".

We recognise that the Government are relatively new and need time to get up to speed, but can the Minister be more specific at this stage in answering the timescale question?

My noble friend Lord Kamall tells me that when he was a Minister there were two phrases in briefings that he was not fond of. One was "at pace" and the other was "in due course". Can the Minister give noble Lords an approximate timescale for a decision—for example, by the end of 2024, mid-2025 or indeed the end of 2025? If not, can she enlighten noble Lords on when she will be able to give an estimate of the date by which she will know the date of the Government's response? It is vital that they give some certainty to noble Lords—and, more importantly, to the many women and children who have suffered for far too long physically, mentally and economically. I know that the noble Baroness is a formidable operator as a Minister and, to speak personally, she has our full support on this side of the House.

2.46 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Merron): My Lords, I congratulate the noble Baroness, Lady Cumberlege, on securing this important debate. I compliment her on getting it early in the time of a new Government, which will help me to do the job that I will need to do. I also thank noble Lords for their powerful words on this important topic. To borrow some of the words used, anybody sitting here will understand that we are talking about something so harrowing, so shocking and so distressing that it would be hard not to be moved by what has been heard both today in the Chamber and, as the noble Baroness, Lady Wyld, said, when one reflects back on the report.

I give the assurance that after the debate I will reflect closely on all the points raised, and I will seek to cover a number of them as best I can now. The noble Lord, Lord Evans, obviously and rightly invites me to set out a timetable—as have many other noble Lords. I know that your Lordships' House understands the newness of the Government and the need to get it right. While saying that, I also hope that noble Lords will appreciate that I understand that this has been going on for a very long time under the previous Government and that many individuals, and their families and friends, are looking for resolution.

As we have heard, lives have been irrevocably changed by vaginal mesh implants, and we have to ensure that lessons are learned. This Government will endeavour to build a system that listens—particularly, I might add, to women, whose voices have not been heard, which is why we find ourselves in many of the situations we are considering—and a system that hears properly and will act with speed, compassion and proportionality.

The noble Lord, Lord Mancroft, brought into the Chamber a very specific case, about which I was sorry to hear. I am sure that we are all sorry to know that the woman to whom the noble Lord referred is far from alone. I repeat to all those who have been affected that, as the report said,

"it was not your fault".

We deliberately will put patient safety at the heart of improving our health and social care system. I convey my sympathy to everyone who has suffered complications following vaginal mesh implants. I am committed to ensuring that we learn from these tragic incidents. The Independent Medicines and Medical Devices Safety Review's report, which was published in 2020 and chaired by the noble Baroness, Lady Cumberlege, was pioneering in its impact. The stories and realities are as deeply affecting today as they were when the noble Baroness commenced her work. I thank her, as many other noble Lords have done, for her work. She has been and is a key advocate for women's health, but particularly for those who are experiencing complications and after-effects that they should not be enduring.

The Patient Safety Commissioner has continued this work. I thank her for the work she did on the Hughes report, published in February. Having met with Dr Hughes soon after my appointment, I very much look forward to working closely with her on a number of issues, including this one, to improve patient safety.

I hope that noble Lords will appreciate that in my comments I am reflecting on the situation as it stands. As we have heard, when used for pelvic organ prolapse and for stress urinary incontinence, vaginal mesh can be incredibly damaging for those suffering from complications, which is why it has been paused in these instances. NHS England has now established nine specialist mesh centres across England. The aim is to ensure that women in every region who have complications can get the right support and care. Each mesh centre is led by a multidisciplinary team to ensure that patients get access to the specialist care

[Baroness Merron]
and treatment that they need, including pain management and psychological support as well as mesh removal surgery where that is appropriate.

The noble Baroness, Lady Sugg, and other noble Lords rightly raised the powerful Sling The Mesh campaign for an improved database. I associate myself with the comments of appreciation for that campaign group and many others who have campaigned in an area where others have feared to tread. I certainly share the desire of the noble Baroness, Lady Sugg, to ensure that there is proper data collection on device safety, which is why mesh centres will improve recording and monitoring of patient outcomes and experience by submitting procedural data to the pelvic floor registry. In this vein, through the National Institute for Health and Care Research a £1.56 million study has been commissioned to develop the patient-reported outcome measure for prolapse, incontinence and mesh complication surgery. In the longer term, this measure will be integrated into the pelvic floor registry.

The review by the noble Baroness, Lady Cumberlege, also looked into the matter of sodium valproate, and rightly so. I am glad to report that since then a number of actions have been taken or are under way to ensure that valproate is prescribed only when absolutely clinically appropriate. Alongside that, I am encouraged that the number of women who are still being prescribed it has reduced significantly following the MHRA's introduction of the pregnancy prevention programme.

While significant progress may have been made in the areas I have outlined, the core question posed by this debate is about progress in ensuring that those suffering complications receive financial compensation for their suffering. This is an absolutely key question. This and the sodium valproate issue, which was reviewed in the Hughes report, are extremely complex and sensitive, as I know noble Lords appreciate. I want to reassure your Lordships' House that I am considering this and the recommendations of the Hughes report.

As I mentioned at the outset, as a new Government, we need to carefully consider the report before coming to a decision. The recommendations will be discussed with colleagues across government, and lessons will be learned from other instances where patient safety has been impacted, as noble Lords have asked of me. As part of this, and in answer to some of the questions by the noble Baroness, Lady Bennett, and others, I will ensure that the number of those affected is reflected correctly. While I hope that noble Lords will understand, if not be happy, that I cannot provide a decision today, I commit to providing an update to the Patient Safety Commissioner's report at the earliest opportunity and look forward to being able to update noble Lords further.

I have taken on board a point made by the noble Baroness, Lady Sugg, and throughout the debate, about the importance of transparency, trust and confidence. The department has worked with NHS England and healthcare providers to understand systems already in place for the collection and publication of information on doctors' conflicts of interest and the work needed to implement updated guidance. That guidance will be published by NHS England. Again, I look forward to providing an update to your Lordships' House on this. Furthermore, the department has held a public consultation on the disclosure of industry payments to the healthcare sector, and we will respond to that one shortly.

The noble Baroness, Lady Cumberlege, and other noble Lords raised the topic of imposing rules on manufacturers to pay compensation. This is a complex area and would potentially affect how products were developed, so it will need careful thought. Again, I will do that in conjunction with colleagues across government. Where a product causes injury, while it may be possible for an individual to pursue a claim for compensation directly against the manufacturer under existing legislation, I absolutely take the points made in the Chamber today that legal costs, practicalities, stress and the further distress that obviously goes alongside it often make this totally unrealistic.

I turn to some of the additional specific questions from noble Lords. The noble Baroness, Lady Bennett, was one of the noble Baronesses who raised the question on stopping manufacturers putting a 10-year time limit on redress. I will certainly raise this in discussions with colleagues at the Ministry of Justice, and I am happy to write to noble Lords further to update them on any progress. The noble Baroness, Lady Berridge, made a powerful and illustrative point that errors are not cost-free in any sense. I definitely echo her concerns about the extensive cost of this failure: some is seen and some unseen, but the costs are there. I will consider it such an exercise when I reflect on how we take this forward. The noble Baroness, Lady Wyld, also raised the point on maternity services, which, as she will be well aware, the Government recognise has serious issues. We are determined to improve this, and I assure noble Lords that my work is under way. Those areas failing in maternity care will be supported to make rapid improvements. The noble Baroness, Lady Brinton, clearly shares my appreciation, as do others, for the work of the Patient Safety Commissioner. I will ensure that she has the resources and support that she needs.

This subject rightly evokes great sympathy, but it also needs action. I must and will return to this again.

Independent Schools: VAT Exemption

Motion to Take Note

2.59 pm

Moved by ***Lord Lexden***

That this House takes note of the contribution of independent schools, and any potential effects that changes to the VAT exemption for independent school fees could have.

Lord Lexden (Con): My Lords, I sought this debate because our country's independent schools—of which there are some 2,500 in total—face an imminent and dramatic change in their circumstances, which will have serious and far-reaching consequences. The Government are to put VAT on their fees in fulfilment of a pledge given in Labour's recent election manifesto. This education tax, the first to be introduced in Britain—and, apart from a disastrous recent experiment in Greece, the first in Europe—is being imposed on schools with extraordinary haste.

At the very end of July, the Government announced, wholly unexpectedly, that their education tax would come into effect at the very beginning of next year. Now, 1 January 2025 is just under four months away. Schools and parents have made their plans for the academic year that is now beginning. How on earth do the Government imagine that these plans can be swiftly and easily rearranged? It is of course impossible, and it is quite wrong that schools and parents should have been plunged into such difficulties. Acute concern has naturally arisen. Many parents are deeply worried. Many schools, particularly those of small size which account for the overwhelming majority in the independent sector, face an uncertain future.

I stress one point above all: the effect that the rapid introduction of the tax will have on thousands of children, their well-being and their life chances. They should surely be at the forefront of our minds and, indeed, our hearts during this debate. The number of Peers taking part in it testifies to the strength of concern that exists across the House.

I declare my interests as a former general secretary of the Independent Schools Council and the current president of the Independent Schools Association, one of the council's constituent bodies. I naturally judge the issues which arise in this debate from their perspective, to which I will return.

Words matter. Labour's leaders have become fond of saying that they will recruit 6,500 more teachers for state schools

"by ending tax breaks for private schools".

This clearly implies that independent schools now enjoy some kind of special exemption from tax that they do not deserve. The truth is that all those who provide educational services have always been exempted from VAT, as they should be. That exemption is now to be removed from independent schools, and from independent schools alone, at least for the time being. The current tax regime has helped independent schools to thrive, a state of affairs that the Prime Minister has said enjoys his full approval. Last September he told *Jewish News*:

"We have got fantastic independent schools, I want them to thrive".

With this VAT proposal, he is perhaps going a strange way about helping schools to fulfil his ambition for them.

No one, I think, doubts the excellence that abides in our independent education sector. It contains some of the best schools in the world. The majority of their pupils find places at leading universities. They go out into the world well prepared for their careers in a meritocratic, multiracial society. They look to the future, not to a vanished class-ridden past, as is so often asserted by those blinded by prejudice against them. Four out of 10 places in the schools represented by the Independent Schools Council are filled by the children of ethnic-minority families. The Jewish and Muslim faiths are among those who run schools within the council's ambit. More than 2,000 youngsters from Ukraine have been given places at member schools, and for the most part their families remain in their war-torn homeland. These are among the many valuable and socially beneficial features of life in our country's independent schools today.

Nor should it be forgotten that independent schools make a significant economic contribution to our country. Research by Oxford Economics in 2022 showed that they add £16.5 billion to the UK economy, sustain 328,000 jobs, provide in one way or another £5.1 billion in tax, and save the education budget £4.4 billion by educating pupils who would otherwise be a cost to the state, a saving that must now be expected to shrink as pupils are forced out of independent schools by the imposition of VAT.

I referred at the outset to the two linked organisations with which I am connected: the Independent Schools Council and the Independent Schools Association. The council represents some 1,400 schools, where around 80% of the half a million pupils in the independent sector are educated—the children at the heart of this debate. The Independent Schools Association has some 670 of those schools, a big slice of the total, in its membership. It is among them that many of the small schools, so prevalent in the independent sector today, are to be found. Some flourish with no more than 200 pupils, others with far fewer. They include performing arts schools, bilingual schools and many special needs schools. They cater for the children of hard-working, local parents who have struggled to have their needs met in the state sector. Many are virtually unknown outside of their local communities, where they are highly respected. The important point is this: the 670 members of the association are far more representative of the true state of the independent sector than the comparatively small number of large, well-known schools—Eton, Harrow and the rest—which exert so much fascination over the media. Those schools are the exception, not the rule; they constitute no more than 10% of the total.

What all the diverse members of the Independent Schools Council have in common is a commitment to high standards for the sake of their children's future and to working in partnership with colleagues the state sector in a whole host of different ways—from academic teaching, orchestral concerts, drama and sport. There are now well over 9,000 flourishing partnership projects. These typically involve several different strands of activity in and out the of classroom, in which state and independent schools work together for their mutual benefit—I stress mutual benefit. Full details can be found on the Schools Together website.

Meanwhile, independent schools have been widening their intake through fee reductions. In the last year, schools provided a total of £1.1 billion, much of it in the form of means-tested bursaries. How I wish it had been possible to induce our Governments over the years to back an ambitious wider access scheme, with places being made available at all levels of ability, co-funded by the Government, local councils, schools and benefactors. Winston Churchill sometimes spoke privately during the Second World War of constructing a great scheme of educational co-operation. How Churchill would have jeered at Labour's attempts to depict our independent schools today as the exclusive preserve of the super-rich, in defiance of the facts that I have set out.

Most independent school parents are not rich, let alone super-rich. Labour blithely says that schools will not need to pass VAT on to parents but can absorb it

[Lord Lexden]
all themselves. They cannot; only a handful have the endowments or reserves that would enable them to pay it themselves. Today, many parents up and down our country are looking at their family budgets and concluding that they will not be able to pay the higher fees that the Government will create for them. They will, with the heaviest of hearts, have to seek places in state schools.

Here is one example of what then will be the inevitable consequence. The head of a small school in Derbyshire with 80 pupils has written to tell me:

"it is clear from conversations I have had with parents that a significant proportion of our families will simply be unable to afford the increase. We could easily lose 17 pupils. This will have a devastating impact upon school income and will close us".

Labour seems to think that school closures need cause no great concern. It says that over 1,000 independent schools closed during the 14 years from 2010. But some were mergers rather than closures and others were very small schools. Less than half were mainstream schools; schools delivering specialist provision are always prone to fluctuations, and Covid took its toll. There is also a world of difference between sudden state-driven closures and the closing down of schools for reasons of their own, with new ones opening probably in the vicinity. Who will want to open new independent schools today?

The prospect of losing smaller independent schools is simply appalling. So much invaluable support is provided in them for a huge variety of special needs. Many parents have since the election been making clear their heartbreak at the thought of being unable to afford any longer the place where their child with a special need has been wonderfully cared for. The Government-created fee rise will affect more than 90,000 families with special needs. Only children with hard-to-come-by education, health and care plans will be exempt from it.

A special needs co-ordinator who has worked in a state school for nearly 40 years writes:

"many private schools have been formed to cater specifically for special needs. They provide centres of excellence, often where there is a deficit regionally. Why risk losing them?"

Why indeed?

The government-created fee rise will make small community faith schools unaffordable for many Jewish and Muslim families. At present, some 370,000 children attend independent faith schools in England.

The prospect of this fee rise is a source of the greatest worry to our service families, who place our society so greatly in their debt. Some long-serving men and women in our Armed Forces fear that they will have to leave jobs they love. The 4,700 children for whom the continuity of education allowance is being provided must not be made subject to VAT.

It is very far from certain that, by slapping VAT on school fees, the Government will get anywhere near the £1.5 billion they seek to create new teachers for state schools. The additional resources that state schools will need to teach more pupils could absorb much of the revenue gained from the VAT charge, and perhaps even exceed it. Estimates of the number of children who will have to leave independent schools vary. The Government have not undertaken any assessment whatever. They are rushing ahead, without even waiting for the conclusions of the Office for Budget Responsibility, which they have pledged to respect.

I invite support for the following propositions. All children with SEND should be exempt from the VAT charge. It should not be applied to service families receiving the continuity of education allowance. Steps should be taken to protect small faith schools. Above all, VAT should not begin to apply before the start of the 2025-26 academic year. The date now proposed—1 January 2025—has been widely and rightly described as cruel. A full independent assessment of the implications of our first-ever education tax should be carried out before it is introduced.

Is it not our duty to do all we can to protect the interests of all children everywhere? One mother writes to me that

"my child sat and watched an interview with Rachel Reeves, in which she stated that she is concerned with the 93 per cent of children in state schools and not the 7 per cent in independent schools. My child turned and asked why the lady doesn't care about me".

Is that not a truly heart-rending comment? I beg to move.

3.11 pm

Baroness Ramsey of Wall Heath (Lab): My Lords, I refer to my interests in the register. I have been lucky enough to play a role in the governance of both state and independent schools. From 2016 until recently, I was chair of Young Epilepsy, which, among many other things, runs a wonderful special independent school in Surrey, called St Piers, for both day and boarding pupils. I am currently a board member of the Lift Schools multi-academy trust—formerly AET—which runs 57 state schools across the country. So noble Lords might think I would find myself somewhat torn when considering the arguments for and against charging independent schools VAT and spending the money generated by so doing on state schools—but I am not.

At Lift Schools, I can see at first hand just how vital that extra injection of money is. In the words of our inspirational chief executive:

"We simply don't have enough teachers in our schools. This is down to absolute numbers, but it is also down to the fact that the role of a teacher has been stretched beyond anything imaginable 10 years ago. No longer simply an educator, they are social worker, mental health first aider, a parent for some. One of the casualties of this raid on discretionary effort is the wider enrichment that is the norm in independent schools and should be for state schools too—the music, sports, art, drama, debating, foreign trips and field trips".

As for St Piers and all those other independent schools meeting the needs of children with education, health and care plans, the Government have made crystal clear that fees for these children will be exempt from VAT.

The independent schools that will have to pay VAT are not special schools like St Piers but the ones whose parents choose to pay for their children to have a more well-funded education than the state can afford to provide. I do not criticise parents who wish that the fees they pay to private schools were not going to rise further as a result of the ending of the VAT exemption—of

course I do not. But, if we look at the issue in the round from the perspective of the nation's children as a whole, rather than from only the one in 15 who attend private schools, what do we learn?

We learn from the unimpeachable source of the impartial Institute for Fiscal Studies that the 14 in 15 who go to state school are falling further and further behind, compared with one in 15 at private schools, with their enviable resources. Private schools, the IFS tells us, spent 40% more on their pupils' education than state schools were funded to do back in 2010—a pretty big gap, I am sure we can all agree. But now the gap is an incredible 90%; it has more than doubled since my party was last in power. In that situation can we really justify a continued 20% tax break for private schools? I think not. Why has the gap got so much bigger? Partly, of course, it is because the previous Government cut state school funding per pupil in the age of austerity, and their more recent increases only brought schools back to where they started in 2010. But it is mainly because private schools have increased their fees, which are 24% higher in real terms than in 2010. By the way, those arguing that charging VAT will mean pupils switching from private to state seem to forget that the 24% increase in fees has led to no reduction whatever in the proportion of pupils going to private schools, which is still steady at one in 15, just as it was in 2010.

But it is not really about the numbers, of course—it is about the children. Let me end by telling noble Lords about my daughter's first day at her local comprehensive secondary school, and in particular about the instruction she and all new pupils were given that day: no running in the playground at lunchtimes. Why not? Because it was so crowded that they might hurt themselves bumping into each other. Why was it so crowded? Because this hard-pressed state school, desperate for extra cash, had sold part of its land to the adjoining private school. My daughter pressed her face up to the wire fence, gazing at the endless fields stretched out in front of her for the benefit of the one in 15, and thought that that was not fair. She was right: it was not, and it still is not, so let us do something about it.

3.17 pm

Lord Addington (LD): My Lords, this is a debate that I never thought I would be taking part in, the tone of which we should note. We on these Benches do not like what is going on here in education. Different bits of the education sector are being taxed differently. With special educational needs, you can claim some of the money back. Well, that is always going to run smoothly; there will never be a cashflow problem and nobody will ever get it wrong. Also, it is dependent on that wonderful thing, an education and healthcare plan.

If there is a more unloved bit of the education sector than the education and healthcare plan, I have not seen it. It takes about two years to get—if you have the right lawyer and the right type of parents, who fight for it. Schools are blocking it because they do not want it to go through. The weirdest thing about it is that we have broken the £100 million barrier of public money going into resisting it and going to tribunals. Some 90% plus of the tribunals are granted—it is almost a rite of passage.

If the Government had said that they would help the private sector in dealing with special educational needs, having dealt with this first, they would be getting a much more favourable hearing from me. It is an absurdity to base an exemption on something that favours—guess who?—the educated, wealthy parents who can afford the legal fees to get through. There is something fundamentally wrong here.

I am in favour of making sure that we get better provision in state schools to address special educational needs. However, the whole system has gone wrong. If it is based around this, I cannot see how it is going to happen. Let us remember that private education has been looking after X amount of those with SEN for more than half a century; it is a very established pattern.

Also, the schools doing this have a percentage of pupils who do not have the plan, often because their parents are not prepared to put themselves or their children through the delays and the process of getting that plan. They are creating a critical mass for the economic reality of that school. If we lose these, or a percentage of these, what happens to those schools?

I hope that the Government have, at some point, done an analysis of how many pupils they can lose from this sector. The Government have recognised that it is important, so I hope they have. For pupils who do not have a plan for leaving the sector or going back into a state school, it would help to know the economic benefit. I do not know what it is—is it positive or negative? It would help if we could find out.

This contribution from the independent sector is clearly necessary at the moment. I hope the Government will tell us what they are going to do that will mean it is not necessary. Can they please tell us how they will do this, and when it will arrive? I do not like the idea of people having to go to independent schools to get the education they need but, at the moment, it is clear that they do. Will the Government address this problem in the round, and will they tell us when they are going to get rid of the plan?

3.20 pm

Lord Alton of Liverpool (CB): My Lords, in welcoming the noble Baroness, Lady Smith of Malvern, to her new responsibilities, I also say at the outset that I am grateful to her for promising to respond, when she replies, to some detailed questions I have sent to her. I also thank the admirable noble Lord, Lord Lexden, for the customarily powerful and eloquent way in which he introduced today's important debate. I agree with everything that he has said today.

For family reasons my Cross-Bench colleague and noble friend Lord Pannick is unable to be here today. He has looked at this education tax and its potential conflict with the European Convention on Human Rights. He tells me that it

"is strongly arguable that the imposition of VAT would breach Article 2 of the First Protocol read on its own (access to educational facilities) or with Article 14 of the Convention (arbitrary discrimination in the enjoyment of educational facilities)".

[Lord Alton of Liverpool]
I serve on the Joint Committee on Human Rights, whose mandate is to monitor potential conflict between government policies and the ECHR. My noble friend Lord Pannick says that

"it would be a very valuable service if the Joint Committee could look at this".

I agree, and I hope that the Minister will assure us that the Government will not proceed if this is found to be in breach of the ECHR.

We need also to scrutinise some of the other claims that have been made, such as the impact on public finance. The Adam Smith Institute calculates that, far from generating revenue, the policy could lead to a staggering loss of up to £2 billion. The Minister has seen that assessment and the work of the Institute for Fiscal Studies, along with a *Times* editorial, which all question the Government's assumptions about raising revenue. Let us also look at what happened in 2015 in Greece when a similar tax was introduced. Some schools were forced to close, while others inevitably passed on the tax to parents. The same thing is already happening here.

Driven by dogma, it is easy to say that this is all justified as a long-overdue attack on the ultra-rich. However, as the noble Lord, Lord Lexden, reminded us at the outset of the debate, this regressive double tax on people who have already paid for universal education through their income tax will not impact wealthy families who pay for education, often, through property purchases in sought-after school districts, merely increasing educational inequalities. This education tax will disproportionately impact middle-income families, such as those of the 168,000 children who receive financial support from independent schools or the 10,000 who pay no fees. These are the families who will suffer, many of whom have made great sacrifices for their children's education, not those with ultra-deep pockets.

Those affected will include men and women in our Armed Forces—families who make use of the Continuity of Education Allowance. Some say that they are having to consider exiting military service as a consequence. How does the Minister respond to their appeals, and to professionals, including those working in education, policing and healthcare, who rely on the wraparound care provided by many independent schools; or to the single mother whose letter I sent to the Minister, and for whom independent schooling is the only way she can maintain her employment?

As the noble Lord, Lord Addington, reminded us, what about the impact on children with special needs or mental illness? The noble Lord gave a figure which I had not heard before that as many as 90,000 people will be affected by this. They will have chosen an independent school because of its particular expertise or focus on those children.

Finally, introducing this tax midway through the school year, on accelerated timeframes, will adversely affect children, who may struggle to integrate into new schools, with some forced to change curriculum, exam boards or subjects. Top of our concern, and at the heart of this policy, must be the impact on children. It clearly is not. This taxation is punitive, unjust and unfair, may be in breach of the ECHR, and will worsen educational inequalities. For all those reasons, I hope the Government will think again.

3.25 pm

The Lord Bishop of Southwark: My Lords, the Government's intention to levy value added tax in this area was a manifesto commitment at the general election. The Government entertain a well-evidenced belief that parents purchase an economic and social benefit for their children's future through private schooling. Whatever the experience any of your Lordships have had of such schooling, the undoubted premium placed on forming character or the excellence in pastoral care that some of these schools exhibit, the Government nevertheless have a mandate for change. The noble Baroness, Lady Ramsey, underlined the pressing need for more teachers in our state schools.

However, who will and who will not be affected by this change is a worthy subject of debate. I am happy to say that both the boys' and girls' choirs at Southwark Cathedral are almost entirely drawn from state schools, and are consequently unaffected by the VAT change. Furthermore, a number of schools in my diocese offering provision for special educational needs and disabilities have their places funded by the local authorities. But there are cathedral and choir schools, and private schools, with provision for special educational needs that will be severely affected by the change that the Government intend. Many of these are small schools, and therefore the impact will be disproportionately severe.

The briefing provided by the House of Lords Library refers to some 20% of pupils in this sector receiving provision for SEND, which is of undoubted public benefit, but of these, only 6.9% have an education, health and care plan. This suggests that there is a significant element of special needs provision that is currently covered by private funding, and which cannot be absorbed by local education authority budgets if private places become unaffordable. Furthermore, if some small and medium-sized schools that provide SEND then become unviable, the general SEND capacity in the country, already overstretched, becomes yet smaller. A question, therefore, needs to be asked—and I ask it of the Minister—as to the appropriateness of removing the exemption at such short notice in January 2025, as other noble Peers have already said, with little time to adjust budgets.

Finally, there is the distinctive yet gloriously diverse world of cathedral and choir schools, which continue to safeguard and feed the English choral tradition. They are intimately bound up with their localities, drawing choristers from a wide social background, and have a very significant impact on the choral and musical life of this nation. I will cite some detail from one of them: a 100% bursary fee remission for local children who are very talented musically but whose parents cannot afford any fees, with numerous other pupils who are in receipt of 75% or more remission—the focus now being on remitting fees, rather than on awarding scholarships, to increase social inclusion.

I am a grammar school boy and I could not sing the "Eton Boating Song" if you paid me, yet I am deeply concerned about the adverse and unintended consequences

which this manifesto commitment will have unless it is applied with much greater sensitivity—and possibly also phased in—affecting, as this does, the enormous variety of private school provision, about which we have heard and which is committed to public benefit.

3.29 pm

Lord Davies of Brixton (Lab): My Lords, I thank the noble Lord, Lord Lexden, for introducing this debate. No one doubts the strength of his feeling on the issue. I suspect that much of his speech overrated the problems that the private sector will face, and my view is that it will survive, but he quite rightly raised a number of practical issues towards the end of his speech which I am sure my noble friend Lady Smith of Malvern will address in her reply. I take the opportunity to welcome her to her place.

I speak as a parent but also as someone who had experience running a public education service, and that drives my view of the necessity for this measure. Of course, the actual discussion will take place when we get the finance Bill, when we will doubtless have this debate again, but it is entirely appropriate that we should discuss it now.

I want to stress that VAT is a tax—no surprise there, but there is a big debate within the public expenditure discussions about the appropriate balance between income taxes and expenditure taxes. There are those who believe that there should be a greater reliance on expenditure taxes. That is an issue, but it means that they are both providing the same function; they are both providing public revenue to provide public services. It is worth stressing that taxes are paid not as a fee for a service but as an individual commitment to society as a whole. It is no more reasonable for those who choose to spend their money on sending their children to private school to have a VAT rebate than for people to expect to get an income tax rebate.

The basic fact about this proposal is that it was in the manifesto. It was not hidden or avoided during the election campaign, and this party was elected with a commitment to implement it. Practical issues were raised, and I hope my noble friend will address them.

I have taken the opportunity to read all the submissions that were sent to me. There was a large number and I cannot claim to have read every last one or through each one entirely—there was a certain amount of copying and pasting—but I got a sense of the expressions of concern that were being made, almost entirely by parents. The issues on which I hope my noble friend will be able to provide some comfort are, first of all, children with special needs and, possibly to a lesser extent, military families.

I want to conclude with a point that makes me angry—so far none of the speakers against this proposal has made the fatal mistake of making this point—and that is the idea that parents who choose to send their children to private school care more about their children than those of us who choose to send our children to state schools. The last Prime Minister made that classic mistake, in answer to Questions in the House of Commons, so noble Lords should not dismiss it. I hope no speaker in this debate will give that idea a scintilla of justification.

3.33 pm

Baroness Fraser of Craigmaddie (Con): My Lords, I add my thanks to my noble friend Lord Lexden for his determination to enable us to debate this issue.

The draft Bill which has been published is, to me, a blunt instrument. It treats the sector as a homogenous whole, so causing unintended consequences that implementing the policy in the middle of the school year will not enable us to unravel, let alone resolve. Time is of the essence, not least the limited time that we have to speak today, so I would like to request that the Minister convenes a round table to explore with interested parties the unintended consequences of the current draft legislation in greater depth.

I declare my interest as a former pupil of a specialist vocational performing arts school. I also have a child at a fee-paying independent day school in Scotland and a sister who is a teacher at another.

In the King's Speech debate, I highlighted my worries about the impact on SEND children. Others have expanded on this, and I support them wholeheartedly. The Local Government Association has called for SEND provision to be reformed; I trust that we can explore this on another day with a little more time.

The first sentence of the Treasury's technical note published in July states:

> "The government is committed to breaking down barriers to opportunity".

For our performing arts sector, and the schools which provide highly specialist training in music and dance, even the prospect of a VAT levy has created a barrier to opportunities. The schools that deliver training for the Music and Dance Scheme are currently able to offer places on assessment of talent, not ability to pay. This will not be the case if MDS schools have to levy VAT on any part of their fees. I urge the Government to work with the heads of MDS schools to explore the case for their exemption.

Question 5 of the current Treasury consultation asks:

> "Does this approach achieve the intended policy aims across all four UK nations?"

I argue that it does not. The education landscape in Scotland is different. We have no academy schools. We have a different curriculum, which in some schools can force children to limit their choices to six subjects at age 14. Thanks to devolution, unlike in England, the Government cannot control how any money raised would be spent in Scotland. That would be a decision for the Scottish Government. There is no guarantee that it would be spent on education. Given the current state of the Scottish Government's finances, it is likely to be repurposed, like many other programmes, such as the provision of digital devices to pupils. In Scotland, independent schools have been subject to more scrutiny by the Scottish Charity Regulator than any other part of the sector, with regular reviews to ensure that they meet the "charity test", a process which does not happen south of the border.

The Government's policy on VAT was announced in the middle of the Scottish school holidays. The allocation of places happens in April each year, but with one in three secondary schools operating at over 90% capacity, there is no space in the Scottish state

[Baroness Fraser of Craigmaddie]
sector to accommodate even a small proportion of the pupils who may need to move. Schools and families have not had time to prepare. With the changes being introduced midway through the academic year, the disruption for all will be significant. Already, two independent schools in Scotland have closed. I urge the Government to pause the implementation of this policy until the beginning of the 2025 school year and to use that time to explore with us the many complex issues raised today.

3.38 pm

Baroness Finlay of Llandaff (CB): My Lords, I declare that I am an associate of the Girls' Day School Trust. I am grateful for the many sacrifices my parents made to allow me to go to Wimbledon High School after I failed my 11-plus pretty badly. I have been the governor of Howell's School in Llandaff, a Girls' Day School Trust school.

We should not be pitching one sector against another, but we must realistically acknowledge the unintended consequences of the VAT proposals and the speed with which they are being introduced. Howell's School, whose pupils come from all walks of life, estimates that 11% of families will no longer be able to afford the fees, causing disruption and distress to those forced to leave a school community where they are happy and established. Howell's will no longer be able to provide bursaries that have tided children over when disaster struck, such as three siblings I knew well, who were suddenly left orphaned and completely destitute. Continuity of education at the school and care allowed them to achieve, against all odds.

When Ukrainian refugees arrived in Cardiff, the school welcomed eight students aged three to 17 into its community. Some spoke no English; many had experienced significant emotional trauma from leaving behind homes, friends, fathers, brothers and grandparents. All had individualised timetables with extra classroom support and access to a school counsellor.

English lessons were extended to the students' accompanying mothers and grandmothers, who connected on cultural visits locally as they gradually integrated into the community. The school has, to date, waived £377,000 in fees and incurred an additional £57,000 in expenses to support these girls—and that support is ongoing. Only this week I had a letter from a disabled school leaver, who, with that school's support, has achieved university entrance to study law. I really doubt that she would have done it without being at the school.

Around 10 % of the school's applications for places come from children who have struggled in a maintained school because of bullying, anxiety and other mental health problems, a lack of support with additional learning needs, or other reasons. This is similar to figures from across the UK. Parents and grandparents desperate to keep their child going to school do without for the child to have a tailored approach to academic and well-being support, a reduced timetable, and a calm, quiet space of safety.

The fee-paying schools in Wales are integral to their local communities. They are smaller on average than those in England, and they estimate that between 10 % and 36% of pupils will have to move to state schools, suddenly putting pressure on the state sector, with between 3,700 and over 6,500 extra children, and requiring £35 million in pupil funding. Education is fully devolved, but VAT receipts are paid directly to the Treasury. Can the Minister clarify whether the whole of the predicted £1.7 billion revenue has already been allocated for England's use, or whether it covers England and Wales, and other devolved nations? Can she confirm that funds needed to meet Welsh schools' needs will come from the additional revenue raised and will include the Barnett uplifts?

I wonder whether the Minister will accept the suggestion made by the noble Lord, Lord Pannick, as outlined by my noble friend Lord Alton, to refer this to the Joint Committee on Human Rights, particularly in relation to devolved nations.

3.41 pm

Lord Forsyth of Drumlean (Con): My Lords, I have only four minutes so I will sum up my view of this policy in three words: wicked, stupid and cruel. I have spent the summer receiving emails from vast numbers of parents. The noble Lord, Lord Davies, told us he had not had time to read all of them. If he had done so, he would be heartbroken.

Lord Davies of Brixton (Lab): My Lords—

Lord Forsyth of Drumlean (Con): I am not going to give way—he would not give way to me.

These are lone parents, single parents perhaps struggling with two jobs in order to pay. They are people who put themselves in danger to defend our country in the armed services. They are parents struggling with children with severe learning difficulties. Who in this Chamber can defend the idea of sending a child who suffers with autism to a completely different environment halfway through term? Anyone who knows anything about autism will know that that would be a cruel and disgraceful thing to do. That is the consequence of this policy.

The messages are coming from health workers, teachers and small businesses, people who are struggling to pay those bills. The noble Lord, Lord Foulkes, is not in his place but he told me he was not going to listen to what I had to say because he has seen people turning up in their Range Rovers to schools. The people I am talking about do not have summer holidays and run old cars to scrimp and save to do their best for their child in their circumstances.

By the way, every single one of these parents is saving taxpayers money. For the noble Baroness to suggest that this was a tax break—it is not one unless you take the view that education should be taxed. What has happened to the Labour Party that set up the Workers' Education Association and founded the Open University? The Labour Party was elected in 1997 on "Education, education, education" and has now become the party of "Taxation, taxation, taxation".

I agree that state schools need more resources, but look at the impact that this is going to have on those schools half way through the school year. I guess Emily Thornberry did not get to be Foreign Secretary because she let the cat out of the bag. She said, "It's

fine: if we have larger classes, we have larger classes". "Let them eat cake"—she did not add. One in four children in Edinburgh go to independent schools. How on earth will state schools be able to cope with people who are no longer able to pay the cost?

I confess that I have not always been a huge fan of the ECHR, but I hope that those people with the resources will put their hands in their pockets and help my noble friend Lord Lexden and others to take this Government to court over this issue, and that the Government will realise that their time is nigh. As for the idea that this will save money—the Government have come up with at least three figures, all reducing in number—they need to read the wonderful analysis by the noble Lord, Lord Hacking, on their own Benches, as to how it will end up costing more than it will save.

I have a suggestion to make to the Government. I know they have made a silly manifesto commitment, and I know they feel that they have to do something, but they should at least take some time and not do this half way through the school year. If that is what they are determined to do, they could perhaps meet their requirement to put VAT at 5% rather than 20%, as we do on heating charges, and phase it in over a reasonable period of time. I fear that this is an ideologically driven policy of the kind that the Prime Minister showed during the election, when he was asked, "If one of your family were desperately ill, would you ever use private healthcare?" and he said no. We do not want that kind of politics in this country.

3.46 pm

Baroness Bull (CB): My Lords, the disparity of outcomes between private and state school pupils is well evidenced, and I welcome the commitment to equalise opportunities by rebalancing investment, but I hope Ministers will heed calls for more nuance in how proposed changes are applied.

As we have heard, "private schools" is a catch-all term, encompassing both schools paid for by choice and schools providing specialist education for pupils whose needs cannot be met in the state sector. I share concerns already expressed in relation to special educational needs, but I will use my time to expand on the concerns that the draft legislation inadvertently captures a small number of schools providing education for another group of children whose needs cannot be met by the state sector—by which I mean schools providing world-class music and dance vocational training to exceptionally talented children, regardless of background or ability to pay.

Successive Governments since the 1970s have recognised that if gifted dancers and musicians are to achieve their potential, they need a level and intensity of training that is impossible to achieve within the structure of a standard curriculum. In 1973, the Yehudi Menuhin and Royal Ballet Schools became direct grant aided, with means-tested DfE support for talented children from low-income families.

I declare an interest here, as I was one of those children. I joined the Royal Ballet School in 1974. The fees were well beyond my parents' means, but they had no choice, because professional ballet training must start young if a dancer is going to compete in a global marketplace. It takes 10 years of daily practice under expert tuition to achieve the flexibility, speed and strength that characterise world-class performance, and those 10 years must take place before puberty sets in.

DfE's music and dance scheme was established in 1981 as the successor to direct grant aid. The nine designated schools in England and Scotland have little in common with typical private schools. They recruit on talent first, and the majority of parents would not, in other circumstances, choose private education. At non-specialist private schools, around 7% of students receive a bursary or means-tested support. At music and dance scheme schools, it is 90%. The schools are costly to run, requiring specialist, world-class teachers, equipment, studios and theatre spaces, but there is no wealthy parent body, no large endowments and no eligibility for government building maintenance grants.

Earlier this year, the now Prime Minister spoke of the country's

"huge talent … waiting to be unlocked",

promising that people from every background and every region would have the opportunities they deserve. The Music and Dance Scheme is pivotal to this ambition, removing barriers to entry and allowing children from diverse backgrounds to dream of a career at the highest level. But 12 years of funding freeze mean the schools are already operating at full stretch. Further financial pressure will impact on quality of training, reduce diversity in the student body and severely impact the UK's ability to produce the home-grown, world-class talent for which it is renowned.

This legislation aims to break down barriers to opportunity, but including these specialist schools in its scope will have the opposite effect. Prodigiously gifted children with the potential to become world-class artists need specialist education from a very early age, education that will never be possible in the standard curriculum. Raising barriers to entry will mean that only the most advantaged children will be able to access the training fundamental to career success. I would not have become a ballet dancer.

I join the noble Baroness, Lady Fraser, in asking the Minister: will she convene a round table with interested parties and experts to explore how this legislation can avoid irreparably damaging the schools that underpin the UK's success on the world stage?

3.50 pm

Lord Maude of Horsham (Con): My Lords, the register carries my declarations that I am chair of governors at Brighton College, a large and successful independent school—which is obviously in Brighton. I was previously chair of governors at my old school, Abingdon, which when I and my brother were there was a direct grant school, a status that was abolished by the Labour Government in the 1970s. It occurs to me to wonder why successive Labour Governments have been more associated with destroying categories of schools—first the grammar schools and direct grant schools and now, in all likelihood, some proportion of the independent sector—rather than creating schools, which would be more natural for a party which, as my noble friend Lord Forsyth suggested, claimed to be for "Education, education, education".

[Lord Maude of Horsham]

Of course, this was a manifesto commitment, and the Government will rely on that. I remember being told when I was in government that relying on the manifesto commitment is the last refuge of the scoundrel; it is there but it did not have to be done this way. The precipitate haste with which this has been pursued and the lack of any kind of impact assessment when the effects are manifestly clear just from the speeches being made in this Chamber today—I particularly pick out the powerful speech from the noble Lord, Lord Addington, based on deep knowledge and deep passion on the effects of it—mean that it is important that the effects should be understood. It is assumed that there will be a cash dividend from this but that is by no means clear. You would think that a Government who claim to be committed to the writ of the Office of Budget Responsibility might want to hear what it has to say about this before progressing at this kind of speed.

I want to say a word about some of the other things that the independent sector contributes to the benefit of society. Brighton College was responsible for establishing the London Academy of Excellence in Stratford in Newham, providing an excellent sixth-form education for some of the most disadvantaged children in that very disadvantaged borough. It now ranks among the top 10 schools of all kinds for A-level outcomes this year. The percentage of LAE students eligible for free school meals is more than five times higher than any other school in that top 10.

The LAE was founded by the Brighton College headmaster, Richard Cairns, who has led it from being a middle-ranking school to absolutely top of the tree in just 18 years, and a Brighton College governor. It receives a cash donation from the Brighton College community, and five Brighton College governors serve on various committees there. It would not have happened without Brighton College, and large numbers of bright, gifted children from disadvantaged backgrounds have benefited from it.

Brighton College has offered 24 refugees from Ukraine places with 120% scholarships. It also offers Opening Doors scholarships to disadvantaged children from local families—I am delighted to see my noble friend Lord Soames here as we both had children going through Brighton College and he now serves as president of the college—and many of those children have secured places at top universities.

Finally, I want to say a quick word about the value of education as an export. The Government do not quite understand the prestige and the cachet that attach to British education around the world, both in attracting students from overseas to schools here and in the growing number of UK schools that operate around the world, particularly in Asia. There is a hard-currency benefit to that in terms of cash coming into the country, and there are softer benefits of great value from the lifelong networks that these young people develop and the bonds of affection that flow from them.

I can see that this must have felt like a free hit at the time, but it is not turning out that way. I advise the Government to think again.

3.55 pm

Lord Griffiths of Burry Port (Lab): My heart has been warmed by the illustration just offered by the noble Lord, Lord Maude, and others like it could be multiplied and accumulated. However, on the other side we can find stories that say exactly the opposite and make the opposite case. Not always do private schools favour places in disadvantaged localities in the way that he has described—would that they did.

I passed the 11-plus at the age of 10, but a year later my brother failed, so we lived in two different universes: we had friends who were not the same friends; we dressed differently; he left school at 15, and I had a Rolls-Royce education. However, at the end of the grammar school—which for me was a godsend; it made me—my headmaster took me into his study and said he was forming an Oxbridge class but was not putting me in it, even though he thought I was clever enough, on the grounds that I would not be able to cope with Cambridge socially. It was the right decision and I have never held it against him, but it made me determined to spend the rest of my life, as much as I could in the sphere of education, trying to ensure that educational advantage was offered equally to all, not simply on the basis of money.

I am not even talking about hugely super-rich people. My three children were educated in private Methodist schools: The Leys in Cambridge and Kingswood School. I spent 38 years in school governance, if you add it all up, and the last 20 years as chair of the trustees of the Central Foundation Schools of London, with a school in Islington and another in Tower Hamlets—I know these places to my fingertips. But they are part of the Dulwich foundation. They are beneficiaries. They get a huge amount of money that helps to pay for a teacher and helps with language-learning skills, sport and pastoral work. We appreciate the 5% that we get in each of our two schools from the total disbursement. However, the total disbursement is £7.5 million, and 85% of that £7.5 million goes towards the three public schools at Dulwich. When you look at this year's A-level results this year and see what our little schools in London got, and compare that to what the rest of the foundation got, you are left with one conclusion: we must build an educational sector that is far more open.

We talk about choice. The people I am thinking about, the 2,500 pupils in our two schools, have no choice. We talk about people doing two or three jobs, but hundreds and hundreds of people in the inner city do two or three jobs with no access whatever to these privileged places. We must be careful about how we lampoon each other.

When I was a governor at Kingswood School, I said, "I can only think of the privileges of this school if you have a social policy that seeks to spread its benefits as widely as you can". Then, at the Central Foundation Boys' School in London, we had a boy with three A* grades who had work experience at three stock exchanges—Tokyo, London and New York—and was captain of the football team. He was fantastic, but he was refused at Cambridge because he had not studied the right kind of mathematics at A-level.

We are grossly saddled with disadvantage, and we need to do something about it. If the VAT project does not do it—and I am prepared to admit that doing that so suddenly presents real problems—at the same time, let us not think we have solved any problems by dealing critically with what is on the table now. The battle will remain, and I am committed to fighting it to my dying breath.

3.59 pm

Lord Taylor of Holbeach (Con): My Lords, I am delighted to follow the noble Lord, Lord Griffiths. I have always liked his contributions to debate and today is no exception. I particularly wish to thank my noble friend Lord Lexden for proposing this debate, because it is opportune. It is really important that we talk about this issue. The debate shows that education is seen by all of us here as a public good—something that needs investment.

I think the present Government are mistaken in believing that they have a solution in trying to transfer resources from the independent sector to the public sector. That is the wrong way to go about raising money to reinforce education. There are other ways of raising tax not on the subject itself. If it is education today, it could be medical and social care tomorrow—the NHS equally needs investment; its staff equally need pay. I say to noble Peers opposite and the Government that I really think this is the wrong way of going about the problem.

I will talk a little about my personal history. I am a local person: I was born in Holbeach, lived in Holbeach and went to Holbeach infant school, aged four. I loved my school; I always liked being educated and learning things and it was a very satisfying experience. But, unfortunately, when I got to the end of the school and was due to move on to secondary school, aged nine, I was too young to sit the 11+ and there was no secondary modern in Holbeach. Because my parents were state-educated individuals, I was directed to the Holbeach boys' school, which contained adolescents aged 15. My parents were horrified that I would not be able to cope with this and they sent me away to school.

Some people may say that that is a terrible thing to do to a child, but fortunately I had a grandmother who sent a brother with me; I am the eldest of five siblings, and my next brother came away to school with me. It was an experience which set me up for life. I am lucky enough to have gone to an excellent public school, with an old boy here, well known to the House—my noble friend Lord Naseby—and Lord Paddy Ashdown, whom many people here will remember. It was a good school. It opened my eyes and gave me opportunities that I would not otherwise have had.

I do not want to penalise people who are not necessarily rich. It has been pointed out time and again, and it is true, that people who look for independent education for their children just want what is best for them. Not everybody is able to do it, but we should not deny it to those people who can afford to do it. This is a misguided policy, and it is clear that the arguments presented about its immediate introduction present a lot of problems for the Government.

4.03 pm

Lord Roberts of Belgravia (Con): My Lords, unlike my noble friend Lord Taylor, I had a terrible time at my public school and was expelled—or, more accurately, I was asked to leave and not come back—so I cannot be accused of being parti pris in this in saying that I support public schools.

There is one iron law in politics and history—namely, the law of unintended consequences. As Winston Churchill said in his eulogy for Neville Chamberlain,

"we are so often mocked by the failure of our hopes and the upsetting of our calculations".

As the noble Lord, Lord Lexden, and several other speakers in the debate have pointed out, the present proposal is suffused with the dangers of unintended consequences. The Government want public schools to become less elitist and exclusive, but as it will be the less financially secure schools that will have to shrink, and maybe in some cases close, that will leave the rest of the independent sector more elitist and exclusive.

The Government say that they are prioritising economic growth, but they will effectively let parents keep about £400,000 of post-tax income per child, if they take their children away. Studies show that many parents will reduce their work hours, retire earlier than planned or leave the workforce entirely, with serious effects on the economy and the public finances. The Government say that they welcome the huge amount of philanthropic work that public schools do in their local communities, but that will understandably be among the first things to go when schools have to draw in their horns financially to keep school fees down.

The Government want more working-class children to go to Oxbridge, but if middle-class parents have to withdraw their children from public schools and send them into the state system while tutoring them privately, the likelihood is that Oxbridge will become more middle class rather than less. The Government are committed to fighting bullying in state schools, but this measure is likely to unleash more bullying, based on class prejudice against middle-class children who join state schools half way through the school year.

The Government say they want lower class sizes, but this measure will probably raise class sizes in state schools, especially if the new teachers cannot be hired on the expected VAT, which will not be forthcoming if parents withdraw their children from public schools in significant numbers. The Government say that they want to encourage educational charities, yet they are setting a hugely dangerous precedent in taxing them, and it is hard to escape the conclusion that they are doing this for a tribal shibboleth, more for ideological than for practical reasons.

This measure unfairly penalises those incredibly useful people in our society—parents who pay for education twice, once through their taxes for other people's children, and once in school fees for their own. Instead of spending their money on luxuries, they invest it in their children's education. This is therefore essentially a tax on those parental sacrifices, and one that comes fraught with myriad unintended consequences.

4.06 pm

Lord Hampton (CB): My Lords, I must join the chorus of thanks to the noble Lord, Lord Lexden, and pay tribute to the noble Baroness, Lady Barran; we may have disagreed at times when she was a Minister, but nobody could doubt her dedication to making life better for young children. I also welcome the new Minister and, as ever, declare my interest as a teacher in a state school in Hackney, where my children have been educated as well. My own education was quite mixed. I went private, and to a local state school—Dyson Perrins CofE high school, Malvern Link. Yes, I thought that might make the Minister look round.

Everyone wants the best for their own children; that is obvious. But history is littered with people who have talked up the state system, then sent their own children private. The best education should be available to everyone, and it should be free, and I am lucky enough to believe that my children have had the best education.

I also believe that those who want to should be able to pay for their children's education. But there is a climate of fear and division in this country, and an idea that private schools equal success and everybody else is going to school with knife-wielding maniacs, in hideous schools with massive classes. I can tell you from personal experience that you can quite happily teach a class of 32, where everyone learns and makes progress, in safety. This is a battle for the middle ground.

We have all had emails from parents with really difficult stories but I have a suspicion that, for some of them, at the first bump in the road the child was whisked out of school and home educated or sent private. I genuinely believe that an education is more than passing exams; it is about learning to face other people—people who do not look like you, people who do not think like you. That is how we get through life; we have to make the best of the situation.

There is an assumption that private schools are at the heart of the community, that they all provide charity to all around and that it would be a disaster if some of them failed. I cannot help feeling that if some private schools failed, that would release a lot of engaged children and motivated parents who could work with state schools, propelling the attainment upwards. It might even bring some badly needed teachers back into the state system.

If parents are unable to afford the fees, it might be a relief to give somebody else the payment of their children's education. Who knows, their children might even thrive in a mixed environment. But, for this, there must be space in state schools, SEN support and, critically, the teachers to teach. I join everybody in asking that the VAT exemption come in gradually. Also, the briefings that we have had have been radically different in terms of how much money this will cost and how much we will have to recoup. I look forward to the Minister's thoughts on that.

With the impact of VAT, the best private schools will survive. Those who want to pay will have the choice. Some of the less good schools will wither on the vine and perish, mourned by very few, but whatever we do, we must be sure that any changes benefit the vast majority of our young people.

4.10 pm

Lord Balfe (Con): My Lords, I thank the noble Lord, Lord Lexden, for initiating this debate which, of course, was tabled before the election. We are now catching up. I agree with noble Lords who said that this was in the manifesto, but it is still a very vindictive policy and the way in which it is being introduced worsens things. Top schools will still be okay. Eton, Harrow, Winchester and the like will not go under. They will stay there. The only schools that will go under are those that are on the margin anyway.

There are good schools in places such as Woking, Guildford and Kent, in areas where there are grammar schools. We already have a lot of schools in the state sector which are as good as public schools.

Two of my children went to public school. I observed the huge struggle that parents had in paying fees. It was quite common for there not to be a summer holiday. They went to a very average public school in Ely. We used to know it in slang terms as "Farmers' Comprehensive" because it catered for the rural community of the north part of East Anglia. However, many of the parents there struggled very much. Not only that, when two parents sent their children to the school, for one of those parents nearly all their income was spent on those school fees.

I was lucky because my wife earned more than me for a good period of our early marriage. Most of that money went on childcare, first on nannies, then on schooling. It was very beneficial because I was working in Brussels, and we felt that my son would benefit from having male teachers around and not being in a totally female environment. However, we also felt that my daughter, who had mild dyslexia, would benefit from the dyslexia programme of the King's School in Ely, which she did. She went on to university, got a 2.1 and now holds down a very good job.

There are a thousand stories behind all this. Look at the family reasons. I am the president of BALPA, the pilots' union. Pilots are often away for a week at a time. Sending their children to weekly boarding helps to round them and to give them a start in life.

The same was true for my wife, who is the daughter of a Foreign Office diplomat. She went to public school at 10 and did not see her parents, apart from during the holidays, until she was at university. This is the sacrifice that many people make for their country and the schooling system helps with that.

Finally, I have one question for the Minister. King's Ely has a burgeoning group of Asian children. It is likely that, if their numbers go down, the school will pull it up by bringing in more migrants. Have the Government made any assessment of this? How many migrants are we to expect? Will there be visas for parents, noting that health service workers can no longer have family visas? Will the children be able to bring their parents in to help look after them, or is this yet another bit of the puzzle that has not been thought out?

4.15 pm

Lord Lucas (Con): My Lords, I declare interests as proprietor of the *Good Schools Guide* and having sent my children to both state and independent schools.

I do not think taxing education is right, but we do. If I spend £20,000 on holidays, I will pay £3,333 in VAT. If I spend that same amount on schooling, I will forgo twice the value of that, and the state will benefit by twice the amount for the cost of schooling that it would have incurred otherwise. In putting VAT on these parents, we are not making tax fair: we are taking people who are already taxed at twice the rate of other people and taxing them at three times the rate. It will not hurt the rich; it will hurt the people who are struggling to afford the fees as they are. As I know from my work at the *Good Schools Guide* and through correspondence in this House, most of them are people who, one way or another, have found that the state will not educate their children in a way that they need. As the noble Lord, Lord Addington, said, a lot of this is due to special needs: a lot of the education is not provided through education, health and care plans but just as part of ordinary education.

This is a tax that is focused on people whom we ought to value and not punish. I do not believe that it will raise the money that it said it will either. There are too many leaks. There are families where the local state system cannot provide local schooling, where they will have to ship them 10 miles or so. You might think that 10 miles is fine, but it has to be by taxi—and 200 days a year of taxis, morning and afternoon, costs 10,000 or 20,000 quid, depending on the state of traffic. There will be parents who opt out of working so hard if their children go state. There will be all sorts of leaks. I really hope that the Government will commit to making a clear evaluation of the effectiveness of this policy and whether it actually raises money.

What I am most concerned about is the merciless decision to put VAT on in January, to force children to move schools mid-year, in the middle of exam years, when there is no chance to negotiate proper provision for SEN; healthcare workers who need to find a way to be able to work the hours they are asked to and cannot turn up at 3.30 pm to pick up their kids from school; and the number of letters I have received from members of our Armed Forces. They are not well paid. It is astonishing that we should treat people who dedicate their lives to our safety in this way, and I find it astonishing, given the years I have been here and the respect I have for the party opposite, that it should contemplate treating children with such cruelty. It really is not in the blood of the Labour Party that I know. I really hope that the Government will think again and make the start date next September.

When approaching the question of the educational divide, I hope this will one day be for the Labour Party a matter of hope not hate. There is so much that the independent sector could do—is doing—for children who need particular help. For instance, there are schools that take on children in care, and there are many other things that could be done by the independent sector, if the Labour Party would only harness its power rather than trying to stamp on it. I think we would all gain.

4.20 pm

Lord Bilimoria (CB): My Lords, the Labour Party's manifesto stated that if it was elected it would remove the exemption from VAT—and business rates, which noble Lords have not mentioned—for independent schools. It said that there would be a benefit of £1.5 billion and therefore it would employ 6,500 more teachers in the state sector.

I thank the noble Lord, Lord Lexden, for his excellent opening speech, and I agree with 100% of his recommendations. I am a governor of Wellington College, where our older daughter was at school for five years under the leadership of Sir Anthony Seldon, the legendary headmaster. I am an international student from India. I came here at the age of 19. I co-chaired the All-Party Parliamentary Group for International Students, and I am president of the UK Council for International Student Affairs. There are many international students at our boarding schools. I attended Hebron School, a British international boarding school in India, and I was back at the school in April for the 120th anniversary celebrations. Recently, I have been appointed honorary president of the British Association of Independent Schools with International Students.

I was a member of the Times Education Commission in 2022, when I was president of the CBI, and we emphasised very clearly that 7% of children go to our private schools. I quote:

> "The commission recognises that many independent schools offer an excellent education. When only 7 per cent of children go to private schools the priority must be to improve the state schools that educate most young people in this country rather than bashing the independent sector for the sake of class war".

Imposing VAT will make it unaffordable for many children to attend private schools, and that will put a burden on the state school sector. We are talking about 600,000 students at independent schools, and 28.5% of them get some sort of support. The total number of international students is 27,000; that is, 5% of these students are international. If we look at the fee gap, it is roughly £16,000 for independent schools and £8,000 is spent on a state school child, so the different is double, and I will come to that at the end.

Independent schools save taxpayers money, as has been said by many noble Lords. Oxford Economics found that this saving amounts to about £3.8 billion just from ISC schools. Now here is a fact: 39% of the current Cabinet, 48% of FTSE 350 CEOs, 59% of Permanent Secretaries and 52% of diplomats were privately educated.

There are 65,000 boarders at ISC schools. The contribution of boarding schools is £3 billion and 64,000 jobs. It is phenomenal. The 26,000 overseas boarders contribute £2.1 billion. Unlike UK students, international pupils who come here have a choice to go to any country. If the fees are increased, there could be a 15% reduction in their number, which would reduce the contribution by £315 million. Here is another fact: international students who come to our boarding schools go on to British universities, so our universities benefit from them as well.

Whatever happens, we must make sure that there is an exemption for children with special needs, whom the noble Lord, Lord Addington, mentioned. Two of my children have special needs. If one of them had not gone to one of the top independent schools, he would not have got three A*s at A-level and a first-class degree from the London School of Economics. We owe that independent school for what he achieved.

[Lord Bilimoria]

We must exempt service families on continuity of education allowance. Independent schools add £16.5 billion to the UK economy, save the taxpayer £4.4 billion, provide 328,000 jobs and produce £5.1 billion in annual tax revenue. I conclude with this, and it is a fact: the state school budget is £60 billion and here we are talking about getting £1.5 billion more. Who is doing the thinking over here? We underspend on our state school children: £16,000 in private schools, £8,000 in state schools. We need to increase investment in state schools and not rob Peter to pay Paul. This is penny-wise, pound-foolish nonsense.

4.23 pm

Lord Hacking (Lab): My Lords, I stand here as a supporter of the Government, but no support can be blind. I cannot support the proposed VAT on independent school fees, whether or not it was in the manifesto. It is immoral and destined to bring about significant social and political damage to my party and the country.

There are many serious worries. For example, the introduction of an education tax will put us at odds with every country in the European Union and all federal and state law in the United States of America. There is also a serious worry about a blatant breach of the education provision in article 2 of the first protocol of the European Convention on Human Rights. Unfortunately, the noble Lord, Lord Pannick, is not among us, but we have heard his views through the noble Lord, Lord Alton, and he supports entirely what I just said.

The most worrying feature is the failure properly to assess the likely level of forced pupil migration from the independent to the state sector—a vital assessment. The VAT proponents have not revealed their calculations, but the arithmetic is such that any pupil migration above 10% will wipe out any profit for the state and become a progressive burden on the state. Since the VAT proponents are still claiming a profit of between £1.3 billion and £1.5 billion for the state sector, the assumption has to be that they are the working on a very low pupil migration figure, possibly as low as 5%.

There are other calculations. The October 2022 parent survey by the Independent Schools Council, conducted among 16,000 parents, found that 18.8% of parents were likely take their children out of independent education. In April 2024, a parent survey by the *Times* newspaper set a pupil migration figure of 26%. A preparatory school in Surrey forecasted the same 26% migration of pupils. The Hulme Grammar School in Oldham believes that 50% of parents will find it difficult to meet the VAT school fees. Scaling down the figures as far as possible, this means we are risking no less than 80,000 to 108,000 pupils being forced from the independent sector, with all the education disruption and distress this will involve, and with a big burden of new pupils being placed into the state sector.

The task, therefore, upon which I have embarked is to persuade my party not to carry this measure further forward. It must be noted that the well-endowed schools constitute only 10% of the independent sector, as the noble Lord, Lord Lexden, pointed out. The axe will fall not on them, although they will be affected, but on the hundreds of independent schools, some very small, throughout the country which are providing most valuable education to supplement the state sector. Take, for example, the independent schools in Greater Manchester that I recently visited—the Hulme Grammar School, which I have just mentioned, and the Bolton School in Bolton. As I learned, the parents are just working people employed in health, education, catering and hospitality. They are taxi drivers, joiners, carpenters, and all are making great sacrifices to provide a better education for their children. These are the very people my party has pledged to support.

Finally, I can only repeat that this VAT proposal is wrong. Any reasonable assessment of likely pupil migration will show that it will provide no benefit to the state but would be a heavy burden on it. I ask the Minister and the Government to respond positively to all these concerns and, as promised by the Leader of the House, to listen to constructive criticism.

4.28 pm

Baroness Garden of Frognal (LD): My Lords, I find this a sad debate, but I am delighted to follow the noble Lord, Lord Hacking. I thank the noble Lord, Lord Lexden, for his championship of the sector and his spirited introduction.

We had high hopes that the incoming Labour Government would champion education, move away from the stultifying knowledge-based curriculum and look for opportunity for all. The Liberal Democrats would never tax education, and worry that singling out independent schools in this way betrays a vindictive lack of understanding of the breadth and social impact of the sector. I thank all those who have written such moving letters to us about their own stories.

Anyone who knows anything about education knows that changes should only ever be made at the beginning of the school year. As many have said, introducing such a significant measure in January will bring great unnecessary stress, as pupils struggle mid-year to adjust to significant change. I join the appeal to the Minister at the very least to postpone this until September, which will also give the chance for proper scrutiny and impact assessment. I fear that the huge sums the Government expect to raise for teachers will prove far from the reality.

In four short minutes, I will raise the issue of military children. With my RAF husband, we moved 24 times in 30 years. At the age of nine, both our daughters were starting their seventh school, and we took the decision that they should board to get continuity. We could do that only because of the substantial forces education grant. My husband was a high-flyer, but we never had much money. When the school decided to change school blouses and summer dresses, I bought material and sewed six blouses and six summer dresses, because the material cost only about a quarter of the ready-made clothes. I assure noble Lords that this was not for fun: we simply could not afford the uniforms from the shops.

Military children already suffer upheavals and uncertainties, so will the military education allowance be raised to pay the VAT? If not, I fear that, as was

mentioned, many military families will be placed in an impossible position and military children will once again be disadvantaged.

The Bill, alas, smacks of prejudice rather than clear thinking. It is of course a matter of concern that the 7% or so of those independently educated end up in much greater numbers in top jobs, but we should look at the reasons why. What is it in private schools that works better than state schools? Surely, we should aim for state education to emulate what works in the private sector, rather than destroy schools that are giving great education, often to difficult and challenged children.

Many independent schools are small, with 200 or 300 pupils. As we have heard, many cater for special educational needs or specialist skills—music, drama, dance and art, subjects that the Conservative Government did much to abolish in state schools. They cater for parents of limited means, who struggle to do the best for their children. This increase in fees could be the straw that breaks the camel's back. But where in the state sector are the places for additional SEND pupils, or, as the noble Baroness, Lady Bull, pointed out, for the creative stars of the future?

Parents work flat out to keep their sons and daughters in school environments where they can flourish and succeed. If the sums simply do not add up, they will be dismayed if their children have to return to schools where they have struggled and failed. It is a matter of great regret that this unkind and uncosted measure was put in the manifesto. It needs much greater scrutiny if we are not to find many vulnerable children, who were happy and achieving, cast into an uncaring world, with their life chances ruined and parents distraught. I beg the Minister at the very least to delay this until September and to look carefully at the damage the Government are doing. The speakers in this debate have surely given reasons aplenty for a pause and a rethink.

4.32 pm

Baroness Monckton of Dallington Forest (Con): My Lords, I declare my interest as set out in the register: I am the founder and chairman of a charity that, among other things, is a special post-16 institution. Our aim is to prepare young people for employment. The charity is Team Domenica, named after my daughter, who has Down's syndrome. Also, we have staying with us a Ukrainian refugee child, who attends the nearest public school, free, along with four others.

Non-maintained special schools have been excluded from the new 20% tax. However, these schools are only a very small part of the special educational needs landscape. Department for Education data shows that there are only 52 such schools, educating 3,965 pupils. Yet there are 753 independent special schools, educating nearly 25,000 pupils, all of whom are potentially liable for VAT. Where their place is funded by the local authority, this can be claimed back, but the school still faces the cost of registering for VAT and the burden of managing the system.

Where does that leave specialist colleges such as ours, of which there are 130 in England? At the moment, all Team Domenica's candidates are over the age of 18, but, if we decide to take on students between the ages of 16 and 18, the VAT would fall upon not only those individuals but on every single pupil at our college. We would also lose our business rates relief, as pointed out by the noble Lord, Lord Bilimoria. In a field where there is already such a grotesque volume of form-filling, we will have the pointless bureaucratic nightmare of recycling money that comes from the state only to return it. The Government would effectively be taxing themselves. This would perversely discourage extending this potentially life-transforming service to some of our most disadvantaged young people. These 130 institutions, of which we are one, are the only alternative to mainstream further education for people with more complex learning disabilities.

On the wider point, which other Members in your Lordships' House have raised, concerning the 94,000 SEN pupils placed in private mainstream schools, only 7% of them have an education, health and care plan, which means that the overwhelming majority are paid for by the parents, many of whom will already be at the limits of what they can afford. A large number of these pupils will have been taken out of maintained schools and transferred by their parents to the private sector out of desperation, as these children, particularly those on the autistic spectrum, have not been able to cope with the large class sizes.

The general effect of this tax will be to drive more SEN young people into the maintained sector, which is already inadequate at meeting these needs. This will make more parents go to tribunals if the local authority refuses to give their child an EHCP—which happens all too frequently. I have sat in on some of those tribunals. I would like to invite the noble Lord, Lord Addington, who articulated with such passion and anger what happens in those tribunals, to come with me to the next one that I have to attend. This is an exhausting option for parents already struggling to cope. Some 96% of such hearings end in favour of the family, but at a huge emotional cost.

No previous Government have taxed education—it is seen quite rightly as a public good. But to tax parents of children with special educational needs, parents whose lives are already so challenged and difficult, and who often struggle more than people could imagine, is cruel. I hope that this is merely an oversight on the part of the Government, but, if such is the case, that is itself a problem, because people with learning disabilities are too often forgotten. They deserve so much better

4.37 pm

Lord Black of Brentwood (Con): My Lords, I declare an interest as president of the Boarding Schools' Association and the Institute of Boarding. This is an intensely personal issue for me. My beloved parents sent my brother and me to Brentwood School, an independent school. They were not at all wealthy—my father owned a shoe shop and my mother looked after the family. It was a real struggle for them, but they never regretted it. To their sacrifice, and an exceptional education at Brentwood, I owe everything. My parents were just the sort of people, battling to make ends meet to pay the fees, who would have been hit hardest by this spiteful policy. They would not have been able to cope with a sudden 20% increase, especially halfway

[Lord Black of Brentwood]
through the school year, and we would have been placed in a state school, adding to their overcrowded classrooms. That is what will happen now—one of many reasons why this policy will end up costing taxpayers money. This truly is voodoo economics. Those affected will be young people at their most vulnerable. They are not statistics, but children with whose lives this Government are heartlessly toying.

Fifty years on, I am chairman of governors at the school, and I declare my interest accordingly. Abundantly fulfilling our charitable purposes, we play our full part in helping many from less well-off backgrounds. We spend nearly £2.5 million each year on over 120 bursaries, half of which are fully funded. We have an active programme of partnerships and volunteer programmes with the local community, and we work with many local state schools to provide sporting, musical and science facilities, as well as donating laptops. That is replicated across the sector. However, all that is at risk if VAT, alongside the removal of business rates relief, hits the financial sustainability of independent schools.

A prime duty of government in education policy should be to encourage excellence access—hallmarks of schools such as Brentwood. This policy does the opposite: it is a tax on opportunity and achievement. If I dare use this phrase, it is the first time in five decades that a Government have had levelling down as an aim of education policy, rather than levelling up.

Brentwood is also a boarding school. Boarding schools, both state and independent, are a vital part of the education sector, contributing £3 billion a year to the economy and providing 64,000 jobs, as the noble Lord, Lord Bilimoria, said. They educate 70,000 children a year, with 25,000 coming from overseas, making them part of the incredible international success story of independent education. They play a particularly important role in training young people in music, singing and ballet. As such, they are a crucial part of the UK's creative economy, especially at a time when music education is collapsing in state schools. They also provide indispensable continuity of education for military families, on whom we depend for our freedoms. The Government say that will not charge VAT on state boarding fees but will on independent boarding fees. Why on earth should they be treated differently, if not simply for ideological reasons? Should not fees for military families, and for students enrolled in music and dance schemes, be exempt, in the interests of wider public policy and at a cost of just a few million pounds?

This cruel policy—in sharp contradiction, I might say, of our obligations under the Universal Declaration of Human Rights—shamefully puts the interests of crude ideology before those of children, many with special needs. The Government must delay its implementation until September 2025, undertake a proper consultation, talk to the sector and come back with plans that are properly thought through, costed and practical. It is time to put children before party.

4.41 pm

Baroness Butler-Sloss (CB): My Lords, I declare my interest that I went to an independent school, as did my children. I must say, like many others have said so far today, that doing that spent all our money. We did not take foreign holidays and things like that, but it was worth it.

I strongly support what the noble Lord, Lord Hacking, said, as well as many other speakers. The Government have not looked across the independent sector; they have concentrated on the great schools. As has been said, the great schools will survive, probably largely because of foreign pupils.

I have had a lot of experience of small independent schools, right across the country, and I have had—like everyone else here, I am sure—endless emails from parents from small independent schools, many of which are likely to close. They are often local, and parents have put their children in them for very good reasons. One example I read was of a nine year-old autistic boy who is extremely clever. In the state sector, he was absolutely hopeless. He was removed and sent to a small independent school, where he was cherished. That sort of child may well cope in ordinary school if he has sufficient help, which this child did not have.

I also have a personal experience. One of my grandsons is profoundly deaf. He is American, and he went to an independent school in Los Angeles because he could not cope with a lot of noise and had to sit at the front of the class to be sure to hear what was going on. I am sure that similarly profoundly deaf children in this country going through ordinary education would not necessarily have a very good time.

I have to say that I am very concerned for the people on modest incomes—many of your Lordships have already been talking about modest incomes—who are still taking the trouble to spend money on education rather than on holidays and other things. That is what is being attacked here with this proposal.

As I said, many small schools are almost certain to close. What on earth will the effect be if, in the middle of the academic year, a considerable number of children have to go into the state sector? We know that many schools in the state sector are overfull already, and the teachers will not be there because the money has not yet been raised. I am particularly concerned with pupils in their GCSE and A-level years; nobody has yet spoken particularly about those two groups. How on earth will they go into the state system with probably a completely different programme, working in a state where they absolutely will not be able to cope with what is going to happen? If they do not look at anything else, the Government must look at January. Finally, I ask them to please look at SEND, at special schools for other needs and at military schools.

4.45 pm

Lord Kirkhope of Harrogate (Con): My Lords, I declare my interests in this subject, first as a former pupil, then a parent and then a governor of the independent Royal Grammar School in Newcastle upon Tyne. I will concentrate some of my remarks on giving a few facts about my old school. Established in 1525, it is coming up to its 500 years. The school has always promoted a rich social diversity. When I attended, a little later than that, we had the benefit of the assisted places scheme, with many students attending based on their potential, not their financial circumstances.

The school has had one of the most distinguished academic records of any school in the United Kingdom, particularly in its region, the north of England.

When the assisted places scheme was withdrawn, the school found ways of keeping its diversity by offering support and finding some or all of the fees for many deserving students and later, to this day, seeking bursary advances from institutions, former pupils and others to maintain that broad offer. Nearly 100 students at the school are currently supported by bursaries. Since going co-ed the pupil roll has gone to more than 1,300, and the mix has added to the comprehensive nature of the education provided. But the school has never considered itself as a privileged island, remote from the community. I am sorry that the noble Lord, Lord Griffiths, is no longer in this place because his reference to this is important. The Minister can get confirmation of that from north-east representatives at all levels.

There is a genuine pride of that establishment in the region. The Labour-controlled Newcastle City Council is constantly in touch with the school and using its assistance in various ways. The governing body has local authority representatives from the neighbouring areas, and its contribution to the community includes the sharing of its assets. More than 100 state schools in the north-east of England benefit from Royal Grammar School specialist staff, who assist with subjects including maths, physics, robotics and computer science. In its charitable status declaration, it includes reference particularly to providing facilities of social welfare to the public at large, with a view to improving the conditions of life in Newcastle upon Tyne and the north-east of England. This is really important.

Alumni have included many who have gone on to be leaders in their fields, in academia, medicine, the arts, the law, sport, religion and public service. I was interested to hear the reference by the noble Lord, Lord Alton, to the ECHR; I think I will have to advise my honourable friends standing for the leadership of my party of that point, in case they develop that theme too much, but it is very important. Can the Government please examine carefully whether legality exists in this case? If they persist in their plan, may they please at the very least look at ways in which they can give concessions to reflect the community output of a school based on its belief in encouraging good education everywhere?

Although bursaries are a means of benefiting those from poorer situations—from an RGS education, for instance—they do not benefit those parents who narrowly fail to meet the criteria for such awards or where the limit of grants has been reached. Many struggle to give their children the opportunity to receive this form of education best suited to their needs. Levying VAT on fees will have a big impact on those families and force compromises, including on services offered by the school both internally and externally. Regardless of the commitment of the Government to this policy, I therefore hope that they will find ways to recognise schools such as the Royal Grammar School in Newcastle, with its strong involvement for good education and community concern.

4.49 pm

Lord Winston (Lab): My Lords, I work at Imperial College where I am a champion of the outreach group, which has grown considerably over the years. It started 50 years ago; we called it the Pimlico project. That school has benefited massively from the sort of work that we do with it, and across London we have done this continuously since.

The big problem is outside London, where what I am seeing, as the person who represents the college mostly outside London, is truly frightening: the lack of aspiration and ambition, and the number of kids who do not consider that it is worth being at school after the age of 15, let alone 16, or who are not able to do A-levels because there is not enough money to do that. There is a crisis in our schools, and it is a crisis in the state sector. It is not diminishing. I go into schools in the north-east and north-west of England. I spend much time in East Anglia, 10 or 15 miles from Cambridge, one or the great seats of learning, and it is extraordinary how great that deprivation is. I also work in the West Country and more recently in Wales, particularly in the parts that are difficult to reach in the middle of Wales on the coast. It is a five-hour journey for me, meaning I have to stay overnight. I wondered what the hell I was doing there, but when I saw the sort of things that I could stimulate, I was completely converted to realising that we are doing a useful job.

We are not going to do anything to deal with the massive problem that we have in some of our state sector—not all of it, but where it is poor and diminished there is some urgency. As for the idea that somehow levelling down by taking money from the private schools is going to make a difference, it cannot possibly. The sort of money that is involved is trivial compared with what is needed. Unfortunately, my Government, which I absolutely support, have to recognise that we need to think of much more sensitive ways of dealing with what is in fact needed.

What we are doing with the outreach at Imperial is using the private schools. To take one example, Peterborough is a pretty poor area. Lots of state schools there are not doing very well. We focused on Oundle, which is in the centre up there. Oundle has been amazing. I have visited Oundle maybe seven times in the last 10 years, maybe more. Other members of the college have gone there too. They have connected with the state sector and made a huge difference to the state schools in that collaboration. Those sorts of collaborations are what we should have done in the health service under Tony Blair's Government, bringing the private sector into the health service, but he felt that the party would never stand for it. We now have another opportunity with education; we have to consider how we can manage that. The attitude of damning the private sector, with all the objections that we have heard—and I agree with them completely; they are really serious—needs to change.

It is all very well to talk about a manifesto commitment. Everybody can believe in their party, but nobody on either side of this Chamber can believe in everything that the party believes; that is madness. Here, we have to think again and recognise that we have to do something about it.

4.53 pm

Lord Naseby (Con): My Lords, I think it is plain to all noble Lords that it is wrong to put a burden on certain families who, faced with increased fees caused by a policy of introducing VAT, find themselves totally adrift. Those children will undoubtedly suffer.

Frankly, independent education has been with us for centuries. I declare an interest as having been at Bedford School, which was founded in 1552. It is a boys' school of just over 1,000 boys, the best part of 25% of whom board. They do so because their families work somewhere abroad and there is no alternative. There is no state boarding. We must reflect on that dimension.

We also need to recognise that children today, whether in independent or state education, have been through a shattering experience with Covid. I do not know whether noble Lords saw what happened in individual homes; I certainly saw what happened in my daughter's home and my son's home. Sections were set aside for remote education for my two granddaughters. That sort of thing was done throughout my former constituency in Northampton South. Whether we like it or not, those children suffered. That must be recognised.

I was a boarder. My parents worked in Lahore and Ottawa. Where else could I go other than to a boarding school? We are an exporting, trading country. For heaven's sake, there are thousands of parents abroad supporting this country. We must remember that. On top of that there is also the military and everybody else. Boarding is vital.

The Harpur Trust, which looks after the three major independent schools and one small one in Bedfordshire, says that £2.7 million is spent on bursaries, as well as for 52 disadvantaged young people from Bedford to go to university. There are school uniform grants to every young person in Bedford on free school meals moving from primary to secondary school. That is a terrific achievement. My own school has a partnership with Mark Rutherford School and a new project in the last few years, Ready2Lead, covering eight secondary schools. The school's Quarry Theatre opened to the public in 2015 and will celebrate 1,200 shows in July. So it goes on. Here is a small quote from a Mrs Barker, the head teacher at Scott Primary School:

"We are so grateful for the opportunity that Bedford School are offering".

This is not the right policy. We need to be practical, exempt boarding fees from whatever comes out, and be sensible and move this to the end of the school year —it is pretty difficult to change course in the middle. If we are really short of money, why is gambling—bingo and betting—exempt from VAT? Is that more important than the education of the young people of this nation?

4.57 pm

The Earl of Clancarty (CB): My Lords, I am grateful to the noble Lord, Lord Lexden, for the opportunity to speak in this debate. This is about schools, but I will start by talking briefly about higher education, as it has a bearing on the debate. Ideally, all education should be free, and that ought to include higher education. I strongly believe that it was a grave error of the Blair Government to introduce tuition fees and effectively commercialise universities. Despite the problems we now face, if Germany can successfully operate a free higher education system, for example, why can we not do so if we believe in the principle of free education? I raise higher education in this debate because of the respective choices that face parents and students in every area of education, which may have little to do with principle but everything to do with necessity.

We have already heard from my noble friend Baroness Bull about the particular performing arts schools where, unless the state decides it is going to start operating its own tuition-free ballet school, for example, there is no option for the parents and students concerned—just as there has been no option since 1998 in higher education except to get a loan.

I agree entirely with the noble Baronesses, Lady Fraser and Lady Bull, about the need for certain exemptions. The Labour Government's own dance and drama awards have potentially been caught up in this too. I hope the Minister can say that the 15 providers for performing arts training through these awards will not attract VAT.

To make the wider point, not every parent has sent their child to an independent school because it is what their parents did, but because what was required for the particular child has not been readily available in the state sector. They will scrimp and save to do so and make use of bursaries which will likely now be less available. This is true for the arts, which have been significantly diminished in the state sector, as the noble Baroness, Lady Garden, said, but have flourished in many independent schools. Nevertheless, let me remind the House what Keir Starmer said in his speech at the Guildhall on 14 March:

"Every young person must have access to music, art, design and drama. That is our mission".

He went on:

"we are launching a sector plan to support the entire ecosystem of the creative industries".

Schools are of course a major part of the ecosystem. The goal should be that the state sector arts education be at least as good as independent schools are now, and make that offer unnecessary. However, when you realise that, for example, independent schools spend on average five times as much on music as state schools currently do, this is a hefty challenge. Will the Government rise to this challenge and keep their promises on art education in view of their intentions for the private sector?

I make one further point, in the interests of co-operation—there is considerable adversity in this debate. I believe in good education for everyone whatever their background. However, I also believe in advances in education—Education, if you like. What independent schools have been able to do, unencumbered by the accountability measures and the narrow tunnel into which state education has been pushed, is experiment, and that should be valued. As my noble friend Lord Aberdare pointed out in the 11 to 16 year-old school education debate on 26 July, some independent schools have developed their own curriculum offers and assessment methodologies. The Government, the state sector and, indeed, Becky Francis could be learning from these developments in the independent sector so that education as a whole may benefit.

5.01 pm

Baroness Lawlor (Con): My Lords, I am very grateful to the noble Lord, Lord Lexden, and I congratulate him on tabling this Motion for us to debate. I am very concerned about the impact it will have on independent schools. I oppose the plan and I hope that we and the Government will think again, given all the reasons we have heard today about the impact on parents, schools who face closure and the wider benefits to the community, which will be lost.

This matters more than ever before. Independent schools show not only what can be achieved. They offer competition and an alternative to the state sector. I believe this is, more than ever, important. We are confronted today, not just in this country but in others too, by the total state and its domination over life and liberty, over every area of our lives and our children's lives, through ever-higher tax, the arrogation to itself of ever greater powers, and ever more spending on what the state, rather than the people, decrees.

That will now be extended to independent schools which, unless the Government change their intended policy, will be obliged to pay VAT. Many are charities that originated in municipal, private and church charity under, and helped by, the historic charity laws of Elizabeth I when education was specifically mentioned as one of the purposes of charity, along with three others.

Indeed, in 1870, when the state itself moved in to provide for public elementary schooling where previously there had been a grant system, the Prime Minister of the day, William Gladstone, insisted that parental freedom and freedom of conscience must continue to be catered for, and that the state should supplement not supersede existing voluntary schools, which were independent of the state. He was a Liberal Prime Minister who led a debate against the left—the ideologues—in his own party, who wanted a uniform, Prussian-type military system of education as a state system. He would not sacrifice parental choice to a uniform system. He won the day and the law provided that the state with its board schools would supplement not replace voluntary schools of all persuasions—Anglican, Catholic and Dissenter.

In today's secular world, your Lordships may no longer think such freedom of conscience matters, but we face an ever bigger state. We also face threats not only to freedom of conscience but to the academic and intellectual freedom of those who teach. The Government now appear intent on suspending indefinitely the operation of freedom of speech in universities, the Higher Education (Freedom of Speech) Act. They are intent on reviewing a national curriculum which the coalition worked so hard to ensure would provide a minimum of knowledge in each subject on which teachers themselves would be free to build and develop. They also intend to get rid of the Ofsted snapshot.

These matters are more important than ever; we are confronted by the total state. I urge the Government to treat this measure in the spirit of all Governments of the past: to encourage diversity and to leave it alone. The Labour Party under Mr Blair, the Liberals under Gladstone and the Conservative Party have all championed diversity, not uniformity.

5.06 pm

Lord Kempsell (Con): My Lords, in the debate on the gracious Speech before the Summer Recess, I suggested that the Government's proposal to impose VAT on school fees would ultimately narrow opportunities across the country rather than widen them. What I did not predict is that the Government would make such a quick success of wreaking havoc on the lives of children who are now living with uncertainty about the implementation of this measure.

I want to focus on one such group in particular: Armed Forces families. More than 4,000 military children receive support with school fees via the continuity of education allowance. From Cyprus to Sierra Leone, from South Sudan to the Falklands, the operational demands on these families have a huge impact on their education. Army families, for example, are highly mobile; they are asked to move every two years on average. They receive support so that their children can have continuity by attending boarding schools, minimising the need to constantly switch schools. That funding is capped and there is also a parental contribution, so these are not fully funded places. Of course, these families are far from wealthy, but they are highly concerned that they will be priced out by the Government's plan.

Just last night, I received an email from a service family who described their tears of worry at the Government's policy. It says: "My child should have stability in being able to stay in the English education system at the same school, but the Labour Government apparently wish to break their heart and soul". I must warn Ministers that their plan is already doing damage to morale among service personnel, and that is not acceptable.

Worryingly, nearly 70% of Army families surveyed say that if there is no exemption or mitigation to cover the costs of the VAT, they would have to consider leaving the Armed Forces. With the global security situation as it is and the current operational tempo, this surely cannot be what the Government intend by this policy.

I also highlight the many self-funding Armed Forces families who do not claim the continuity of education allowance, who rely on these schools to make their role feasible—on overseas deployments there is obviously no access to alternative state provision. I asked a Written Question on this matter over the summer break and no detail has been forthcoming from Ministers. I wrote to the Treasury but have not received a reply. The school year has already started and the Government are leaving Armed Forces families in the dark. I join calls from across your Lordships' House today for Ministers to clarify the situation for Armed Forces families. They should commit to exempt all Armed Forces families, whether in receipt of support or not, from their plan to place VAT on school fees. If the Government are not willing to do so, they should design a rebate or mitigation that means that Armed Forces families are not forced to consider whether they can continue in service. It is not sufficient, as the Treasury says in its technical notes, to wait for the spending review to evaluate the impact on military families as this is having an impact now.

[Lord Kempsell]

As my noble friend Lord Roberts so aptly said, private school VAT will become a case study in the unintended consequences of ill-thought-out policy. Indeed, it has already been scrapped in other countries, the unintended consequences having been noted in Greece, where the policy was withdrawn. It will flood the state sector, cause successful schools to close and have a negative impact on communities. I fear that most of all it will clobber Armed Forces families, who are doing nothing other than serving their country and from whom I have had a huge number of representations.

I fear that behind this policy lies the worst kind of political grandstanding. It does not reach the standard even of sixth-form politics but feels like 1970s-style divisive class politics reheated for today, and leaves a bitter taste.

5.11 pm

The Earl of Devon (CB): My Lords, it seems that this is a debate somewhat about privilege and so I should declare some privileges as I start. The first is the privilege to listen to such an interesting, balanced and informative debate. The second is the privilege I enjoy, having gone to Eton College, which got a rather stupid student into Cambridge University. The third is the privilege I had of sending my children to state primary and secondary schools in Devon, where the education was excellent and they did very well. Fourthly, I should note the privilege I currently have of hosting Kenton Primary School at Powderham Castle—it moved in this week and therefore I am the landlord of a state primary school.

I am not an education expert and was not going to speak in this debate but I was encouraged to by the experience of the people I know locally, particularly families with SEN children and military service families. On SEN children, I really cannot add much more than what the noble Lord, Lord Addington, said, except to note that Covid has obviously been brutal on children's mental health. It has also been brutal on the mental health services that support our children. The thought that those wholly stretched services are going to have to deal with a whole raft of additional applications for education, health and care plans at short notice when they are considerably understaffed beggars belief, and I cannot believe that the Labour Government really intend to do that in January and cause so much additional burden and stress for these families who are in great need.

On military families, I spoke to my sister this morning. Her husband commands in the south Atlantic and she is flying off to the Falklands tomorrow. She has just packed her children off to boarding school, where they are safe and will have a consistent education. They have no idea how they are going to afford that education on their military salary. I think it is particularly cruel to those people who give so much for the defence of our realm for us to be putting them in this state at this time.

Lastly, it is difficult to say anything new after such an erudite debate, but Mrs Helen Mason, who has informed me a lot about the condition of SEND children, points out that Articles 28 and 29 of the UN Convention on the Rights of the Child may well be implicated in this policy. I ask the Minister to comment on that.

5.14 pm

Lord Fairfax of Cameron (Con): My Lords, I too thank my noble friend Lord Lexden for bringing forward this debate. Like many others, I agree with every word that he said.

I had intended to speak in this debate in any event, but the pitiful letters that I and many others have received have stiffened my resolve. While this misconceived and ill-thought-through measure was in the Labour Government's manifesto with the aim of reducing educational inequality, every indication is that its rushed implementation without proper consultation or financial assessment may achieve precisely the opposite, as well as bringing extreme pain to many families and children.

The Government's vindictive proposal is to impose this measure with effect from 1 January next year. That is an exceptionally short time and is likely to lead to many seriously negative effects. Some independent schools will be unable to plan properly in the short time available and may be forced to close. Children, particularly those with special needs, may have their education catastrophically disrupted mid-year and their exam attainment prejudiced. Local authorities and state schools may not have time adequately to plan for the likely mass transfer or attempted transfer of pupils to them from the independent sector. I say "attempted" transfer because of course, many schools have already told inquiring parents that "there are no places available".

As some speakers have said, there is great uncertainty about the likely financial impact of this policy. The Labour Party is praying in aid a net benefit of £1.5 billion but others, including the Adam Smith Institute, suggest that the measure could raise no money at all or even cost the Government £1.5 billion per year.

Because my noble friend Lord Lexden has already quoted them, I will not repeat the Oxford Economics figures—on the contribution of independent schools to the UK economy and so on—but have the Government and the Minister ever heard of the Laffer curve effect? Contrary to stereotypical perception, this measure will not hit the Etons of the independent school world but the small, far from rich independent schools, about 50% of which have fewer than 100 pupils. Those are the schools that are financially vulnerable and may be forced to close because of this measure.

Internationally, neither the US nor the EU imposes VAT on independent schools; and as noble Lords have heard, Greece tried it in 2015 with catastrophic results and had to reverse it. So, if the Government bring in this measure, they will be an international outlier. As others have advocated, there is a strong case that three categories in particular should be exempted, which I would support: children with special educational needs, small faith schools, and service and diplomatic families.

I have to hand it to the new Labour Government: in their short time in office, they have already succeeded in alienating pensioners, Jewish people, entrepreneurs and now children and parents using independent schools. That is quite an achievement in three short months. Our children's education is far too important a subject to be upended by this mean-spirited, ideological and ill-conceived measure.

5.18 pm

Lord Etherton (CB): My Lords, I too am grateful to the noble Lord, Lord Lexden, for securing this important debate. I agree with many of the concerns expressed by previous speakers, including the need for more comprehensive consultation; the need to delay the imposition of VAT until next September; and an exemption for schools providing for children with special educational needs and disabilities, as well as for small faith schools and boarding schools for the children of soldiers and diplomats, who rely on boarding education for their children in order to carry out their duties.

I shall concentrate on the contributions made by some independent schools for the benefit of state schools and deprived children. The helpful briefing of the ISC states that there were 9,248 partnerships between ISC schools and state schools or community groups in the 2023-24 academic year. Last year, ISC schools gave £1.1 billion in assistance, more than half of which was means-tested. My point, in short, is that this contribution must in some meaningful way be recognised if the proposed new VAT regime is imposed.

I wish to give as a live example one metropolitan independent school—not Eton or Harrow. It supplies teachers directly to state schools: last year the equivalent of three full-time teachers. Substantial amounts were applied in partnership projects, equivalent to approximately 2.7% of total turnover. In addition, the school spends approximately £3.5 million a year on bursaries—8% of turnover. The majority of this comes from donations. Critically, more than 50% of parents give donations for bursaries and partnerships. Taking an overview, more than 10% of the school's turnover was applied last year to bursaries and partnerships, a significant proportion of which came from donations from parents.

The obvious concern is that parents who pay VAT at 20% will be less inclined to give donations that would have been applied for bursaries and partnerships. I suggest that the Government should consider carefully ways in which, if VAT is imposed on the fees paid to independent schools, allowance is made to recognise the significant amount paid by some independent schools for the benefit of less-advantaged state schools and pupils and, indeed, to incentivise the giving of such assistance.

I put forward for consideration by the Government two possible approaches. One is to have a reduced rate of VAT where a certain percentage of the independent school's turnover is applied in bursaries, partnership projects and other assistance. The second is to treat money, or money's worth, applied for bursaries, partnership projects and other assistance as deductible from the fees paid by parents in order to arrive at a net figure for the purposes of VAT.

Assuming as I do that the Government's intention is not a spiteful attack on independent schools but a genuine attempt to improve state schools, it seems obvious that the Government should not disincentivise the financial assistance for state schools and disadvantaged pupils currently derived from parental donations in the independent education sector, but encourage such donations alongside the intention to impose VAT on independent schools' fee income. If, as I hope, these ideas are of some interest to the Minister, I suggest that a meeting with her, attended by those with appropriate expertise, be arranged.

5.22 pm

Lord Fuller (Con): My Lords, I attended an independent school and was a governor of another one for about 10 years in the 2010s. I thank the many people who have written to me explaining their personal circumstances and detailing the effect the proposals will have on them as families and on their children. For the most part, these correspondents are not wealthy people. They include police officers, soldiers, airmen, nurses and firefighters—working people with aspiration and ambition for their children, many of whom have their own challenges. I empathise with them all but wish to make a different point.

First, I wish to talk about the schools themselves and their staff. Nearly all these organisations are charities; they are run for charitable purpose, not to generate healthy bank balances. Even schools with 500 pupils may run a surplus of just £250,000 a year to fund reinvestment. They do not have fat on their backs. In these cases, the fees from perhaps only half a dozen boarders make the difference between profit and loss, surviving or failing. Their finances are finely balanced and under pressure.

In the shires, these schools are often located in market towns: places such as Loddon, Holt, Ely, Uppingham, Oundle—I notice that the noble Lord, Lord Winston, is not in his place—Oakham, Felsted and Framlingham. They are lovely places with wonderful high streets and a much wider range of pubs, cafés and restaurants than their populations would normally sustain. But they are not market towns; they are factory towns. The schools are their factory: factories of education and learning. Two boarding schools in Norfolk, Langley and Gresham's, employ 450 people each and the latter spends £25 million a year in Holt and is just about to refurbish and repurpose a grade 2 listed building which otherwise would be lost to the nation. They underpin local economies.

I was in my local pub in August, and I bumped into a man wearing a Langley School polo shirt. It turned out that he was responsible for running the minibus network, with 27 minibuses, the drivers, himself, a secretary and some maintenance staff—a 35-person sustainable transport business. His colleagues were cooks, cleaners, matrons and groundkeepers, not just the teachers. They are working people, and I want to speak for them, because this proposal risks putting them all out of work, and will not raise a penny for the Exchequer.

It is simple: if you force an organisation to levy VAT on sales, it can reclaim VAT on its purchases, and net off. Charities cannot do that. If you start to treat charities as businesses, do not be surprised if they start acting like businesses. If schools are forced to close, we are looking at the loss of PAYE and the payment of benefits, in areas where there are few other employment opportunities. Cancelling a bursary for the child prodigy, or a scholarship for an exceptional sportswoman from a disadvantaged family, helps nobody. It will drive inequality harmful to our national sporting life. We will all be poorer for it.

[LORD FULLER]

There is so much more I could say, but this proposal will drive more elitism and social inequality, and lead to less opportunity, less charitable purpose, less choice, fewer exports and stunted economic growth. It will have a catastrophic effect on the economic base of our market towns, and on working people and struggling parents. It will put additional burdens on local authorities, with listed buildings left to moulder and the disruption of house prices.

I was just a boy in the 1980s, but I remember wholesale factory closures. For four decades the Labour Party made a rallying call around that. But make no mistake, the Government are mandating factory closures in market towns across our nation. The perverse consequence will be that the lowest paid and the most challenged will pay the price, damaging our place in the world and the promotion of our values to other nations.

5.26 pm

Lord Shinkwin (Con): My Lords, I am grateful for the opportunity to speak in the gap. I too thank my noble friend Lord Lexden for securing the debate. I can hardly remember a time when the House has been so united in rejecting policy based on class envy at the expense of the life chances of vulnerable children.

I declare an interest: I am the beneficiary of a public school education. That was not the intention; it happened by accident—literally by accident, because as a child, as a result of brittle bones, I had too many accidents and too many fractures. My orthopaedic surgeon at the time told my parents that I had to carry on walking if my bone density was not to deteriorate further and my brittle bones worsen. The state system said I had to stay in my wheelchair if I was to remain at a state school. The only alternative was a segregated school for what were labelled "handicapped children", where the headmaster boasted to my mother that one of the pupils had recently achieved one CSE.

My parents, being teachers in the state system at the time, knew that a solid education would determine the difference between my being able to realise my potential or sink in a pool of chronically low aspiration. Thanks to my parents' huge sacrifices, their decision to join the staff of an independent school, and my gaining a scholarship, I was able to benefit from smaller class sizes, a safer environment that enabled me to walk at school, and educational opportunities I would not otherwise have enjoyed.

None of this is in any way intended to detract from the wonderful work our state sector teachers, SEND specialists and support staff do today. It is fantastic to know that laws passed by your Lordships' House prohibit the disability discrimination I faced. Yet like other noble Lords I fear that an unintended consequence of this dramatic change will be to deny the more than 110,000 pupils with SEND currently at independent schools the educational opportunities that I had—opportunities that mitigated the potential life chance limitations imposed by my disability. I cannot believe that that is the Government's intention.

I close by supporting the call of my noble friend Lady Fraser of Craigmaddie in asking the Minister to meet with those noble Lords who have expressed concerns relating to children with SEND, specifically to explore how, together, we can address the unintended consequences of this policy for disabled children and their families.

5.30 pm

Lord Wallace of Saltaire (LD): My Lords, this has been a passionate debate about a policy which we do not know the details of yet, and which, as many noble Lords have said, has a lot of consequences about which one cannot be entirely sure at present.

I am a disciple of slow government. Many of the things that I objected to most about the last Conservative Government involved Ministers dashing in and pushing ideas which they had not thought through and which ended up being disastrous. I fear that this is one of those. Certainly, it ought not to be implemented within a few months of being decided.

I am also in favour of a simplification of the British tax system. As your Lordships know, the British tax system is far more complicated than that of any other European country, with a much longer tax code. This, I fear, is a further complication, with a great many administrative costs around tax moving backwards and forwards, being remitted and so on and so forth.

There is a major problem of inequality and unfairness in the provision of education in this country. It is the result both of the steady increase in private school fees above inflation over a very long period and of the cumulative cuts in funding for state education over the last 20 years—which has doubled the gap between what we spend on children in state schools and children in the private sector, with the quality of the facilities in private schools increased even further by donations supported by their charitable status. There is a desperate need for better funding of state schools as a result.

My party has been in favour of education for all, funded out of general taxation, for a very long time. Titus Salt, a Liberal MP who built Saltaire, built a village with a school at its centre. His successor as Liberal MP for Bradford, WE Forster, introduced the first Elementary Education Act. I do not recognise the description of that Act given by the noble Baroness, Lady Lawlor. Of the debate within the Liberal Party, including on the Prussian elements, I recall that it was between nonconformists and Anglicans over the quality of religious education. The noble Lord, Lord Roberts of Belgravia, a historian, will remember that a number of Tories in both Houses opposed the Acts on the principle that education for the working classes might encourage them to become discontented with their station in life. I fear that there were those in the Conservative Party of the last 20 years who had something of that in their attitude to the funding of state education.

Clearly, we need better-funded schools for all our children, not only for the principle but because they are citizens and because competitiveness requires us to get the skills that we need for all our population. Since we have just seen riots committed by people who were no doubt excluded from school in their teens and have not really had any purpose in life since, there are all sorts of reasons why funding for state education should increase. I was very glad to hear the noble Lord, Lord Forsyth, say that. Every time he hears one of the candidates for the Conservative leadership say, "What we

want are further tax cuts and a smaller state", I hope that he thinks that that would mean further cuts to state education. We cannot say we want a smaller state if we want to have decent education and welfare for our citizens.

We are talking here about a very diverse private sector. I see it in both Yorkshire and London, and I am struck by how different it is. Day fees for private schools in London are twice those in Yorkshire. In West Yorkshire, 4% or 5% of people go to private schools—these are Catholic, Methodist, Anglican, Jewish, Muslim, Quaker; small, large, prestigious. In south-west London, a quarter of students go to private schools. There is a real social divide, and it worries me that the gap in income and wealth in London is also becoming a gap in society, which we need to tackle.

Of course, there are also specialist schools. I declare an interest here: I dropped out of the state sector at the age of nine by getting a full scholarship to a choir school just across the road. It is not entirely clear what will happen to these specialist schools, as the noble Baroness, Lady Bull, said. I was given a full scholarship, and thus free education, as a choirboy. Does that get taxed with VAT or are those schools exempt? When I went on to secondary school, my father's employer gave me a two-thirds fee scholarship, very generously—good-enough scholarships were then provided by Barclays Bank. I presume bursaries and partial scholarships are subject to tax, but what about Eton's King's scholarships, for example, which are full scholarships for very bright young men? I have met one or two of them—one or two when they were Cabinet Ministers. Do those come under the same system or not?

I will not touch on SEN; I am sure the Minister will, because it is clear from all the messages that we have got that SEN raises very considerable difficulties, and the problem again is that state schools are unable to provide sufficient support for SEN in their schools. I have talked to teaching assistants, and I have seen some of my local schools. Titus Salt School has an extremely good stream for dealing with children with Down's in the school, but there are not very many schools that can manage to do that sort of thing. I look forward to what the Minister will say on SEN.

As a party, Liberal Democrats oppose VAT on schools, but we do favour a much tougher approach to charitable status and the requirement to contribute to public benefit. The charitable status of schools requires a major contribution to public benefit. Some do this extremely well—I have visited the York partnership and have seen other schools—while others are beginning to lose any sense of providing the sort of public benefit that is required and have gone a long way from their original charitable purposes, with international franchising, failure to invest in bursaries for local students or failure to share their facilities with the local community. I am aware of one school in Yorkshire that had such a large proportion of foreign students that it was beginning to lose any possibility of optimising British values or even making sure that English remained the dominant language within the school corridors.

I read this in the *Times* the other week, written by a Policy Exchange staffer:

> "It is through education that children come to understand themselves as citizens of a nation, with a common culture and shared values".

I hope we all agree with that, and I hope we think that that should be the purpose of all schools, public or private, state or independent. That requires active partnership between the state sector and the independent sector. It requires independent schools to recognise that one of their main purposes and responsibilities is to act as members of their local community and their national community. That said, I think this is the wrong way to encourage that, and that the priority for the Government should be a qualitative improvement in our state schools, their funding, staffing and resources. I regret that we have not yet seen enough evidence of that.

5.39 pm

Baroness Barran (Con): My Lords, I too thank and congratulate my noble friend Lord Lexden on securing this debate and on his exceptionally clear and lucid introduction. I also congratulate noble Lords on the high quality of all their contributions today. Like others, my inbox has been full of correspondence from numerous parents who wrote to me. I thank them too and share with the Minister—her private office inbox may also be full, but they might not have got to her—just some of the questions they asked, because I would be interested to know her response and what she would say to those parents.

Many of them point to the sense of rushed policy and poor planning that we have heard from so many of your Lordships this afternoon. I do not know what the Minister would say to the mother of a child who has just finished their first year of A-levels in subjects that their local state schools do not offer, or to children in year 11 who have been doing the IGCSE syllabus, which again would not be available to them, to the parents of children in state schools who will have bulge classes to accommodate new entrants from private schools, or to the parents of children with special educational needs who now feel that they will need to go through the process, which we heard about so vividly from the noble Lord, Lord Addington, of getting an EHCP for their child in order for their needs to be met.

We have heard from many of your Lordships, including, of course, my noble friend Lord Lexden, about the very important contributions that independent schools make to our education system and economy. That is through bursaries, through partnerships with state-funded schools, such as those that the noble Lord, Lord Winston, articulated, through the provision of places for children in the care system and, crucially, as we have heard from around the House, through support for 90,000 children with special educational needs and disabilities.

We have heard about the range and variety of schools, including from the right reverend Prelate the Bishop of Southwark, and we even had the noble Lord, Lord Alton, channelling his inner Lord Pannick to raise questions about the legality of the policy, which I am sure the Minister will take away and consider. I shall pick up on some of these themes and ask the Minister a number of questions.

In terms of timing, which my noble friends Lord Maude and Lord Lucas and many others raised, could the Minister explain to the House and the parents who will be impacted by this change why the

[Baroness Barran]

Government judge it to be the right balance to introduce VAT in January 2025 rather than in September next year? We all understand that it raises more money, but the disruption of moving a child part-way through the school year is something that every parent seeks to avoid. The technical note provided by the Treasury states that:

"The Government understands that moving schools can be challenging".

I have to say that is quite an understatement, even from the Treasury.

Why the rush? It leaves so many unanswered questions and puts so much avoidable pressure on parents, teachers and, most importantly, children. I hope the noble Baroness will consider some of the suggestions about a phased introduction, such as those raised by my noble friend Lord Forsyth of Drumlean.

I turn to the amount of money this may raise, which was touched on by the noble Lord, Lord Hacking. The Government tell us that this change is not ideological; it is about raising an estimated £1.3 billion to £1.5 billion to fund additional teachers and a long list of other things. Will she confirm that, if the tax fails to raise additional revenue, her Government will reverse this proposal, and if not, why not? Will she confirm that the Office for Budget Responsibility will give an annual update on the net financial impact of the proposed change once it is clear how many children have left independent schools and joined the state sector, and not simply—again, I quote from the technical note—

"certify the government's costings and impact analysis for these measures"?

I turn to capacity in the state sector. The Government have said that they are

"confident that the state sector will be able to accommodate any additional pupils and that there will not be a significant impact on the state education system as a whole".

I know that the noble Baroness understands that this is not really about the system as a whole. We know that there are parts of the country with plenty of capacity in the state system, but it is about what happens in each local area. It would help reassure the House if she could explain what assessment the Government have made of the impact on children in state schools in areas with very high percentages of children in independent schools—for example, Surrey or, as we heard, Edinburgh? There are also areas such as Bristol, where there is already pressure on state school places, and Salford and Birmingham, where there are many small Muslim and Jewish schools.

Turning special educational needs and disabilities, can the Minister reassure the House that VAT will not be charged on places for children with special educational needs? We heard very powerfully from the noble Lord, Lord Addington, about some of the issues. My noble friend Lady Monckton of Dallington Forest spoke about specialist further education colleges. It would be helpful if the Minister could clarify if they will be impacted by this. Will non-maintained special schools be able to recover VAT? What assessment have the Government made of the demand for additional EHCPs as a result of this policy?

A number of noble Lords, including the noble Earl, Lord Devon, and my noble friends Lord Black of Brentwood and Lord Kempsell, raised the important issue of military families who serve their nation abroad and, as we heard, need boarding places for their children. Can she confirm that their personal contribution will be exempt from VAT?

I look forward to the Minister's response to the questions from my noble friend Lady Fraser and the noble Baroness, Lady Bull, about the impact on specialist music and dance schools, the future of which is now in peril. I hope the Minister can respond to these questions from the Dispatch Box but, if not, perhaps she could confirm that she will write to me with the answers.

Time does not permit me to cover other points today, so I will close with the feeling these proposed changes give me, and many others, as we have heard in your Lordships' House today. This feels like a Government who are focusing on division, rather than aspiration; a Government who are seeking to run down private schools, rather than challenging them to contribute more to the overall education sector. The suggestions from the noble and learned Lord, Lord Etherton, were extremely helpful. These proposals will take away parental choice not from the super-rich—from the people the Prime Minister described as having the broadest shoulders—but from those with shoulders already burdened by choosing to prioritise education for their children in the way that they want. That erosion of choice bodes ill for our country.

I will leave the Minister with one last question. I think the House is just asking the Government to listen. I hope very much that she can answer that they will.

5.49 pm

The Minister of State, Department for Education (Baroness Smith of Malvern) (Lab): My Lords, I thank the noble Lord, Lord Lexden, for opening this debate, and I am grateful for the many contributions. I will do my best to respond to as many as I can in the time available, and I undertake to write to noble Lords on those that I am not able to get to.

I put on record that I share the view of the noble Lord, Lord Lexden, that there are many excellent schools in the private sector, as there are in the public sector. My mother taught at one of them in Malvern. I spent time during my teenage years washing up in the kitchen of another. I know that excellent education is provided in those schools, which is why the department will continue to have, I hope, an important and constructive relationship with the ISC and the ISA in thinking through the whole range of issues that relate to independent schools. But some people listening to this debate might have thought that the intention was to completely do away with the private sector. The noble Lord, Lord Naseby, described how independent education has been with us for centuries. It will be with us for centuries more. People will continue to have a choice of whether they want to educate their child in a state or a private school. I will return to that in a moment.

I was a teacher in one of the excellent state schools which educate more than nine in 10 of our children, and I now discover that I attended the same state

school as the noble Lord, Lord Hampton. So I will be crystal clear about the focus and priority for this Government. We are determined in government—on these Benches and in the other place—to drive up standards in those schools for the overwhelming majority of the children in this country, so that they may receive the opportunities that, too often, have been the preserve of the rich and the lucky, as many noble Lords have demonstrated.

There has been an assumption from some contributors that only some parents have aspirations for their children. As the mother of two children, of course I understand the absolute passion of parents to do the best for their children—to find the place that suits their children the best. That is not confined to people who choose to educate their children in private schools and are able to. As my noble friends Lord Davies and Lord Griffiths made clear, it is an aspiration shared by many parents around the country and one that this Government are determined to meet. Private education is not an option—

Lord Forsyth of Drumlean (Con): Will the Minister give way?

Baroness Smith of Malvern (Lab): No—the noble Lord has had the opportunity to have his say, and I want to respond to as many of the points that have been made as possible.

Private education is not an option for most of those people and, unlike the last Government, we will not build public policy around the expectation that public services will fail our children. Most parents need local state-funded schools to support them in meeting these aspirations. It is therefore right for the Government to focus on improving those schools—a public good that will benefit all of us.

Several noble Lords, including the noble Lord, Lord Forsyth, have identified the significance of education and the contribution that investment in that education makes. My noble friend Lady Ramsey identified the gap between that investment provided to our state schools and that provided to private schools: there was a 40% gap in 2010 and there is a 90% gap now. The noble Lord, Lord Bilimoria, said that we should spend more on state schools. The noble Lord, Lord Winston, talked about the deprivation and impact on aspiration of those who do not get the education that they deserve, and argued for more investment. That is precisely what this Government want to do—but we arrived into government to discover a £22 billion black hole and, unlike the previous Government, we are determined to make that investment in our schools but make it on a sustainable basis whereby we can outline where that money is coming from. That is why ending the tax breaks on VAT and business rates for private schools is a tough but necessary decision. It will generate additional funding to help to improve public services, including the Government's commitments relating to education and young people.

VAT will apply to tuition and boarding fees charged by private schools for terms starting on or after 1 January 2025. I assure noble Lords that the impact of those changes has been assessed and that the Office for Budget Responsibility will certify the Government's costings for those measures at the Budget.

Several noble Lords have asked what the impact will be of introducing the change on 1 January. We are impatient in this Government to ensure that we can start funding the improvements that so many noble Lords have argued for—that is one reason. It is also worth while, when thinking about the impact of the changes, to recognise that, for many pupils, the change should not mean that parents will automatically face 20% higher fees—nor do we expect pupils to move immediately. Most of the analysis suggests that that will not happen to the extent that pupils move at all—and I shall return to that point.

The Government expect private schools to take steps to minimise fee increases, including through reclaiming the VAT that they incur in supplying education and boarding—so the estimate is that the real VAT impact will be 15%. We think that that will happen, because we have seen what has happened in recent times. There have been above-inflation increases in private school fees for very many years. There has been a 55% increase since 2003 and a 20% increase since 2010, and there has not been a large exodus of pupils from those schools, which of course suggests an inelastic demand for private school places. It is reasonable for the Government to model and think about future impact based on previous experience.

We have provided considerable information around the proposal—both in the technical note and the draft VAT legislation. The technical consultation remains open until 15 September, and I encourage those who are interested to contribute to that as well.

The noble Baroness, Lady Monckton, raised a specific issue about the support to implement the VAT regime. The Government recognise that this will be the first time for many schools that they will need to register for VAT, and HMRC will publish bespoke guidance. It will also contact private schools directly with information about support sessions that will help them to go through this process.

The noble Lord, Lord Lucas, and the noble Baroness, Lady Barran, raised issues about what potential there is to raise revenue here. This will of course be part of the OBR assessment that will be published alongside the Finance Bill at the time of the Budget, which will enable us to consider the broad impact of this—not just the taxation impact but the broader cost impact as well. The IFS estimates that it will raise an extra £1.3 billion to £1.5 billion per year in the medium to long term. As I say, these points will be certified by the Office for Budget Responsibility. The Treasury is doing an economic analysis of the impact of this policy change and the interaction with other behaviours that might come about because of the introduction of VAT.

While there will be more detailed information about the revenue raised by this measure, this seems like a reasonable estimate of the revenue that will be raised. Unlike some other noble Lords, I do not see that amount of money as being inconsiderable. Of course there is more that I would certainly hope that we as a Government will be able to find to invest in education, as previous Labour Governments have, but this is an important contribution to some very important changes that we wish to make.

[Baroness Smith of Malvern]

The noble Baroness, Lady Finlay, asked about the devolution consequences of VAT receipts. I assure her that additional funding provided for schools in England will be matched in the devolved Administrations in line with the Barnett formula.

I move to the issue of special educational needs. Understandably, this has been raised by many noble Lords this afternoon, in particular the noble Lord, Lord Shinkwin, in his contribution about the enormous significance of the independent special school that he identified, and the noble Baroness, Lady Monckton. Once again, I say that there is excellence in the private sector in independent special schools. Such excellence is the reason why, when there is a particular need for a pupil educated in the state sector to benefit from that excellence and its provisions for their education, health and care plan, that place is paid for by the local authority. The local authority will have the ability to reclaim the VAT placed on that fee, so there will be no impact on the parents of those children with the most acute special educational needs. I can also confirm, in answer to questions from the noble Baroness, Lady Barran, that further education institutions will not be affected by these provisions, and non-maintained special schools are exempt as well.

I can understand the concern of parents—given what I said previously about everybody's aspiration—particularly where their children have special educational needs that have not been met or assessed through an education, health and care plan, in wanting to think about the best place for their children to go, but we cannot organise policy on the basis of the broken state of public provision for children with specific learning needs. This is a government failure long in the making. I share the passion of the noble Lord, Lord Addington, about the way in which the current system is working. In fact, the former Secretary of State for Education, after 13 years of her party's approach to special educational needs, rightly described this issue as "lose, lose, lose". One reason for needing the additional investment that this provision will provide is to help begin turning round the special educational needs system, which I wholly agree currently fails too many of our students.

In response to those who have asked for further discussions about the position of independent special schools, we are happy to continue having those conversations. However, I reiterate that, for those children with acute needs who are being educated in independent special schools with an EHCP, there will be no impact on them from this VAT change. We will actively listen to the questions and concerns being raised and will meet with our colleagues.

Several noble Lords, including my noble friend Lord Hacking and the noble Baroness, Lady Barran, raised the impact of these changes on state schools. The Government believe that the number of pupils who may switch schools as a result of these changes represent a very small proportion of overall pupil numbers in the state sector. As I have already outlined, those parents paying to send their children to private schools have already experienced considerably above-inflation increases and have not chosen to move their children, but we will of course monitor local demand to ensure that appropriate measures are taken to increase capacity where required.

I take the noble Baroness's point about the differential impact, potentially, on different parts of the country, and DfE officials will monitor that very carefully, but children move between the private and state sectors every year and local authorities and schools have processes in place to support their transition. In terms of places, of course we are going through a period of demographic change. Even if the pupil displacement is above the estimate of the independent Institute for Fiscal Studies, which suggested that up to 40,000 might move over a period of time, that is still likely to represent less than 1% of the more than 9 million total UK state school pupils. The latest figures published showed that 83% of primary schools and 77% of secondary schools have one or more unfilled places.

I turn to the issues raised by the noble Baronesses, Lady Fraser and Lady Bull, about the enormously important contribution of Music and Dance Scheme schools. We can all see, in the talent of the noble Baroness, Lady Bull, the significance of those schools. We are continuing to engage with the schools currently within the Music and Dance Scheme project. As has already been outlined by noble Lords—and I wholly agree that, for the good of all of us, we need low-income families to be able to send their children to those schools when they have that talent—the children of parents who cannot afford the fees are funded by the Music and Dance Scheme. We will consider, in the light of the VAT charges, how and whether we can change that scheme to compensate for the VAT issue. We are willing to carry on talking, as we have done, to representatives from the Music and Dance Scheme schools about the impact of this change of policy. The same goes, as the noble Earl, Lord Clancarty, raised, for the dance and drama awards, where we will also continue having discussions that we have already started with the schools in that category.

Noble Lords, including the noble Lord, Lord Kempsell, the noble Baroness, Lady Garden, and the noble Earl, Lord Devon, raised the issue of military families. I reiterate that the Government recognise the enormous sacrifices our military families make; of course, that is why the Ministry of Defence and the Foreign and Commonwealth Office provide the continuity of education allowance to eligible officials and service personnel. It is also worth pointing out that very many military personnel send their children to state schools and want to benefit from the improvements that will happen in those state schools. However, the Government will monitor closely the impact of these policy changes on affected military and diplomatic families. The upcoming spending review is the right time to consider any changes to this scheme, but we will continue to look very carefully at that.

Several noble Lords talked about the contribution of private schools, and the defence was that because they contribute through partnerships with state schools or by providing bursaries, we should not interfere with that. I welcome the contributions private schools make to cross-sector partnerships, as outlined by the noble Lord, Lord Maude, my noble friend Lord Winston

and the noble and learned Lord, Lord Etherton; I hope that will continue. Certainly, for schools with charitable status, as charities, and in line with legislation passed by the last Labour Government, they must continue to demonstrate public benefit. I hope they will continue to do that through the provision of a small number of means-tested bursaries and through partnership with local state schools. I think they will continue to demonstrate their broad public benefit through those wider contributions.

On the legal position, raised by the noble Lord, Lord Alton—channelling the noble Lord, Lord Pannick—and my noble friend Lord Hacking, I am not going to speculate on the outcome of the ongoing technical consultation. However, legal considerations have been incorporated into the process, as is standard for all legislative changes, and we are confident that the measures are compatible with the Human Rights Act 1998.

I know I have not managed to cover all of the wide range of issues that have been raised, and I undertake to write to noble Lords, but I assure the House that private schools will remain part of our education system. The choice to send your child there will remain. However, most children are educated in the state sector and that is where we must target our support and resources most. We will work closely with schools and local authorities to make the implementation of the new tax rules as smooth as possible. I thank noble Lords for their contributions this afternoon.

Lord Hacking (Lab): Before my noble friend sits down—

Baroness Smith of Malvern (Lab): I have sat down.

Lord Hacking (Lab): These are therefore imaginary words being used in the House of Lords. My noble friend was kind enough to mention the first protocol of the European Convention on Human Rights, but I would be very grateful if she could send a letter, particularly to myself and the noble Lord, Lord Alton, on the advice the Government are receiving relating to that very important issue. I remind her that it was a Labour Government, in 1998, who brought that provision into our law under the Human Rights Act 1998.

Baroness Smith of Malvern (Lab): My noble friend is right, and I am very proud of that. Our position, as I said, has been tested in the legal advice in the consideration of these changes. Our view is that being charged at the standard rate of VAT paid by millions of businesses across the UK is not discriminatory and is clearly proportionate to the objective of better funding for state schools. To the extent that I am able, I will certainly ensure that I write further about that issue to my noble friend and to others.

Baroness Butler-Sloss (CB): May I ask the Minster, before she sits down, about the children taking GCSEs and A-levels? What are the Government going to do to help them where there will be changes in the programmes they are doing?

Baroness Smith of Malvern (Lab): I apologise to the noble and learned Baroness: with respect, I was showing my inexperience in this House and asking my Whip about the situation. If the House will allow, could the noble and learned Baroness repeat her question?

Baroness Butler-Sloss (CB): I was asking about children taking GCSEs and A-levels when this starts in January.

Baroness Smith of Malvern (Lab): I think I covered that point in talking about the arguments for introducing this in January, while also making it clear that it is the Government's view that introducing the VAT liability does not necessarily imply that a sudden increase in bills will arise; nor does it imply that the whole of that increase in VAT will be passed on in fees. In fact, if we look at the behaviour in the private school sector, we see that, despite very large increases in fees—well above inflation—parents have tended, where they have made that choice, to keep their children in the private sector anyway, and I am sure that the vast majority of parents will continue to do that. The analysis, including that carried out by the Institute for Fiscal Studies, suggests that, even if there is going to be a movement of pupils away from the private sector, that will tend to be not immediately in January but over a much longer period, and I imagine that will be the approach that most parents take.

Lord Forsyth of Drumlean (Con): Before the noble Baroness sits down—since she is now giving way—she made a very passionate point about how all parents have aspirations for their children, wherever they are educated. She has not explained why she wants to tax that aspiration.

Baroness Smith of Malvern (Lab): I explained that, to improve state education—where 93% of our pupils are educated—and meet the aspirations of the parents who send their children to those schools, we need to find the funding. Unlike the previous Government, we are not willing to make uncosted commitments or run this country's fiscal position into the ground. We are not willing to risk our pensions and our reputation as a fiscally prudent country in the way that the last Government were. Therefore, to make and deliver the range of commitments we have set out, we will be clear about where that money is coming from. This is part of the honesty and transparency around fiscal prudence that the last Government so patently failed to deliver.

6.15 pm

Lord Lexden (Con): My Lords, my purpose in seeking this debate was to bring home to the Government the extent of the damage that would be done as a result of the imposition of VAT on school fees on 1 January 2025. That purpose has been very satisfactorily achieved, on behalf of all the parents and schools up and down our land who have been brought to despair by the Government's decision to impose VAT so suddenly on them.

Many who have been watching this debate and follow these controversial matters will be disappointed by what the Minister has said. I do not think that

[LORD LEXDEN]

the great concern that exists has been in any way significantly alleviated by her comments. We who have sought to represent the difficulties feel, above all, that VAT should not be introduced without, as I said at the start, a full and independent assessment of the implications of our first-ever education tax. This is the essential point on which nearly all speakers agreed. We must ask the Government to think again.

Motion agreed.

House adjourned at 6.17 pm.

Grand Committee

Thursday 5 September 2024

Arrangement of Business

Announcement

1 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, as noble Lords can see, the annunciator is not working. Staff are working on it. If there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Bank Resolution (Recapitalisation) Bill [HL]

Committee (1st Day)

1 pm

Clause 1: Recapitalisation payments

Amendment 1

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

1: Clause 1, page 1, line 8, after "institution" insert "that is not required to hold Minimum Requirement for Own Funds and Eligible Liabilities (MREL) or is below a level of total assets of value of £15 billion index linked from 1 January 2016"

Member's explanatory statement

This amendment seeks to ensure that the bill applies primarily to smaller banks, using Minimum Requirement for Own Funds and Eligible Liabilities (MREL) as a definition.

Baroness Bowles of Berkhamsted (LD): My Lords, I am pleased to open the Committee stage of this Bill. I expect this to be the only longish speech that I will make, so noble Lords should not worry about getting six of this length.

I have two amendments in this group but, first, for the benefit of anybody following these discussions either now or later, I shall mention the scope issue that has reared its head for several noble Lords in trying to formulate amendments. The Long Title, which defines scope, is:

"A Bill to make provision about recapitalisation costs in relation to the special resolution regime under the Banking Act 2009".

The Bill's provisions have effects that reach into resolution decisions, bail-in and capital structures, but various amendments' attempts to take that into account in other relevant ways have been ruled out of scope. Indeed, in the light of this amendment-drafting experience, I wonder whether all the bits of the Bill pass the scope test; that may become clearer as we work through the amendments, in particular my Amendment 22 in this group and Amendment 23 in the final group.

I turn to my Amendment 1 and the similar amendments in the rest of the group. They have a common theme: making sure that the provisions really are limited in application to small or smaller banks, which is what we have been told they are about following on from the actions taken for Silicon Valley Bank. However, there is no such small bank limitation in the Bill. Clearly, the question arises: how small is "small or smaller"? Like other noble Lords, I have taken the view that the only clear distinction is for non-systemic banks—that is, those required to hold MREL, bail-in bonds or whatever you wish to call them, which represent the only regulatory division we have.

Of course, as raised by me and others at Second Reading, we then have the issue that the PRA has extended the MREL requirements far lower down the bank size range than systemic banks, well into the "smaller bank" range. This may well be the reason that there is no differentiation in the Bill: so that, in theory, the Bill applies to any bank and everything rests on the Bank of England's decision. It seems that the majority of us here disagree with that and think that it should be limited by a defined measure; the obvious one is the level at which MREL is required. If the PRA causes the resolution provisions to be impeded by its MREL choices, that will be something for it and the Bank of England to consider and live with.

My Amendment 1 has another little tweak, in which I suggest that the cutoff is linked to the index-linked value of the net assets at which MREL was originally set in 2016: £15 billion. In numbers, that would mean the size now would be £22 billion if it were index linked, not £15 billion, and it would not continue to dwindle, relatively speaking, as is happening with the PRA MREL threshold. My amendment therefore overlaps with regimes that can do bail-in, although my real hope, as I have already suggested, is to make the PRA see that, for various good reasons, it should increase the MREL threshold at least by indexation, and ideally to the level where it applies only to banks that have full capital market access, so that bail-in instruments are not disproportionately expensive for them. However, if we want to coalesce around MREL as the dividing line, I am not going to rock the boat. Indeed, I tabled an amendment to that effect, but it got lost somewhere. I think the Bill Office thought that my other amendment was an amendment to my amendment.

I turn to my Amendment 22. This deletes Clause 4(3), which is not needed in the event that there is limitation to application only to non-MREL banks. I will explain how I came to that conclusion. The subsection references Section 12AA of the Banking Act 2009, which in turn references Article 47.3(b) and (c) of the EU's Resolution and Recovery directive. Most compliance with EU directives has been put into the 2009 Act.

I happen to think, especially nowadays, that it would be much better to say more clearly what we actually meant in Clause 4(3) than to have to pedal all the way back to a European directive. I have another amendment on it, Amendment 23, right at the end of our considerations next week. I will let noble Lords know what it is all about. Article 47.3(b) of BRRD is the amount by which the authorities assess that common equity tier 1 items must be reduced to the relevant capital instruments written down or converted, pursuant to Article 61. The latter gives the order of writing down priority. Article 47.3(c) is the aggregate amount assessed by the resolution authority, pursuant to Article 46. To save noble Lords the misery of me reading out Article 46, it is the sum of write-down and recapitalisation.

[Baroness Bowles of Berkhamsted]

To cut this long story short, the subsection refers to things that happen only when you are in a bail-in situation. So, if we limit it to non-MREL banks, it would seem to be superfluous, because there cannot be any bail-in as they are not required to hold MREL. Of course, if we use my Amendment 1 with the index threshold of MREL, we might need it or need to rewrite it.

However, thinking about it further, I also query whether this subsection is properly in scope as it seems to relate to changing bail-in requirements and not to recapitalisation. That is made clear in the Explanatory Notes, which state that Clause 4(3) basically amends the bail-in sequence and conversion of capital instruments to allow adjustment to the contribution of shareholders and creditors when exercising the bail-in write-down tool. We should bear in mind that there are other parts of legislation that tell you the sequence in which you must do one, and how you exhaust the first before you move on to the next, and all those kinds of measures.

The end result that it has a knock-on effect of increasing recapitalisation costs that are then to be met by the FSCS. As I said, that seems to depart from what I envisaged was the purpose of the Bill. I did not have in my mind that it was about levying banks to help rescue shareholders or bail-in bond holders of another bank. I understood that it would be more like the Silicon Valley Bank rescue, where the point would be to rescue unprotected depositors.

Overall, we can do without this clause in all circumstances and I wait to hear the Minister's explanation. It would be useful, before we get to Report, if we could have some kind of laid-out worked examples of where this might come in and what might happen. I understand why the Government wish for flexibility but it is a flexibility that goes way beyond what I have understood to be the intents of the Bill. I beg to move.

Baroness Noakes (Con): My Lords, I have Amendment 5 in this group, to which I will speak. I regret that I was unable to take part at Second Reading in July, but I have read the *Hansard* report of the debate and I can see that there is a lot of common ground on the Bill between those of us not on the Government Benches.

As this is the first time that I have spoken in Committee, I draw attention to my interests as recorded in the register of interests, in particular that I hold shares in banks which, under the terms of the Bill, will end up footing the bill if the bank recapitalisation power is used.

My Amendment 5 is slightly different from Amendment 1 in the name of the noble Baroness, Lady Bowles, and slightly different from Amendments 8, 10, 12 and 18 in the names of other noble Lords. Those amendments basically seek to confine the use of this power to small banks—typically using MREL as the deciding point. Mine does not rule out using the power for larger banks but instead inserts the requirement for Treasury consent.

The Government clearly sold this legislation, as the noble Baroness, Lady Bowles, explained, as being about smaller banks, referring to it as being a better route for a better outcome compared to using the bank insolvency procedure, which is the current default assumption for smaller banks. As is often the case with legislation, however, the stated aim then gets converted into a very broad power. This power is so broad that if the RBS failure happened again it could cover the recapitalisation of RBS, which, I remind noble Lords, cost £45.5 billion in 2008. The Bank would have that power with nothing in the Bill to prevent it.

There is a constraint on the amount of annual FSCS payments set by the PRA, which I think is £1.5 billion a year, but that can be changed by the PRA at any time, and the PRA is not, of course, independent of the Bank of England; it is fully part of it.

I am not surprised that the Treasury does not want to narrow the drafting of the Bill to cover only those banks that do not have MREL. The Government have themselves talked about wanting to cover the case where MREL has been set but the banks are on a glide path and have not yet achieved the full amount of their MREL. It seems reasonable for the power to be used in those circumstances, but the Government have not even offered to amend the Bill to confine it in that way.

I broadly accept that there may be a good case for using recapitalisation schemes beyond non-MREL banks or those that have not yet raised their full amount of MREL, because it is genuinely difficult to predict circumstances where such a power would be extremely useful. However, when the Government draft broad and unconstrained powers, they have a duty to put checks and balances in place, and there are none in the Bill. If they do not put checks and balances in place, we must take that on as part of our duties in scrutinising legislation. My amendment has opted for Treasury consent, but there could well be better ways of putting guard rails in place. Treasury consent is not an onerous requirement when the Bank of England is handling a potential bank failure. It inevitably works closely with the Treasury; the Treasury has to be consulted whenever a stabilisation power is used, and we should be in no doubt that when, for example, SVB UK was in trouble, the Treasury was intimately involved in the arrangements to deal with HSBC very rapidly. Therefore, obtaining Treasury consent need not cause a delay or any other real problems.

1.15 pm

There are good reasons for the Treasury to have some skin in the game. If the power is to be used for banks which have been set an MREL amount, the need for recapitalisation payments under the Bill raises an inevitable question about decisions the Bank had already made in relation to the amount of MREL or the timing or shape of the glide path that it had allowed. The Bank of England made those decisions, yet it now has the power to force the rest of the banking sector to foot the bill if those decisions prove not to be robust. The Bank of England has an obvious conflict of interest here, and it is right that the Treasury should formally agree with the rationale for the use of the power in circumstances for which it was not designed by giving its consent. Treasury consent is important

also in a broader context of accountability—I shall return to that in a later amendment, but I will keep my powder dry until then.

I hope that the Minister will agree that some way of ensuring that the power is kept wholly or mainly for its original intended use—namely, for small banks—will give the banking sector reassurance that it will be used sparingly. The amendments in this group might not be the right ones, but surely something is needed.

Lord Vaux of Harrowden (CB): My Lords, as we have heard, this group of amendments, including my Amendment 10, probes the reasons for including all banks in the scope of the Bill, rather than just the smaller banks, as originally envisaged in the consultation that started in January. The first sentence of the consultation was very clear:

"This consultation sets out the government's intention to enhance and keep up to date the UK's Special Resolution Regime … providing a new mechanism to facilitate use of certain existing stabilisation powers to manage the failure of small banks".

But, as we have heard, it is not restricted to small banks. Most of the amendments in this group would remove from the scope of the Bill those banks that are required to hold MREL and would be subject to bail-in procedures using those MREL resources. I think the number of separate but similar amendments that we seem to have is probably down to the fact that this all happened in recess, and we did not have the opportunity to get together. I am sure that if the Minister is not able to satisfy us, we will be able to coalesce around something in common.

It is worth quoting from paragraph 7 of the Explanatory Notes:

"This means taxpayers are exposed if a small bank failure is judged to require resolution action but the firm in question does not possess sufficient MREL resources to provide for recapitalisation, unlike larger banks that do possess these resources".

If larger banks possess those resources, as they are required to do, why do we need them to be subject to the process envisaged by the Bill? The noble Baroness, Lady Noakes, talked about the glide path situation where a bank has not quite got there—yes, I see that point—but for those that are there, does this not imply that we are not confident that the existing MREL scheme is sufficient? If there is a problem with the MREL scheme, surely it would be better to fix that rather than adding a new process on top of it.

So could the noble Lord please clarify under exactly which circumstances he sees the recapitalisation process in the Bill being used for a failing MREL bank? Is there a concern that the MREL resources are insufficient? Other than glide path situations, that is the only logical reason I can see to include big banks in the scope of the Bill.

Secondly, not having the expertise of the noble Baroness, Lady Bowles, I do not really understand how the two processes would work together. Is this an either/or situation; is it either a bail-in using MREL resources or a recapitalisation? If that is the case, surely there is a risk that the industry would be required to fund the recapitalisation of banks with large balance sheets instead of the costs being borne by the failed bank's shareholders and subordinated debt holders. That would create a potential moral hazard. Or is it a combined process where the MREL resources would be used first and, if insufficient, the recapitalisation would follow on top? If that is the case, it implies that there is a concern that the MREL funds are insufficient. The best way forward would be to fix that problem rather than add another process, as I said before.

So could the noble Lord please clearly explain how he sees the two processes working together? I am drawn to the suggestion by the noble Baroness, Lady Bowles, of a worked example between now and Report to help us see how that could work. In particular, can he clearly confirm that the recapitalisation process can never be used to reduce the losses of a failing bank's shareholders or creditors?

In the absence of a strong explanation of why, contrary to the originally stated intention, the scope of the Bill has been extended to larger banks, I would be minded to support amendments on Report that restrict its scope to exclude MREL banks.

Lord Eatwell (Lab): My Lords, my Amendment 11 also—I think rather neatly—confines the Bill to what are defined as small banks. However, my concern is somewhat different from those voiced by noble Lords until now. It is that the whole approach to the resolution regime suggests that banks fail one at a time and not all together. Anyone who went through the experience of 2007 to 2009 knows that, in a systemic crisis, it is possible for all the banks in the country to be suffering major problems at the same time. In the circumstances of a systemic crisis, I fear that the mechanism proposed in the Bill could be a source of contagion, in the sense that the cost of the collapse of a bank, or of many banks together, would be seen by the market as imposing costs, which are now unbearable, on other parts of the banking sector.

This comes down to two issues—that of contagion and, I am afraid, that of persistent complacency. The Treasury and the Bank of England refuse to face up to the fact that, in the end, it is the taxpayer who will pay in a systemic crisis.

I will deal first with contagion. The levy links the financial failure of a bank or number of banks to the banking sector as a whole. Does this create a contagion effect? It must be remembered that much of contagion is created by the expectation of a cost, not just the reality. Expectation then becomes the parent of reality. It can reasonably be expected that the failure of a small bank would be manageable under the resolution regimes set out by the Bank of England and discussed in this Bill and its explanatory documents.

However, there are two fundamental problems where one could have significant contagion. One would be multiple failures, an issue I will address in a moment. The other is the potential failure of a big bank, because the Bill and the Explanatory Notes explicitly refer these mechanisms to big banks as well as small ones.

I will take the issue of the failure of multiple banks or a big bank. I wrote to the Financial Secretary about this and he very kindly wrote back a very valuable explanation. I presume that his letter has been circulated to the people who took part—no, I see that it has not. Well, I will quote a bit of it, because it seems to reveal the problem that I am identifying. He refers to multiple

[Lord Eatwell]

bank failures, but I would apply the same thing to a big bank failure. He says that there will be levies when the bank fails and adds:

"These levies are subject to an affordability cap"—

I did not know that—

"by the Prudential Regulation Authority based on how much the sector can safely be levied in a given year. This cap is currently set at £1.5 billion. If multiple firm failures resulting in a recapitalisation requirement is under £1.5 billion, the Government would expect the FSCS to borrow from its commercial borrowing facility and be able to safely levy from the banking sector and repay that commercial borrowing within 12 months. However, if the amount exceeds £1.5 billion, or if it is below £1.5 billion and the PRA has determined that the FSCS is unable to raise the levy on affordability grounds, the Government would expect levies to repay any borrowing from the National Loans Fund to be spread out over multiple years".

But, no, you do not have multiple years in a systemic banking crisis; you have to operate now.

The cap of £1.5 billion is worth comparing with the measures that the Government had to take in 2007-08—Lloyds Bank, £20 billion and NatWest, £45 billion. So the failure of one of those banks could be somewhat above the affordability cap, as set out in the Financial Secretary's letter to me. Indeed, today, those numbers could be multiplied by a factor of roughly five.

Even when MREL is taken into account, the £1.5 billion cap seems to me to expose the fact that this scheme is not applicable to large banks. For example, if we look at the largest MREL plus required capital, it is that of Barclays, which is 30% of risk weighted assets—the largest of all the major banks. That leaves 70% of risk weighted assets to which the taxpayer is exposed. There would not be a collapse of all of those, but there can be very large numbers very quickly. So the idea that with an affordability cap of £1.5 billion, one could handle the Lloyds Bank situation or the NatWest situation as the Government confronted them in 2007-08 is, it seems to me, fanciful.

This brings me to my final related point. There is a persistent reluctance in all the documents concerning the resolution regime to admit that the resolution of a large bank will always fall on the taxpayer. Given the need for the maintenance of confidence in the banking sector, this persistent reluctance and the pretence that MREL has eliminated the taxpayer from exposure is damaging to confidence. It would be valuable for the Purple Book to make clear that, in extremis, Bagehot's rule comes into effect, the Bank lends without limit and the Treasury will step in to resolve those banks that are "too big to fail". My amendment clears away a dangerous ambiguity in the Bill. The threat of multiple small failure will continue to exist, but it takes away the ambiguity that this could be involved in the resolution of a big bank in the circumstances of a systemic crisis similar to that which we have faced in the past.

1.30 pm

Baroness Vere of Norbiton (Con): My Lords, it is a great pleasure to be back in this Room—sadly, standing on this side. Nevertheless, it is an interesting experience being in opposition and doing my first Committee—a learning experience. I am grateful to all noble Lords who have participated in scrutinising the Bill. I recognise that we are at the beginning of the Session and sometimes it takes a while for things to get into place. There has been quite a lot of work done and I think we have made some very good progress. I, too, did not speak on Second Reading, and I blame that entirely on the Prime Minister, because he extended Parliament and I was already on holiday, so therefore I could not do that. I am very grateful and put on record my thanks to my colleague, my noble friend Lady Penn, who did it in my stead.

The Bill was originally developed by the previous Government and was waiting for parliamentary time, so I think my role today is to test the thinking of the new Government to make sure that they are still on the same page. I am very grateful to the noble Baroness, Lady Bowles, for kicking off this debate so eloquently and knowledgeably. I note her concerns about the scope of the Bill. I would love to say that she did not slightly lose me, but she did, so I will come back to that if it seems to be a problem that we need to look at.

I want to go back—to be helpful, possibly to me—to first principles on this. Having listened to the contributions that have gone before me, I think I have got it right that there are three groups of financial institutions. I am going to call them "banks", because "financial institutions" is long and it takes a while to get my tongue around.

The first group are the MREL—the big eight banks. These are the ones that have been directed by the Bank of England to hold MREL, and they must also submit a resolvability assessment framework, or RAF, to regulators. The RAF is structured so that these firms can think about how their business works and what capabilities they need to achieve the three resolvability outcomes: having adequate financial resources; being able to continue business through resolution restructuring; and effective communication and co-ordination.

I read somewhere that the 2024 assessment of these documents was due to be published in September, and I should like an update as to whether it has been published. Can the Minister comment on the outcomes of this scrutiny: is the system working? I understand that one bank was not quite there yet. Let us see whether we are going to try to exclude the largest banks from the scheme or whether we follow the suggestion of my noble friend Lady Noakes of getting the involvement of the Treasury. We need to test whether those banks which are deemed too big to fail have a coherent and funded plan in place should they get into financial difficulty. If that were the case, there would be some argument for potentially excluding them from the Bill, but there should at least be some safeguards in place.

Then there is the second group. This was raised with me by UK Finance, and this is why my amendment is slightly different to those of other people. There are those banks in the second group that are on the glide path to full MREL status. These institutions will get there, but it would be helpful to get an update from the Minister as to how many institutions make up this second group so that we can consider further whether there is a substantial risk and where that risk might reasonably lie—and so how long they will take to reach their destination.

Finally, there is the third group. These are the important ones. They are the ones that the Bill should be focused on. These are the smaller banks, and they

are often innovative, they are often very high growth and sometimes that in itself can lead to challenges. It is these banks that the Bill seeks to target. Indeed, it was my understanding, as it was that of the noble Lord, Lord Vaux, that they would exclusively benefit from this scheme.

If things start to go awry, due to either a business-specific issue or wider market turmoil, these proposed powers would create this mechanism where the banking sector itself, in its entirety—all three groups—would fund the recapitalisation of the relevant bank or banks, and the taxpayer would be relieved of that burden. So that all makes perfect sense to me.

Then we come to the reasonable worst-case scenario, which I think is what the noble Lord, Lord Eatwell, was referring to. It is not beyond our imagination that things could get very bad very quickly, with a number of small or even medium-sized banks getting into trouble at the same time. The first group would, I hope, have their MREL in place; they would have their plan, which has been approved by the regulators to make sure that they continue.

I am slightly less clear what would happen to the second group—those on the glide path to MREL—were there to be a market-wide event. These are significant institutions and if they are to be included in this mechanism, we get into issues of how the banking sector then repays that through the levy, which I will come on to. There might well be a situation where one, two or more quite substantial institutions need recapitalisation from the FSCS in the same financial year. Have the Minister's officials done any sort of assessment of how bad that could possibly get and any thinking about what the plan would be if it were to get that bad? Also, what would the hurdle be for declaring this sort of state of emergency?

While the FSCS might have a looming potential liability from the second group, there is also the third group to be considered. These ones are the potential future lifeblood of our financial sector in the United Kingdom and they would most likely need a relatively small amount of recapitalisation funding to get them through the turmoil. This is why parity is needed around the applicability of the scheme proposed in the Bill, but also the circumstances in which the scheme would reasonably and rationally be used—and, frankly, the circumstances in which it would not be, because it would just not work. In a reasonable worst-case scenario, how is anyone going to decide which ones get saved and which do not? One has to rely upon the amount of funding that could be affordable over several years of a levy applied to the UK banking sector, but that is not going to be enough money. How would that resolve itself and what would that process look like?

As mentioned by the noble Lord, Lord Eatwell, which I picked up in one of the briefings as well, the FSCS will have significant powers to apply the levy, not only in the financial year when the event or events take place but in subsequent financial years. If I am in the UK banking sector and things have gone pretty bad, and I suddenly have this massive weight of a levy going over several years to repay the events of one financial year, that to me is concerning.

It is also concerning because, of course, things are done differently in the EU, so you would get a slight mismatch from a competitiveness perspective. I would be worried about that. Has the Minister done an assessment of the impact of this potential multiyear hit, once we have an idea of the reasonable size and then the potential maximum size? Has he assessed the competitiveness of the UK banking sector, should this multiyear levy suddenly be required? How much could the UK's system cost our banking sector and over what period of time? Are there circumstances, and in which circumstances, when rationally there is a systemic failure and the only person who could step in would be the taxpayer? I do not want the taxpayer to step in, trust me, but that would prevent permanent damage to one of our most important sectors.

The other key consideration is the impact on the FSCS and its ability to meet its obligations under the deposit guarantee insurance scheme, because if that has all gone to recapitalisation funding, there will be nothing left. I believe we will come on to that later in Committee.

This is a range of thoughtful amendments tabled by noble Lords and I am grateful for them. As many noble Lords pointed out, they very much go along the same sorts of lines. I look forward to hearing the Minister's response to them. I will not go into a great amount of detail on them, but I note that my Amendment 8 takes into account those on the glide path, which we need to recognise. I am grateful to the noble Baroness, Lady Bowles, for the fine case she made for Amendment 22; I will move quickly on from that.

That brings me to the remaining amendment in the group: Amendment 18, which is in my name. Here, in essence, I am probing whether the Minister is content with the current imbalance between the banks liable to pay the levy versus the ones that, realistically, will make use of the new powers. Does he feel it is fair that the entire banking sector pays to recapitalise what, I feel, the Committee hopes will be smaller banks only? Does he accept and is he comfortable with the largest banks paying twice, in essence—particularly as they will have to have limited or no input in or influence on many of the events that might cause a resolution event or events? These largest banks will pay twice: once for their MREL and associated requirements, and again in the event of a resolution event or events of which they would not be able to take advantage.

Context is important here. We will come back to costs again but banks already pay a plethora of taxes, levies and charges, both to regulators and directly to Treasury funds. There is the bank levy, the bank corporation tax surcharge, the economic crime levy, the FSCS levy and the FCA/PRA fees. That is a lot—and let us recall that these costs are never borne by the banks themselves; they will always be borne by the businesses and consumers who use them.

The Financial Secretary to the Treasury (Lord Livermore) (Lab): My Lords, I am grateful to all noble Lords for taking part in this debate on the first group of amendments. I note that the scope of the mechanism is a key and central issue, both for noble Lords and for the wider

[Lord Livermore]
banking sector. I hope to offer some reassurance to the noble Baroness, Lady Bowles, and other noble Lords regarding this concern.

I start by addressing Amendment 1, tabled by the noble Baroness, Lady Bowles, which would prevent a recapitalisation payment involving a bank that has issued minimum requirements for own funds and eligible liabilities, otherwise known as MREL. I stress that the Government's strong policy intention is for the mechanism provided by the Bill to be used primarily to support the resolution of small banks. The Government therefore do not generally expect the mechanism set out in this Bill to be used on the type of firms that these amendments would seek to exclude.

The principal issue here is whether that intention should be set out in the Bill. The Government's considered view is that it is right for the Bill to contain some flexibility for the Bank of England to be able to use the mechanism more broadly in some circumstances. That is because firm failures can be unpredictable and there could be circumstances in which it would be appropriate to use the mechanism on such firms.

For example, this may be relevant in situations where a small bank has grown but is still in the process of reaching its end-state MREL requirements. Firms in this position would have at least some MREL resources to support recapitalisation but the new mechanism could be used to meet any remaining shortfall if judged necessary. Without the proposed mechanism, there would be a potential gap in this scenario, creating risks to public funds and financial stability.

Ultimately, the decision to use the mechanism would rest with the Bank of England, having assessed the resolution conditions. The Bank of England is required by statute to consult the Treasury before any use of resolution tools, providing an effective and legally binding window for the Treasury to raise concerns if it had any.

I also point out that, during the Government's consultation period, more respondents were in favour of the scope set out in the Bill than opposed. I appreciate noble Lords' concerns about this issue and am happy to commit to exploring how to provide further reassurance on the Government's intent via the code of practice.

The noble Baroness, Lady Bowles, asked whether the Bank of England should reduce MREL requirements in the knowledge that it could instead use FSCS funds. The Bank of England sets MREL requirements independently of government but within a framework set out in legislation. Any changes to firms' MREL requirements would therefore be a decision for the Bank of England. The Bank of England will consider, in the light of this Bill and wider developments, whether any changes to its approach to MREL would be appropriate.

I turn briefly to Amendment 8, tabled by the noble Baroness, Lady Vere, which similarly aims to exclude from the new mechanism those firms that are required to hold MREL. I hope that I have already fully responded to her concerns in that regard; the Government are clear that this Bill is primarily intended for small banks, but that it is right to retain flexibility.

1.45 pm

Amendment 10, tabled by the noble Lord, Lord Vaux, would restrict the mechanism for firms whose MREL requirement is set on the basis of a bail-in resolution strategy. I additionally note here that the Government agree that bail-in exists as the primary mechanism for resolving larger, more complex banks. The Bill does not change that principle but, as I say, it is important for the scope of the mechanism to remain flexible so that the Bank of England can respond effectively as the circumstances require.

The noble Lord asked for the Government's view of whether MREL is insufficient and whether the Bank of England should reform its thresholds. The Bank of England sets MREL requirements independently of government, but within a framework set out in legislation. The Bank of England will consider, in the light of the Bill and wider developments, whether any changes to its approach to MREL would be appropriate.

The noble Lord also asked for confirmation that the new mechanism will not be used to transfer costs from shareholders and creditors on to the wider banking sector. It is an important principle of the UK's resolution regime that, when a banking institution fails, its shareholders and creditors should bear losses. Existing provisions relating to this will continue to apply alongside the new mechanism. This includes Sections 6A and 6B of the Banking Act 2009, which require the Bank of England to ensure that shareholders and creditors bear losses when a banking institution fails. This is an important principle that will continue to apply when the new mechanism is used. This involves cancelling, diluting or transferring common shares so that shareholders are the first to bear losses. Where necessary, the Bank of England must also reduce the value of particular types of instruments, known as additional tier 1 and tier 2 instruments, or must convert such instruments into shares.

Lord Vaux of Harrowden (CB): Just to clarify, is there anything in the Bill that changes the effect on shareholders and creditors compared with if it had been done by just the bail-in approach?

Lord Livermore (Lab): I am told that the answer to that is no.

Baroness Bowles of Berkhamsted (LD): I know that the notes have no effect, but those regarding Clause 4(3) say that it

"amends section 12AA … to allow the Bank to take into account the funds provided by the FSCS when they are calculating the contribution of shareholders and creditors required when exercising the bail-in write-down tool".

That says that you will be able, and consider it positive, to adjust the contribution of shareholders. That is because you are using incoming capital. I think that the shareholders and bail-inable creditors should be written down as they are supposed to be, then, when you still do not have enough money for capitalisation, there is the money from the Financial Services Compensation Scheme. I understood that and have no problem with it, apart from the size issues. Saying no to the question just put by the noble Lord, Lord Vaux, contradicts what is written in paragraph 26 of the Explanatory Notes.

Lord Livermore (Lab): It may be best if I write to noble Lords to clarify this point.

Amendment 11, tabled by the noble Lord, Lord Eatwell, would exclude from the scope of the new mechanism those firms whose MREL requirement exceeds their minimum capital requirement. This would include both firms expected to be transferred to a private sector purchaser and those bailed in when they fail.

I stress to the noble Lord, as I have to others, that the Government's intention is for the mechanism to be used primarily for small banks. That is ultimately central to the Bill's purpose, but I emphasise the importance of having flexibility in the legislation for the Bank of England's ability to respond effectively in a crisis. As I have noted, this may, for example, be relevant if a firm is still in the process of building up its MREL requirements to be able to fully implement a bail-in strategy.

I also note the amendment from the noble Baroness, Lady Noakes, which intends to ensure that, if the Bank of England seeks to use the new mechanism on a bank required to hold bail-in liabilities, it must first get the consent of the Treasury.

I am conscious that there are other amendments related to the subject of Treasury approval for the use of the Bank of England's powers and that we will turn to this matter more substantively later. What I will say now to the noble Baroness is that the Government consider it important for the Bank of England to be able to take decisions in a resolution independently and decisively.

I will mention two important safeguards. First, as required by statute, the Treasury will always be consulted as part of the Bank of England's formal assessment of the resolution conditions. Secondly, if using the mechanism on larger banks had implications for public funds, such as requiring the use of the National Loans Fund, this would be subject to Treasury consent. But I repeat that the Government's strong policy intention is ultimately for the mechanism to be used primarily on small banks.

Amendment 18 was tabled by the noble Baroness, Lady Vere. It seeks to clarify the rationale for the scope of financial institutions liable to pay the levy for the new mechanism delivered by the Bill, given the expectation that the new mechanism would apply primarily to small banks. The Government believe there to be benefits to mirroring the existing process for recouping the costs of paying out depositors in insolvency and maintaining a broad-based levy. In particular, as noted in the Government's cost-benefit analysis, the exclusion of larger banks would raise concerns about the affordability of the levy for other banks, which would in turn increase risks to public funds and the overall viability of the new mechanism.

In addition, in cases where the new mechanism may be used, the counterfactual would be for the failed bank to enter insolvency. As a result, the sector would already be liable to contribute to the costs of a small bank failure. As set out in the Government's cost-benefit analysis, while highly case-specific, the upfront costs of an insolvency are generally expected to be greater than those under the new mechanism delivered by the Bill. The Government therefore feel it is right to mirror the arrangements in place for an insolvency and to maintain a broad-based levy.

The noble Baroness asked about the Bank's resolvability assessment framework. I am told that the latest update was published in August. She asked how many firms were on the glide path. I will write to her with specific details, and if any of her other questions are not answered in my speech today, I will write to her also on those points.

Baroness Vere of Norbiton (Con): One concern was raised in the document that has been published, so I would be grateful for the Minister's comments on that.

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

I turn finally to Amendment 22 in this group, tabled by the noble Baroness, Lady Bowles, which concerns the use of the bail-in resolution tool. Section 12AA of the Banking Act 2009 sets out the principles by which the Bank of England calculates the shortfall amount when the bail-in tool is used and, as a consequence of that calculation, how much of a failed firm's resources needs to be bailed in. The addition to Section 12AA in Clause 4, which this amendment seeks to prevent, ensures that any available funds from the Financial Services Compensation Scheme via the new mechanism could be taken into account when calculating the shortfall amount and, as a consequence, how much of a firm's resources would need to be bailed in when the new mechanism is used alongside the bail-in tool.

This change to Section 12AA is important as there are some circumstances where bail-in may be the preferred tool for the Bank of England to use as a precursor to transfer of the firm to a bridge bank or private sector purchaser, even if the bank is small. This is because the bail-in tool permits the writing down of subordinated debt or other liabilities, to which mandatory reduction under the bridge bank or private sector purchaser tools does not apply. There may be circumstances in which it is appropriate to write down the subordinated debt or other liabilities of a small bank. The intention is therefore for the bail-in tool to be available alongside use of the new mechanism.

In such circumstances, this amendment would preclude the Bank of England, when calculating the shortfall amount, from being able to take into account any funds that were available from the Financial Services Compensation Scheme under the new mechanism. As a consequence, when determining how much of the firm's subordinated debt and other liabilities should be bailed in, the Bank of England would be obliged not to factor in those external funds and would have to write down more of the firm's resources than it needed to. In certain circumstances this would be undesirable and could undermine the wider goals of a resolution process. The noble Baroness, Lady Bowles, and the noble Lord, Lord Vaux, suggested worked examples. We will of course take that idea away for further consideration ahead of Report.

I hope that these explanations have been helpful and that I have provided some reassurance on these points. I will of course write where I have indicated

[Lord Livermore]
that I will do so. In the circumstances, I hope that the noble Baroness will withdraw her amendment.

Baroness Noakes (Con): My Lords, before the noble Baroness decides what to do with her lead amendment, I will raise two points. The first is that the noble Lord referred fairly briefly to the code of practice. Could he explain, first, how he sees the code of practice being used for the issues that we have identified in this group of amendments? Secondly, will he update the Committee on when we expect to see a revision to the code of practice? At Second Reading, my noble friend Lady Penn asked whether she could have sight of the draft updates. The noble Lord responded very positively to that, but clearly no draft updates have yet appeared. My additional question is: are we likely to get those draft updates? Clearly they have not arrived before Committee; will we get them ahead of Report? Seeing codes of practice, or updates of codes of practice, helps us to understand exactly what the Government are doing.

The second point I wish to address is a mechanical one. The noble Lord has already said he will write on a number of things; I expect he will say that quite a lot as we go through Committee. It would be very helpful if those letters were copied to all the Members who are taking part in Committee, or that the mechanism of "will write" letters on the publications page of the Parliament website is used promptly so that all noble Lords who have an interest in the areas get an opportunity to see the correspondence.

Lord Livermore (Lab): On the noble Baroness's first point, we are committed to updating the code of conduct, to doing so swiftly and to consulting with industry thoroughly on it. I cannot give her a timescale today. On the commitment to write letters, of course I will make sure those letters are copied to all noble Lords.

Baroness Bowles of Berkhamsted (LD): I thank everybody who has spoken in this debate. Not surprisingly, we have had quite a lot of good points. I am still not reassured that the Bill's scope is right. I understand entirely wanting to give the Bank of England flexibility. Ultimately, it is in the best place to judge what is the best thing to do, taking into account public interest, not setting off a systemic failure and all those kinds of things. At the same time, I have this instinctive dislike of something that enables the Bank to do something that I think it definitely should not be allowed to do, which I have said is in paragraph 26 of the Explanatory Notes. I will not repeat it.

I noticed, as the Minister spoke, that he very carefully said "primarily small banks" the whole time. There is this issue of "primarily" and where it stops. There could be other ways to include up to medium-sized banks. The code of practice could be one way of doing it, or a strategy, as the noble Lord, Lord Vaux, had as part of one of his amendments. I do not think it can be passed in this case which, as was said by the noble Lord, Lord Eatwell, could start a whole systemic issue. It is really built for the idiosyncratic case, or maybe for a couple of small banks, but that is it. It is basically about saving the uninsured depositors and people like that, in the public interest, rather than, as unfortunately it says, saving the shareholders and creditors. We have to look carefully at which creditors and at the definitions. I would like to see that laid out, because my reading is that, when we looked at the sections I quoted that date back to the BRRD, we looked at the bail-in things that happen in big banks, not at the other liabilities generally held by small banks. I might have got that wrong, but I would really like to see this properly laid out.

So I still have some issues. There needs to be something in the Bill that takes account of the concerns raised, however that is done. I can be flexible about it, but I think that my Amendment 23, when we get to it, would be one way to do it.

I am afraid that I will withdraw my amendment at this stage, but I expect to return afresh on Report. We have all been hampered by the fact that this has been a first-up Bill after vacations—and this will happen again on Report, when we will have been back for only one week. That makes it very difficult to have communications and meetings with the Minister.

Amendment 1 withdrawn.

2 pm

The Deputy Speaker (Lord Haskel) (Lab): My Lords, I have to inform the Committee that the annunciator will not be repaired until this evening. Apparently, there is a fault with a cable and the carpet has to be taken up to get to it. We will have to manage without the annunciator this afternoon.

Amendment 2

Moved by ***Baroness Noakes***

2: Clause 1, page 1, line 18, leave out lines 18 to 20

Member's explanatory statement

This amendment probes the nature of "other expenses" and the persons other than the Bank which could incur expenses.

Baroness Noakes (Con): My Lords, Amendment 2 is a probing amendment. It would delete new Section 214E(2)(b) of FSMA. Under new subsection (2), a "recapitalisation payment" includes the cost of recapitalisation; that is at new paragraph (a). There is clearly no issue there because that is what the Bill is about. However, new paragraph (b) would allow the Bank to include

"any other expenses that the Bank or another person has incurred or might incur in connection with the recapitalisation of the institution or the exercise of the stabilisation power".

This raises a number of questions.

First, who are these other persons who can incur expenditure in connection with the recapitalisation? The Government's consultation referred to the Treasury, the Bank of England and a bridge bank. If that is the case, it seems that the paragraph ought to be confined to those persons, as I could not think of any other person who could make a case for receiving money under the auspices of the recapitalisation payments power.

Secondly, why is there not more precision about exactly which costs could be covered? Again, the response to the Treasury's consultation gives the sorts of expenses that could be covered—legal fees, consultancy fees

and the like—but is virtually silent on what should not be covered. The only example cited for what is not covered is the cost of preparing in parallel for an insolvency process, but that leaves a huge swathe of costs that could well be brought within the ambit of the recapitalisation payments. As drafted, it could certainly include many expenses that no one could reasonably label as being related to recapitalisation.

The Minister will be aware that UK Finance has expressed very real concerns that the banking sector will be left exposed to litigation or regulatory costs that emerge once a failed bank is in a bridge bank. In a bank insolvency procedure, such litigation or regulatory action would lead nowhere, as there would almost certainly not be any spare funds to cover any costs arising in that way. However, once the possibility of financing via the recapitalisation power arises, a new deep pocket appears, which could act as a magnet for litigation. Does this legislation mean that the banking sector is writing a blank cheque for whatever litigation emerges and which the Bank then chooses to engage in? Can there be any constraints on the Bank's decision to fight or concede litigation? What are the incentives for the Bank to seek the optimal outcome, which may or may not be to concede a case in litigation? How is the banking sector to be protected in these circumstances?

Costs arising from regulatory action is even trickier. Let us assume that, following a small bank failure, the FCA decides to take regulatory action in relation to non-compliance with the consumer duty prior to the failure. As anybody who has been involved in one of the regulatory actions taken by the FCA, or indeed the PRA, will know, these are long, drawn-out and very expensive processes. Who should decide whether to fight regulatory action or concede and pay fines or redress? These could end up being funded by the recapitalisation payments. If the PRA were involved in regulatory action, rather than the FCA, how can the conflict of interest within the Bank be dealt with so that the costs falling on the banking sector are seen to be fair?

Lastly, new paragraph (b) allows the Bank to include costs that "might" be incurred. I completely understand why, when the recapitalisation calculations are made at the outset, that will involve an element of forecasting, because the formulation is not confined to, say, costs that are reasonably expected to be incurred. Instead, the Bank is allowed to include any costs that "might" be incurred, however improbable that might be. An overly conversative approach to working out what costs might be incurred will result in the banking sector bearing too much cost up front. It is not good enough to just say that, if there is a surplus left at the end of the day, it will be returned via the FSCS.

To sum up, the formulation in new subsection (2)(b) is simply too wide. As I said at the outset, this is a probing amendment and I shall listen carefully to what the Minister says, but my instinct is that new subsection (2) needs some guard-rails drafted into it. I beg to move.

Baroness Bowles of Berkhamsted (LD): I only need to say briefly that I am in agreement with the noble Baroness. This is drafted too widely. Part of me thinks that some of this should be covered by the ordinary banking levy, and that the PRA and the Bank of England have to manage their budget, as anybody else would have to, in expectation of sometimes having adverse effects, rather than there being some bottomless pit, or pool, of money into which they always have access. The truth of the matter might need to be somewhere half way in between, but it is too open at the moment.

Lord Vaux of Harrowden (CB): My Lords, I briefly add my support to what the noble Baronesses have said. This is drafted extraordinarily widely. The words

"another person has incurred or might incur in connection with the recapitalisation"

could theoretically include the legal costs of the shareholders of the bank that is going bust, for example. We have to find some way of reducing that scope. I had attempted to deal with this in Amendment 12 on reporting, but having heard what the noble Baroness said I do not think that does it. We need to find some way of narrowing it.

Baroness Vere of Norbiton (Con): I am grateful to my noble friend for tabling this amendment and I added my name to it. I am also grateful for the comments made by my noble friend Lord Moylan. He is not in his place but he raised this issue during Second Reading and set people thinking about it.

I do not have a huge amount to add. I agree with the comments made by my noble friend Lady Noakes, the noble Baroness, Lady Bowles, and the noble Lord, Lord Vaux, but I would also say that this will have to be a double-edged attack. Not only must we potentially do something on this but the reporting of it will have to be clear and go into great detail.

When it comes to expenses, all noble Lords will be aware that the costs of financial lawyers and other professional financial advisers are not de minimis. The total cost of expenses may well exceed the cost of the recapitalisation of the bank, so it is important that we ensure that there are some guard-rails around this, recognising as ever that these costs will end up falling not on the banks but on the people who bank with the banks.

Does the Minister have any view as to roughly how large an expense bill might be? I do not even want to guess, because I hope that he will be able to give me some idea of what we are looking at.

The noble Lord, Lord Vaux, mentioned the expenses incurred by another person. I think that all noble Lords who have spoken so far agree that that is extraordinarily broad, and we will need to consider what we might do about that. Potentially, one could put something in the code of practice but, again, is that sufficient? We might also protect ourselves by requiring Treasury consent—who knows? Again, we might want to think about that. Going back to the point raised by the noble Lord, Lord Eatwell, it is tempting to think about these things as a single event, and we might be talking about £10 million-worth of expenses, but if a whole bunch of such events happened at the same time, we could very soon be talking about real money. We need to get to the bottom of this. I look forward to the comments from the Minister.

Lord Livermore (Lab): My Lords, in response to the amendment from the noble Baroness, Lady Noakes, I hope to explain and provide some clarification around the expenses within scope of the mechanism under the Bill, as well as clarify the Government's rationale for our approach.

The key purpose of the Bill is to ensure that there is a source of funding for recapitalisation of a bank in resolution, where that bank does not hold the necessary resources to allow it to be bailed in. In addition to the core expense of the recapitalisation payment, other expenses are likely to be incurred. There are two in particular.

First, there are likely to be a number of ongoing expenses incurred by the Bank of England, or by a Bank of England-owned holding company or operating company, when running a bridge bank, beyond those concerned with simply injecting new capital into the failed firm. This could, for example, include additional staffing costs and advisory fees incurred by the Bank of England to support its ability to operate a commercial bank.

Secondly, there will likely be a set of ancillary expenses incurred by both the Bank and the Treasury in undertaking a resolution of this type. As set out in the Government's consultation response, this could include, for example, the costs of receiving professional advice, such as on legal or accountancy matters. It may also include the costs of appointing an independent valuer, as required under the Banking Act. As such, the persons other than the Bank of England referred to in the legislation whose expenses could be met using the new mechanism are expected to be the Treasury and any other Bank of England-owned legal entities that are not the Bank of England itself. The noble Baroness asked why the full set of costs are not specified. It is important that the Bill is not overly prescriptive, allowing the Bank to respond flexibly when costs arise.

The noble Baroness, Lady Noakes, also raised concerns about the treatment of litigation costs. As the noble Baroness, Lady Vere, noted, this arose at Second Reading as well. Depending on the circumstances, these again may be covered by the relevant part of Clause 1 addressed by this amendment—for instance, where the Bank of England is subject to litigation concerning the resolution and recapitalisation process. Given the fast-moving and unpredictable nature of bank failures, the Government believe that it is prudent to ensure that there is broad provision to cover these potential additional expenses incurred by both the Bank of England and other persons such as the Treasury. Ultimately, the alternative is that the cost of such expenses may need to be met by the taxpayer.

I wish to reassure noble Lords that in determining whether to include certain ancillary expenses in its request for funding to the Financial Services Compensation Scheme, the Bank of England is subject to the usual obligations under public law to act in a way that is reasonable and it will need to factor this into any assessment of what is in the public interest. In addition, the legislation does not allow the Bank of England or any other person to claim expenses that arise exclusively for preparing for bank insolvency.

I hope this provides the noble Baroness with a helpful explanation of the Government's approach, and I respectfully ask her to withdraw her amendment.

2.15 pm

Baroness Noakes (Con): My Lords, first, many thanks go to the noble Lords who supported my amendment. I thank the Minister for his response but, with the greatest respect, he did not go much beyond what is in the Treasury's response to the consultation document. He reiterated that the Bank and the Treasury, or the Bank and its entities, are likely to be the ones that have their costs covered. I have no real problem with that—put it in the Bill.

Similarly, the Minister talked about the Bank needing to be reasonable but I am not sure that being reasonable about the kinds of expenses that could occur via litigation is going to satisfy the banking sector, which fears that judgments working significantly to its disadvantage are going to be made and that it will have no way of influencing those decisions. There is not even the kind of protection that you get in insolvency, where you get, for example, creditors' committees that act as a constraint on what liquidators can do. So I do not think that the Minister has really given a proper response on how the sector, which is going to pick up the tab—ultimately borne, as my noble friend Lady Vere pointed out, by the customers of banks—can be satisfied about the judgments made about the huge range of costs that could emerge during the course of handling a failed bank using the recapitalisation power; and how those costs can be seen to be properly incurred and not acting against the interests of the banks.

The Minister also did not engage with the issue of whether, in estimating future costs, you should constrain the costs to those that are reasonably foreseen, which is a natural formulation in legislation. Frankly, "any costs that might be incurred" is too big a definition to be used reasonably. I think that that formulation needs to be used again.

I will read carefully what the Minister has said in *Hansard* but my instinct is that he has not added to anything that is already in existence via the Treasury's response to the consultation. I suspect that we will want to return to this on Report but obviously, for now, I beg leave to withdraw.

Amendment 2 withdrawn.

Amendment 3

Moved by ***Baroness Noakes***

3: Clause 1, page 1, line 20, at end insert—

"(2A) The Bank may not exercise the power in subsection (1) more than once in respect of the same financial institution without the consent of the Treasury."

Member's explanatory statement

This amendment requires the Bank to obtain Treasury consent before it can require the FSCS to make a second (or subsequent) recapitalisation payment in respect of an individual bank.

Baroness Noakes (Con): My Lords, it is me again, I am afraid. That is the trouble with getting enthusiastic about amendments during recess—you pay for it when you get back.

Amendment 3 is a probing amendment to find out the Government's approach to using the recapitalisation power on more than one occasion. The amendment uses the technique of requiring the Treasury's consent to the use of the recapitalisation power more than once in respect of the same financial institutions. My purpose in this amendment is not to debate the formal involvement of the Treasury, as I will return to that broader topic in a later group. I am using the amendment as a technique to find out whether there are any constraints at all on the use of the recapitalisation power on multiple occasions.

When the Bank of England decides to use the recapitalisation power, it works out what sum of money it needs to put the bank in a position where it can be sold on. We discussed in our debate on the previous amendment the kinds of expense that can count as recapitalisation costs for the purposes of the power. My own view is that the Bank must try at the outset to reach as clear a view as possible on the amount of the whole that the recapitalisation payment is designed to fill because, if the Bank does not do that properly at the outset—making a good, honest assessment of what the total cost will be—it cannot reach a realistic judgment about whether to proceed with a bridge bank or to initiate an insolvency process.

So I find it disturbing that the drafting of new Section 214E seems to allow the Bank to double-dip into the FSCS without any other process or consideration. If the Bank runs out of recapitalisation cover, it probably means that it did its sums wrong in the first place or that additional facts have emerged, increasing the costs in ways that were not anticipated at the outset. In either event, that can call into question whether the initial decision to use the bridge bank instead of the bank insolvency procedure was the correct one. It may also raise the question of whether the bridge bank strategy should be continued or replaced with the bank insolvency procedure.

It also brings into question the nature of the additional hole in the finances of the failed bank, which is covered in part in the previous amendment. It may not be clear that the incentives are in the right place for the correct judgments to be made about whether any additional costs arising from regulatory action or litigation should be accepted or challenged. If the costs are down to PRA action, there are clear conflicts of interest involved.

I completely understand the need for flexibility in legislation. I hope that the Minister will also appreciate that the open-ended nature of the Bank's powers in the use of the recapitalisation payment technique carries particular problems when a second or subsequent attempt is made to obtain a recapitalisation payment. I hope that the Minister can explain how the Government see this power being used, if it is to be used more than once, and whether—including to what extent—there are mechanisms in place to ensure that the way in which the Bank uses that power is fair to the banking sector.

The Bill makes the banking sector pick up the costs. The sector itself will probably have had no involvement whatever in the failure of a bank yet it has to pick up the tab, ultimately borne by its own customers; that is whenever the Bank decides to use the recapitalisation powers. So it is only fair and reasonable that there should be some checks and balances in return. I hope the Minister can reassure the Committee that there are checks and balances and that, when the Bank uses the power in what has to be quite an unusual situation—for example, it has got the sums wrong or something else has caused a requirement for more to be put in—it raises the need for additional safeguards in order to satisfy the banking sector that the costs that will be loaded on to it are reasonable.

I beg to move.

Lord Vaux of Harrowden (CB): My Lords, I rise again briefly. The noble Baroness has made some really important points. Once again, I have attempted to deal with this as a reporting question in Amendment 12, which states that a report would be required each time a recapitalisation payment was made; that should stand anyway.

This can become quite significant if, for example, there is a situation where the Bank of England expects to be able to sell a bank immediately but that falls over and then goes into a bridge bank for two years—or, indeed, more—and picks up all those costs along the way. One can see a situation where you could have, for example, an annual payment covering the costs of the bank until the Bank eventually decides to put it into insolvency. The critical factor must be that, any time a recapitalisation payment is being considered, whether it is the first one or a subsequent one, the insolvency route is reconsidered at each point and this does not become an open-ended default drag on costs—but the reporting point, which we will come on to later, stands as well.

Baroness Bowles of Berkhamsted (LD): The noble Baroness, Lady Noakes, made a good point. I agree entirely with what the noble Lord, Lord Vaux, said.

I raised double-dipping at Second Reading and got the answer, "Well, yes, you could double-dip". Of course, if you go from thinking that you are going to do the bridge bank or whatever to having to move into insolvency, there will be another dip if there are deposits to cover; I have a later amendment on that but it is all part of the same conversation. I am sure that the noble Lord, Lord Vaux, knows a lot more about this than I do because he is an accountant, but things always get worse than you expect. How is the Bank going to deal with that? Initially, it is probably going to have to ask for more than it thinks it could possibly ever need.

Some kind of structure around this, with points at which it is revisited and good reporting, appears to be the only solution. I initially thought, "Yes, maybe HMT intervention is the solution", but I take the point that the Minister made earlier on about HMT intervention and independence. The fact is that, really, they are all in it as a club taking the decisions together already, so I am not sure that that would necessarily be the decisive factor one would want. It is about what the procedures are; the way things are being done and being understood; and how the reviews and reporting happen so that, when the worst happens and another dip comes along, one is not totally taken by surprise.

Baroness Vere of Norbiton (Con): I rise only to celebrate the fact that my noble friend Lady Noakes had so much time during recess in which to draft all these marvellous amendments because they certainly get the little grey cells going. I appreciate her eloquent explanation of her amendment and the very practical example of what could happen that was provided by the noble Lord, Lord Vaux. This goes back to a topic that was raised earlier about there being a certain feeling of a blank cheque in terms of certain elements of the scheme and wanting to ensure that there are appropriate guard-rails.

I will not go much further; I will come on to my observations about the sharing of powers and responsibilities between Ministers and regulators in due course. I look forward to hearing from the Minister.

Lord Livermore (Lab): My Lords, I note that this amendment from the noble Baroness, Lady Noakes, is one of several concerning whether Treasury consent is needed when the Bank of England is exercising its powers—in this case, when the mechanism is used more than once for a particular institution.

Addressing the specific case of the amendment, although I think we can agree that it would usually be desirable to have to use the mechanism only once in respect of a particular institution, this may not always be the case. As an example, if a failed bank is transferred to a bridge bank, there is a risk of further deterioration in its balance sheet over time. It is foreseeable that, if that were the case, the Bank of England may need to use the mechanism again in order to recapitalise the institution; this would allow the Bank of England to maintain confidence in the firm, promoting financial stability.

The Government believe that it is important for the Bank of England to have reasonable flexibility to do so, reflecting that the full implications of a bank failure are hard to anticipate in advance. In addition, if further approvals are required, this may undermine market confidence in the original resolution action given that such approvals cannot be presumed in advance.

However, I note a few important pieces of context to this broader position. First, as required by statute, the Treasury is always consulted as part of the Bank of England's formal assessment of the resolution conditions assessment. In practice, there is also frequent and ongoing dialogue between the authorities. Therefore, the Government are confident that there are proper and robust channels by which it could raise concerns if it had any.

Secondly, given that the new mechanism is ultimately funded by industry, we would expect the Bank of England to consult the Prudential Regulation Authority on any additional request to use the new mechanism. This is important as the Prudential Regulation Authority determines what is considered affordable to be levied on the sector in any given year.

Finally, if additional use of the mechanism had implications for public funds, such as requiring use of the National Loans Fund, provision of this additional funding would be subject to Treasury consent. Overall, the Government believe that this strikes the right balance in preserving the Bank of England's freedom of action while ensuring the appropriate level of Treasury input into decision-making.

I hope that this provides some comfort to the noble Baroness and respectfully ask that she withdraw her amendment.

Lord Vaux of Harrowden (CB): The one thing the Minister did not cover there was the question of whether, on a second or subsequent recapitalisation payment, the Bank would have to look again at whether the insolvency route is the one it should go down, rather than a secondary payment.

Lord Livermore (Lab): It would always look at the situation at the time and make each individual decision on that basis.

Lord Vaux of Harrowden (CB): It would always do so or it would always have to do so?

Lord Livermore (Lab): It would always have to do so.

Lord Vaux of Harrowden (CB): Okay.

Baroness Noakes (Con): I am not sure who the "it" was.

Lord Livermore (Lab): The Bank.

2.30 pm

Baroness Noakes (Con): Okay. We understand that the Bank has to make these decisions. The issue is what there is to provide a check or balance on the Bank. That has not been addressed by the Minister.

I thank noble Lords who supported this amendment. I agree with the noble Lord, Lord Vaux, that there has to be something that allows a proper judgment to be made if there is a second go. It is also important to consider at each stage whether the bank insolvency procedure should be the right route. It is not clear that that is written into the legislation. It appears not to be very transparent after the initial use of the powers. I think the Bank is required to consult the Treasury on the initial use of the powers, but it is not required to consult the Treasury on any subsequent use of the stabilisation powers or of the bank recapitalisation power itself. I think the Minister referred to the fact that there was a lot of contact between officials. I know that, but the issue is what is formally required.

The Minister's response in respect of guarding the finances of the industry seemed to be that the PRA has to be consulted, but the PRA is not overinterested in the finances of individual institutions. Indeed, a big conflict of interest exists between the Bank of England and its component part of the PRA. The governor chairs both the Bank of England and the PRA and the deputy governor sits on the Court of the Bank of England. This is all very intertwined, so consulting the PRA does not provide a mechanism that gives comfort to the banking industry that its interests are being dealt with. This is another bit of unfinished business.

I have one question for the Minister: is any of this territory, such as using the mechanism more than once, likely to be covered in the code of practice?

Lord Livermore (Lab): We can certainly take that away and look into doing so.

Baroness Noakes (Con): That means you were not thinking about it, but you might think about it, so I will leave that for the time being.

I remain uncomfortable at the scale of the powers that the Bank has without any real practical constraints on how they are used. Given that we are using the banking industry to avoid amounts falling on taxpayers, which is reasonable and accepted by the industry up to a point, I think we need to make sure that it is protected in that, and I cannot see where the protections are.

I need to think about this further. I will certainly read what the Minister has said, but I suspect we will return to this in some way when we get to Report. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Baroness Noakes***

4: Clause 1, page 1, line 20, at end insert—

"(2A) The Bank may not exercise the power in subsection (1) in respect of a financial institution which meets the condition in subsection (2B) without the consent of the Treasury.

(2B) The condition is that the financial institution is a subsidiary of a company based outside the United Kingdom."

Member's explanatory statement

This amendment requires the Bank of England to obtain Treasury consent before it can require the FSCS to make a capitalisation payment in respect of a bank which is a subsidiary of an overseas body.

Baroness Noakes (Con): My Lords, this is another probing amendment. In this, I want to probe the circumstances in which the Treasury believes it would be appropriate for the UK banking industry to stump up for the recapitalisation of a foreign-owned bank. This amendment uses the technique of Treasury consent, as some of my other amendments do, but this is not what I am trying to talk about in this amendment. I am trying to probe the substance of using the recapitalisation power for the subsidiary of a foreign company.

Of course, I know that SVB UK was a foreign-owned bank and the simple answer to my question might be that this gives the Bank another way of avoiding what happened in that case: SVB was gifted to HSBC with the additional present of permanent exemptions from the ring-fencing regime. If we accept that we should avoid being held over a barrel by HSBC in future, this would be a good use of the power. So can the Minister say whether, if presented with the same facts as those relating to SVB UK, the Bank would have preferred to recapitalise SVB via a bridge bank and then sell it on a timescale consistent with achieving better value for money from the UK? The heavens are opening as we are discussing these important things.

More broadly, is it not the case that the Bank should satisfy itself that the foreign subsidiary banks are either adequately capitalised in their own right or parts of groups that are expected to be resolvable via bail-in-able capital, in line with international expectations? In general, the regulatory system for banks following a financial crash is designed to ensure that they hold capital or bail-in liabilities, which avoids the need for extraordinary support. When a UK bank subsidiary of a foreign company fails and requires money to keep it going, there has been at least a prima facie case that there has been some element of regulatory failure, either in the UK or elsewhere. There should not be an expectation that the failure of a foreign bank would impose costs on the UK banking sector—nor, indeed, the UK taxpayer, if that is the alternative.

It would be helpful if the Minister could explain in what circumstances the Government would consider it appropriate for the Bank to use the recapitalisation power in relation to foreign-owned banks and, perhaps more importantly, when the Government would not consider it appropriate to use the power. Can he also say whether any of this is likely to be covered in the code of practice? I beg to move.

Lord Vaux of Harrowden (CB): My Lords, this weather sounds like the reason I ended up tabling a load of amendments in south-west Scotland: I had nothing better to do for a few days.

Again, the noble Baroness, Lady Noakes, raises a really important point. I have tried to attack it in a different way in Amendment 16, where I look at the recovery of money from shareholders. I will be interested to hear what the Minister has to say. I had in mind the sort of scenario where a foreign company sets up a bank in the UK, it does not go very well and it decides just to walk away from it, having perhaps removed all the assets in the meantime. Clearly, it does not seem fair that the costs of sorting that out should fall on the industry or, indeed, the British taxpayer. It would be really interesting to understand how we can ensure that foreign shareholders behave properly and how, when it does go wrong, we can recoup the money from them.

Lord Eatwell (Lab): My Lords, I am somewhat puzzled by the amendment in the name of the noble Baroness, Lady Noakes, in this case. Surely, under the Basel accord, the UK regulator is responsible for the regulation of a subsidiary that is legally established in the UK. If "subsidiary" were changed to "branch", the foreign regulator would indeed be responsible for regulation in that case. It seems to me that this particular amendment would violate the Basel accord to which His Majesty's Government are committed.

Baroness Bowles of Berkhamsted (LD): I will just comment that we have seen capital being sucked out of subsidiaries and taken back to the States and have been left with the collapse here. Basel accord or not, there ought to be some kind of mechanism of group support. I wonder whether there has been any international progress on that. What other mechanisms could be used to ensure that those kinds of things do not happen? Ultimately, it is going to be quite difficult to do this unless you somehow put on some extra capital requirements–and then you then start to get into all kinds of international difficulty. Perhaps the Minister could say something about what levers, if any, are available.

Baroness Vere of Norbiton (Con): I rise briefly to build on the comments made by previous speakers. This is an important issue. Again, it is worth recalling that this will not just be the recapitalisation funding; there might also be associated expenses. I note the point made by the noble Lord, Lord Eatwell, about the Basel accord and it being a subsidiary et cetera, but it strikes me that this is of a different level of political salience than a purely domestic collapse might be, where one has established structures. It could get incredibly uncomfortable for the Government if we do not have a better and fuller understanding of what safeguards exist already to make sure that banks are appropriately capitalised by their parents abroad and of how we avoid the perception of the Bank of England acting in interests which are not necessarily aligned with those of *Daily Mail* readers—let us put it that way. It is not that they have to align with *Daily Mail* readers, but one might imagine that this could be very problematic.

I would like some reassurance about what we would do if it were to be a significant amount rather than the very small amount for Silicon Valley Bank and how we would seek to address the concerns that would inevitably arise from the general public.

Lord Livermore (Lab): My Lords, in response to the amendment tabled by the noble Baroness, Lady Noakes, I hope I can provide some clarification on how the resolution regime operates currently with respect to subsidiaries of international banks, and therefore how the Government have approached the design of the new mechanism with respect to those banks.

One of the strengths of the UK's banking sector is that a number of international banks seek to operate within the UK, including by setting up subsidiaries. These are often providers of critical banking services, such as current accounts, business accounts and sources of working capital to businesses. It is therefore important that a robust system of regulation is in place to ensure that such subsidiaries can operate safely within the UK. This includes ensuring that in the event of their failure they can be managed in an orderly way. The resolution regime does not currently make a distinction between domestic UK banks and subsidiaries of international banks in terms of which authority is responsible for taking resolution action in the UK. In all cases, this responsibility falls to the Bank of England, except where there are implications for public funds. The Government continue to believe this is appropriate.

While the failure of banks is rare, the most recent example, and the genesis of this Bill, was Silicon Valley Bank UK, itself a subsidiary of an international bank. The Government consider that there were two key lessons from that event. First, it is critical that the Bank of England has the flexibility to move decisively during a crisis. Secondly, it is important to introduce the new mechanism delivered by the Bill in those cases where there is not a willing buyer. The Government do not therefore believe that there is a strong justification for treating subsidiaries differently from domestic UK banks and requiring a further set of approvals. To do so would create additional obstacles to efficient resolution decisions, which recent experience suggests can be necessary.

The noble Baroness asked whether the Bank would have used the mechanism on SVB. I cannot comment on an individual case or decision that it may have taken, but the case showed the usefulness of the option of having a mechanism provided to the Bank.

The noble Baroness also asked whether this issue will be covered in the code. The code updates will cover a broad range of issues following the Bill's passage. We will progress and publish that code swiftly.

The noble Baroness further asked whether a parent company should be able to support the failure of a subsidiary. While the parent company may be able to recapitalise its subsidiary outside of resolution, there may be circumstances where that is not possible, as was the case with SVB UK. It is important that the Bank of England has the necessary tools to deal with a failing firm regardless of its home jurisdiction. In practice, the mechanism uses the Bank of England's transfer and writedown powers, so the parent company would suffer losses on its investment in a subsidiary.

I therefore respectfully ask the noble Baroness to withdraw her amendment.

Baroness Noakes (Con): I thank noble Lords who have taken part in this debate. I found what the Minister said very helpful. What the noble Lord, Lord Eatwell, said, was also helpful, although I had understood that, where there are large groups, the group parent will be responsible for ensuring the capitalisation of the subsidiaries, in particular by holding MREL at the top level, but I may need to check my facts on that. I thought colleges of regulators would be working among themselves towards the health of the group overall, so I did not I think it was entirely located in the UK, but I will check that out.

What the Minister said is very helpful and I will reflect carefully on it. If the case is that there is no difference between a UK-owned and a foreign-owned bank, no issue arises. But if there are any differences in the way that a foreign-owned bank is treated in the UK, then that would be a case. I will go away and think about that further and I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

2.45 pm

Amendment 6

Moved by ***Baroness Noakes***

6: Clause 1, page 1, line 20, at end insert—

"(2A) The Bank may not exercise the power in subsection (1) without the consent of the Treasury."

Member's explanatory statement

This amendment requires the Bank of England to obtain Treasury consent before it can require the FSCS to make a capitalisation payment.

Baroness Noakes (Con): I rise to move Amendment 6. Noble Lords will be pleased to know that I get a bit of a break after this one.

This amendment would require the Bank of England to obtain Treasury consent before it uses the recapitalisation power. When I introduced my last two amendments, which contained a requirement for Treasury

consent, I explained that they were a device to probe issues about the use of the recapitalisation payment power. In this amendment, my use of Treasury consent is not a probing device and I am focusing on the role of the Treasury in the broader context of accountability.

The Minister is a newcomer as far as the passage of financial services legislation in your Lordships' House is concerned; some of us are older hands at it. When the Financial Services and Markets Act 2023 went through this House, accountability was one of the key themes which was debated on and off throughout its passage. This amendment and a later amendment return to that theme of accountability.

The Bank of England has been given huge powers by successive Governments, which we debated at length in passing the 2023 Act, but, like many other bodies which have accumulated in the public sector, it has relatively weak accountability. The governor may need to turn up to the Treasury Select Committee for an uncomfortable couple of hours from time to time, but that is just about it. One great outcome from the 2023 Act has been the creation of the Financial Services Regulation Committee in your Lordships' House, which is chaired by my noble friend Lord Forsyth of Drumlean and on which several noble Lords on this Committee sit. I hope that our new committee will add significantly to parliamentary scrutiny of financial services quangos, but neither House of Parliament has any real powers in relation to these public sector bodies that have been given very significant powers.

This problem is not confined to the Bank of England or to financial services. The Industry and Regulators Committee of your Lordships' House produced a report earlier this year, *Who Watches the Watchdogs?*, which will be debated in this House next week. One of its findings was that regulators, as a particular kind of public sector body

"exercise substantial powers on behalf of Parliament and the public, but are not subject to the same forms of accountability as ministers; to quote one witness, 'the people can replace their elected representatives, but they can't vote out bad regulators'".

That applies, mutatis mutandis, to many other forms of public sector body.

The report noted that there was a

"widespread perception … that regulators' accountability to Parliament is insufficient".

It went on to recommend that there should be a new independent statutory body to support Parliament in holding regulators to account. All of this will sound familiar to those of us who took part in debates on the 2023 financial services Bill, because my noble friend Lord Bridges of Headley tabled amendments trying to set up something similar for the main public sector bodies in financial services—the PRA, the Bank of England, the FCA and so on. I hardly ever support setting up new public sector bodies, so I did not support my noble friend last year, and I would not support the Industry and Regulators Committee's recommendation either. It does not form an approach that I think is the right one, but I wholeheartedly agree with the analysis that accountability is a real issue for these public sector bodies.

By enjoining the Treasury in any decisions as to the use of the recapitalisation power, Parliament gains the additional ability to question Treasury Ministers about the use of the power and the circumstances that surround the use of it. At the moment, it is easy for the Treasury Minister to say, "Nothing to do with me; it's all down to that lot up in Threadneedle Street". We have had many frustrating exchanges with Treasury Ministers along these lines, including when SVB UK was given away to HSBC. Treasury consent would be an important enhancement of the process of parliamentary accountability.

As I said in the earlier group, I do not believe that getting Treasury consent is necessarily an onerous part of the process, but it would be a small price to pay for an increase in accountability, so I regard this as a modest addition to the framework created by the Bill. Obviously, I have drafted this in connection with a specific power in the Bill, but it is a principle which could be applied to many uses of significant powers by the Bank of England, the PRA and the FCA.

The use of the power by the Bank of England could be entirely straightforward, in which case it is unlikely to engage the interest of Parliament, but there are likely to be some cases where the use of the power is controversial or where there are questions to be asked about whether bank failure is associated with some form of regulatory failure. Parliament should be very much engaged in cases of this nature, and my amendment would provide the platform for such engagement.

I know that the Minister will be briefed by his officials to resist this amendment, and I am sure that it suits the Treasury to be able to operate behind the scenes with the Bank of England but in a largely deniable way. I appeal to the Minister's instincts, which I am sure are sound, about the need for effective parliamentary accountability. I beg to move.

Baroness Vere of Norbiton (Con): My Lords, I am incredibly grateful for all the amendments from my noble friend Lady Noakes, but particularly this one. It gives the Committee the opportunity to consider the overarching balance of power and I think it is right that we start to do so—or continue to do so, as my noble friend pointed out.

I am the poacher turned gamekeeper. I am no longer a Treasury Minister. I have just spent many glorious months at the Treasury and prior to that I spent eight years as a Minister in government. I was in the Department for Transport for a long time and a Lords Whip, which many noble Lords will know puts one in touch with all sorts of government departments and various people giving you briefings and all sorts of things. One learns quite a lot about things and it is all very interesting. I am grateful for the opportunity to touch on the bigger picture, which my noble friend has allowed us to do.

The scrutiny and accountability of regulators is somewhat lacking. It was possibly the biggest surprise that I had as a Minister over the years. Having said that, each regulator is very different, and I have worked with a wide variety of them. Each wears the independence cloak in a different manner: some regulators, despite claiming independence, will actually work very closely with and listen to the Minister; other regulators, when I tried to ask them a question, literally slammed the door. It is really not on. Something needs to change.

[Baroness Vere of Norbiton]

It is entirely natural that operational decisions, based on a set of detailed regulations, should sit with regulators. Of course they should; that is unarguable. Ministers do not really have the time or the knowledge. They could do it, because they could have the knowledge as Ministers can be briefed, but they would not have the time to do it and it would gum up the system. That is fine. However, the balance between who takes the operational decisions and the broader operations of regulators is somewhat awry, in my view.

We have handed over a large amount of policy-development, policy-making, regulation-drafting, code of practice-drafting and consultation-issuing activities to regulators, over which Ministers have no insight. I know that officials from the Treasury will recall some issues that happened under the last Government fairly recently, when one of the regulators just took off on a path. I asked, "Why are you going down that path? That's not a path you should be on. Come back". They replied, "But we're independent".

How are we going to fix this? I have a niggling feeling that the Bill continues a trend to which I see no end. Fairly broad-brush powers are being given to a regulator or regulators that are then subject to interpretation and implementation. Often that interpretation and implementation cause the problems. There is mission creep. The regulators add another team of officials; the Minister never sees these officials and does not know what they do. They interpret the policy slightly differently, because they were not involved in its original development and so on. All this happens with little or no oversight.

I used to sit on the other side and would happily stand up to say—my goodness—the best thing that a Minister can say: "I'm sorry; I cannot comment on that. Regulators are independent". It is really easy. The second thing I would say, if that did not wash, is that, "Ministers are accountable to Select Committees in Parliament". Are they really? No, they are not really. I have appeared before Select Committees and it can be a bit uncomfortable for a while. They might ask you a couple of difficult questions, but it is not going to cause you to lose more than a couple of nights' sleep.

Quite often, by the time you get to a Select Committee appearance by AN Other head of a regulator, it is too little, too late. The policies have already been devised, developed and put in place. The damage has already been done.

Furthermore, there seems to be no mechanism by which recommendations from these accountability sessions in Parliament are mandated for action by the relevant regulator. Many regulators can be told or asked by the Select Committee, "Please can you do X, Y and Z", but they can basically take no insight from that at all.

I feel this quite personally, having recently lived through it, because throughout my time as a Minister I had the fear that if things go horribly wrong—sadly, sometimes they do—it is not the regulator that feels the heat. It is the Minister. One cannot go to the media and say, "The regulator is independent. I had nothing to do with it". That does not wash with the public. Now that we have broken the connection between Ministers and regulators, we are in a very difficult situation. The Minister has no power—and that is why the fear exists—to make sure that things cannot go horribly wrong, even if they spot things that need to be improved.

This is but one amendment in a whole series. Yes, it was a useful device for getting amendments down for other elements for debate, but this is serious. My noble friend Lady Noakes is trying to take back control from the regulators and rebalance the system to enable Ministers to input at an appropriate point. She has a point.

3 pm

I shall be grateful for the Minister's reflections. He will probably say something like, "The Bank of England has to consult the Treasury, the PRA and the FCA". It has to consult the Treasury and a couple of regulators—a regulator consulting regulators; that is just brilliant—but it is just a consultation. There is no agreement involved in that; it is probably just a meeting or a couple of meetings. When the noble Baroness, Lady Bowles, mentioned this earlier, she said, "Well, of course they're all in it like a club", and my heart sank. She is absolutely right: they are all in it like a club because they are all part of each other's boards. There is nobody. I cannot tell you—well, I can, because I have just come out of the Treasury; there is no oversight. It just makes me feel rather disappointed. This is something that we must return to. It is about how long we let this go on for and what the consequences are for the British public, not just in financial services but in all sorts of regulatory areas. It is really important.

So the Treasury has to be consulted, and then the second element of what I think the Minister will say is that consent will be needed if public funds are used. I made this point earlier and I will make it again: banks do not pay. Banks are just buildings or legal structures. They do not pay; it is the customers who pay. Actually, it is not only the customers who pay but the shareholders. The shareholders are not big bad pension funds; those pension funds hold the pensions of real working people, who will end up paying through the levy. The distinction between public funds and, "Don't worry, the big bad banks are going to pay", does not really wash because the direct, the indirect and the opportunity costs to this are pretty enormous.

I also have an amendment in this group, for which I slightly apologise because I am not sure it is quite in the right place. Again, I wanted to test that, in a reasonable worst-case scenario, we had a mechanism by which somebody somewhere would have some accountability over the size of the levy that will be levied on the UK banking system, potentially over many years. Again, I am concerned about that. It comes back to the earlier point about contagion and financial services collapse sometimes being rather more significant than a single unit. I am testing the Minister: does he consider that some level of accountability should be inserted? The drag on the economy and on any recovery from a multiyear levy would be significant. I am uncomfortable about just leaving it up to the regulators to say, "Well, the UK banks can afford £1.5 billion a year. If we need £20 billion, that is whatever over X number of years". It does not strike me that that decision should be taken purely by regulators.

I am testing the Government's thinking here. I am serious on the first bit; I am concerned about the power of regulators and the lack of oversight. It will be something I return to, maybe on this Bill or maybe in other areas.

Lord Livermore (Lab): My Lords, I note that a number of other amendments have touched on the topic of Treasury consent before the Bank of England exercises its powers. I hope to fully address the Government's position on that matter now.

I start by addressing the amendment laid by the noble Baroness, Lady Noakes; I will touch briefly on some points that I have made previously. The Government believe that the existing division of responsibility between the relevant authorities in resolution works well. It is important to maintain the position that the Bank of England can take decisions on the appropriate resolution action independently, guided by the objectives given to it by Parliament under the Banking Act and in line with relevant international standards.

There would be two key risks if that system were to change. First, it would confuse the lines of accountability for resolution decision-making, in effect making the Treasury the de facto resolution authority in the case of certain banks that may be subject to the new mechanism. This would undermine the Bank's role as the resolution authority and may be seen as out of step with the intent of the relevant international standards. Secondly, a resolution is more likely to succeed when it is conducted by a single decision-maker backed by the right resources and expertise. The Bank of England is ultimately best placed to make those judgments and, therefore, to ensure that there is market confidence in resolution action.

However, there are safeguards to ensure that the Treasury can engage with the Bank of England's decision over resolution matters, including any use of the new mechanism. As I have noted before, the Bank of England must consult the Treasury during any resolution action as part of its assessment of the resolution conditions, which are required by statute. This is an important legal requirement and ensures that the Treasury is meaningfully engaged in the Bank of England's decision-making process. The Treasury and the Bank also maintain a productive ongoing dialogue.

Finally, the Treasury retains absolute approval in any resolution with implications for public funds, ensuring that the interests of taxpayers are appropriately reflected in resolution decisions and the Chancellor's ultimate accountability for public funds to Parliament. The Government view this as an appropriate and proportionate framework in the context of the new mechanism.

The noble Baroness, Lady Noakes, asked about the Bank's accountability to Parliament. I note that the Bank must inform the Treasury and share copies of legal instruments when taking resolution action. The Treasury must lay those in Parliament. The Bank must also report to the Treasury on the use of those powers; in some cases, the report must also be laid in Parliament.

I turn to the amendment in the name of the noble Baroness, Lady Vere—I note what we might describe as a slight change of heart from her position in government over the past 14 years. Her amendment would require the Financial Services Compensation Scheme to seek the approval of the Treasury in circumstances where it has to levy in subsequent financial years after the mechanism under the Bill has been used. I should clarify that, in principle, the mechanism provided by the Bill could be used to manage multiple firm failures at once; of course, the Bank of England would carefully consider the implications of doing this when assessing the resolution conditions, having regard to the special resolution objectives.

Moreover, any levies would be subject to the affordability cap set by the Prudential Regulation Authority, based on how much the sector can be safely levied in a given year; currently, that is £1.5 billion. In the event that multiple failures resulted in a recapitalisation requirement under that cap, the expectation is for the Financial Services Compensation Scheme to be able to levy safely for the funds within 12 months. It would not do that only if the Prudential Regulation Authority considered that it would carry issues of affordability, in which case the levies could be spread over a longer timeframe. In the event that the amount exceeded the £1.5 billion cap, the Government would expect the Financial Services Compensation Scheme to levy over multiple years, ensuring that it remains affordable for the sector.

It is important also to note that, in these circumstances, the Financial Services Compensation Scheme would be able to turn to the Treasury and request a loan under the National Loans Fund. The levies charged over multiple years would then be used to repay such a loan. Of course, borrowing from the National Loans Fund remains at the sole discretion of the Treasury.

I hope that I have been able to provide noble Lords with some reassurance on these points, and that the noble Baroness is able to withdraw her amendment as a result.

Baroness Bowles of Berkhamsted (LD): I did not speak earlier because all the points I wanted to make were picked up, but there are two things on which I wish to comment. We have a change now in that, before, the Treasury would be more involved when the matter involved use of public funds; now, that has been transferred to the industry, so the Treasury is less involved and perhaps less concerned. Yet the Treasury remains the only possible constraint around and is far from perfect.

For the PRA and the FCA, there are plenty of powers to instigate reviews by government. The big mistake, apart from us not having proper oversight of regulators in general—there are various mistakes—is that those reviews have not been used a lot more often. They should be done almost on a rolling regular basis, not just when there has been a big disaster.

The other thing we have done differently is that we have made the central bank the resolution authority. Therefore, you cannot hold the central bank to account, because of its independence, in the same way that you could if you had constructed an independent resolution authority. That is, as you might suppose, the subject of a big debate that went on in Europe when I was ECON chair. There is an independent resolution authority there; it is not the central bank. That was one of the big considerations, because you cannot really hold a

[Baroness Bowles of Berkhamsted]
central bank to account. Ultimately, the sort of change that is envisaged in this Bill may move us further towards considering whether we need to do that.

Baroness Noakes (Con): My Lords, I thank all noble Lords who have taken part. The predictions made by my noble friend Lady Vere on the content of the noble Lord's response were pretty accurate in places. The noble Lord has not really engaged with the weak accountability that exists. The noble Baroness, Lady Bowles, is absolutely right about the use of the Bank of England as the resolution authority and giving it all those powers with almost no constraints whatever, other than consultation. Whoever chose to do that back in 2009—whichever Government were in power then—did not set up the right accountability environment for the use of those powers to exist. Once you put something inside the Bank of England, it is very difficult to engage in those issues, because it guards its independence on practically everything.

This is one of the big issues that will need to be addressed at some stage. There may not have been an instance yet that has caused people generally to realise how dangerous it is to have large, unaccountable bodies in the public sector with huge powers but relatively weak accountability. That is because we are still muddling through, and it is frustrating to some people who are dealing with these regulators, including Ministers, that they cannot fully engage. We have not had one of those big instances where everybody says that we have the wrong model. In a sense, I know that my pleas for a greater level of accountability to be included in statute are not really being heard, but that will not stop me raising them at every single opportunity I can. Indeed, I have some more amendments through which to talk about accountability further.

This has been a useful exchange. I will think about it further, having read the Minister's response in *Hansard*. I will think further about whether I take this forward again on Report. For now, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Amendment 7

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

7: Clause 1, page 1, line 20, at end insert—

"(2A) The Bank of England may only exercise the power in subsection (1) if it assesses that the use of the power would support the public interest, which may include but need not be limited by—

(a) supporting market competitiveness, or

(b) retaining or growing smaller banks."

Baroness Bowles of Berkhamsted (LD): The point that I am trying to get to with Amendment 7 is, again, more transparency around what the public interest issues are. It is fairly reasonable to say that, of course, the Bank will do things that are broadly what it considers to be in the public interest, but there are quite a range of factors involved. They include the specific ones that were utilised in the Silicon Valley Bank case because of the potential loss of the float that companies had for paying their workforce and all those kinds of things. I did not object to that; I thought it was jolly good.

We also have the issue of wanting to encourage market competitiveness while retaining and growing smaller banks, which is always trumpeted as an issue, so I put those in as possible factors. But my real call is to say, again, that we need more things to be put into the documentation, whether that is a strategy, a code of conduct or even discussion documents, about the types of things that can be contributory factors to this public interest. Something may always happen that is a surprise. Maybe the Silicon Valley Bank and the large amounts of payroll in a particular sector of the economy was a surprise.

We need some kind of expectation and oversight of how these things are to be weighed up. That is the main force behind me putting this particular amendment in. Can we specifically mention, somewhere in the Bill, that it is in the public interest? As I said, it is accepted but I do not think that it is written down. I beg to move.

3.15 pm

Lord Livermore (Lab): My Lords, before I turn to the specific amendment from the noble Baroness, Lady Bowles, I note that the Government fully recognise the importance of market competitiveness and the critical role played by small and growing banks in serving customers across the UK.

On the specifics of this amendment, I note that, before undertaking resolution, including when using the new mechanism, the Bank must be satisfied that the resolution conditions in the Banking Act have been met. The third resolution condition is that resolution is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives. Those objectives are set out in detail in the Banking Act and are intended to reflect the key objectives of the resolution regime across all in-scope firms. For instance, this includes maintaining financial stability, protecting public funds and enhancing confidence in the stability of the financial system.

The objectives do not explicitly reference market competitiveness or supporting small banks. This reflects how, in undertaking resolution, the Bank of England should be appropriately focused on managing the significant risks to financial stability that can arise in a highly unpredictable scenario. As set out in their consultation response, this has informed why the Government believe that the broader resolution framework works well, including the existing balance of special resolution regime objectives, and why we have not proposed to change them.

I note, however, that the Government actively considered both the role of small banks and market competitiveness when developing the policy approach for this Bill. In particular, market competitiveness is a key reason the Government chose to pursue a solution whereby banks must contribute to the costs of recapitalisation only after a failure has occurred. Crucially, this means that the new mechanism does not create any upfront costs for the banking sector.

As noted at Second Reading, the Government have also committed to updating the code of practice to ensure there is a clear process by which the Bank of England calculates the costs that could arise for industry if the new mechanism is used. In addition, the Government believe that the new mechanism supports the UK's small banks. It ensures that there is a robust system in place for resolving them and maintaining continuity, when that is judged to be in the public interest. This should help support wider confidence in the regulation of the sector.

The mechanism in the Bill is also designed to be proportionate. This is why any levies associated with recapitalisation will be spread across the entire banking sector, ensuring that it is affordable for small banks. Overall, the Government believe this strikes the right balance in that these wider policy issues have influenced the design of the Bill, but that in using the mechanism the Bank of England is ultimately guided by the existing special resolution objectives. I therefore respectfully ask the noble Baroness to withdraw her amendment.

Baroness Bowles of Berkhamsted (LD): I thank the Minister for that response. Again, I make the point that, through the Bill, we are changing from an inherent public interest in public money into using private money to do the rescue. I am not sure that the Banking Act was drafted with that in mind and I doubt that we could amend relevant sections through the Bill. It is just worth having another look with those eyes, maybe after a period of time, to see whether some kind of adjustment is needed because this safeguard check that exists around the use of public money has been taken away. It has not been replaced by anything; it has not even necessarily been replaced by more transparency. With those comments I beg leave to withdraw my amendment.

Amendment 7 withdrawn.

Amendment 8 not moved.

Amendment 9

Moved by ***Lord Sikka***

9: Clause 1, page 1, line 22, at end insert—

"(3A) Before exercising the power in subsection (1), the Bank and the scheme manager must assess whether they consider that there should be a clawback of executive pay and bonuses from the previous 12 months."

Member's explanatory statement

This amendment seeks to address potential moral hazards through requiring the Bank and scheme manager to take directors' pay and bonuses into consideration when a recapitalisation payment is made.

Lord Sikka (Lab): My Lords, Amendment 9 deals with moral hazards, which, if anything, are multiplying. The amendment seeks to restrain excessive risk-taking by imposing possible personal penalties on bank directors.

The recent legal developments have actually multiplied financial moral hazards and the related risks. For example, the Financial Services and Markets Act 2023 reintroduced the secondary regulatory objective to promote the growth and international competitiveness of the finance industry. In effect, it dilutes the regulator's remit to protect customers. On 12 August, the Chancellor said that she and the Economic Secretary to the Treasury were constantly asking regulators, "What are you doing in practice to meet that secondary objective?" The meeting of that secondary objective will necessarily increase moral hazards.

Secondly, further deregulation is coming in—reforms of Solvency II, for example—with the claim that this will somehow conjure up an additional £100 billion of investment by reducing capital requirements. There is no pot of gold sitting in a corner in any bank boardroom that people can simply empty and get £100 billion out of. All of that is underpinning bank resilience and insurance company resilience. All of that is invested in some safety buffers. All of that will have to be liquidated. Yet the consequences for how the directors might behave have not really been outlined.

The cap on bankers' bonuses has been lifted, so there are now economic incentives for bank directors to be reckless and take excessive risks, as that would maximise executive pay and bonuses—all done in the full knowledge that the bank would be rescued, restructured, recapitalised or bailed out, be it through the mechanism of the Financial Services Compensation Scheme or, eventually, some reconstruction. There are no great pressure points on bank directors to be risk-averse and prudent or to act in a responsible manner.

The risk-boosting effects of moral hazards are ignored by this Bill, yet they are highly relevant to any form of stability. We have a whole history showing how this happens. In the 2007-08 banking crash, attention was drawn to moral hazards or conflicts of interest between the interests of shareholders and managers, debt holders and the public purse. Bank directors took on excessive leverage because the state incentivised them to do so. It continues to incentivise them to do so, for example by giving tax relief on interest payments, which reduces both the cost of debt and the weighted average cost of capital while increasing shareholder returns, providing a justification for greater executive bonuses and remuneration.

Numerous studies have shown that shareholders were, and remain, focused on short-term returns. In any case, they still do not get good-enough information to invigilate directors; perhaps at some point, when we are discussing the world of accounting, I will point out how almost useless company accounts are in enabling shareholders or anybody else to invigilate directors. Back at the time of the last crash, directors accepted excessive risks from not only financing the organisation but risky investments. For example, numerous varieties of derivatives and complex financial bets were made because of explicit guarantees about depositor protection, central banks providing liquidity and support, and, ultimately, publicly funded bailouts.

If the bets made with other people's money paid off, directors got mega payoffs; if they did not, somebody else picked up the loss, leading ultimately to rescue bailouts—now we are using the term "recapitalisation". This Bill adds another string to publicly funded bailouts—though it likes to use different language. Yes, the cost of the FSCS levies is borne ultimately by the people, as has already been pointed out, and not necessarily by other banks.

[Lord Sikka]

If the Government succeed in persuading the banks to lend more to facilitate additional investment, as they are trying to do, that will add to the risks and strain the capital adequacy requirements of those banks. In boom times, banks tend to lend more freely, because they do not want to miss out on the opportunity to make more profits, and they relax credit standards, but there are inevitably consequences, as we saw with the last crash. Directors are rarely held personally liable, and that remains the position today.

Amendment 9 would address this gap by requiring the Bank of England and the scheme managers to consider a clawback of directors' pay and bonuses paid during the previous 12 months. In case the Minister might refer to other clawback arrangements, let me pre-empt those. Paragraph 37 of the UK Corporate Governance Code states:

> "Remuneration schemes … should include … provisions that would enable the company to recover and/or withhold sums or share awards and specify the circumstances in which it would be appropriate to do so".

That is of no help whatever, because such codes do not apply to large private companies, of which Wyelands Bank, which came to an end recently, is a good example. The codes are also voluntary and cannot be enforced in the courts. They do not empower stakeholders in any way; they do not require the clawed-back amounts to be handed to regulators or to be used for recapitalisation of banks.

The FCA handbook also has a section on possible clawback, but it applies to what it calls "variable remuneration", which is generally taken to mean bonuses. It states that in certain circumstances the clawed-back funds need to be handed back to the institution. This does not cover entire remuneration; it does not require that the clawed-back amounts be used for the recapitalisation and reconstitution of banks. So, in the interests of clarity and certainty, a statutory approach to clawbacks is needed, not a mishmash of voluntary arrangements. I beg to move.

Lord Vaux of Harrowden (CB): My Lords, I shall speak to Amendment 16, which would do a certain amount of what the amendment from the noble Lord, Lord Sikka, would do, but in a slightly different way. It is intended as a probing amendment to obtain clarification on what ability there would be to recover all or some of the costs of failure from either management or shareholders of the failed entity when it is recapitalised rather than being put into insolvency—there seem to be two different things there.

It is possible to imagine a situation where members of the management team responsible for the failure are paid large bonuses or dividends prior to that failure. As the noble Lord, Lord Sikka, pointed out, that is more possible now that the cap on bonuses has—rightly, in my view—been lifted. Can the Minister clarify in what circumstances it would be possible to recoup those bonuses or dividends to offset the recapitalisation costs? In an insolvency situation, where there is fault—for example, in cases of wrongful trading—it may be possible to recoup those payments, but I cannot see how that would work if the bank was recapitalised. To me, it must make sense that management should not see the risk of having to repay bonuses or dividends as being lower than it would have been if the bank had been put into insolvency just because the bank has been recapitalised.

3.30 pm

Perhaps more importantly, I am not clear what can be recovered from shareholders in a failure, especially overseas shareholders. The noble Baroness, Lady Noakes, referred to this earlier on her Amendment 4, so I realise that I am treading slightly on ground that we have already covered. Thames Water is a good example of a company that has been left almost insolvent by inappropriate levels of past dividends to a foreign shareholder, and it seems to be something that we cannot do anything about.

How can we ensure that a foreign owner cannot just walk away from a failing UK subsidiary bank, perhaps after paying itself a substantial dividend? I know it did not apply in the case of SVB, where the parent was insolvent and which has driven the Bill, but if there is a solvent owner somewhere up the chain, it does not seem right that they should be able to walk away, leaving the UK industry to pick up the costs.

Can the Minister please explain how costs can be recouped in such situations? Do we need to strengthen any regulations to ensure that the wider industry is not expected to pick up the cost while management and shareholders can walk away with full pockets? How do we ensure that a decision by the Bank of England to undertake a resolution process at the cost of the industry does not lead to an advantage to either management or shareholders who may be at fault? That would introduce a level of moral hazard that would be unacceptable.

Lord Livermore (Lab): My Lords, I turn first to the amendment tabled by the noble Lord, Lord Sikka, which seeks to ensure consideration is given to a clawback of executive pay and bonuses from a failed firm before using the new mechanism. I note that while the bank resolution regime does not set out powers allowing the Bank of England to claw back money from shareholders or management, it does provide an extensive and proportionate set of powers to the Bank of England to impose consequences on the shareholders and management of a failed firm in resolution.

First, on placing a firm in resolution, we expect that any existing shareholder equity would be cancelled or transferred. This is an important principle that ensures the firm's owners must bear losses in the case of failure. In many circumstances, this will affect directors and management who hold shares or other instruments of the failed firm.

In addition, the Bank of England has the power to remove or vary the contract of service of its directors or senior managers. The Bank of England exercises its discretion in deciding whether to use this power. However, as set out in the Government's code of practice, the Bank of England generally expects to remove senior management considered responsible for the failure of the firm and to appoint new senior management as necessary.

Finally, as reflected in the code of practice, it is a key principle of the resolution regime that natural and legal persons should be made liable under the civil or criminal law in the UK for their responsibility for the failure of the institution. This is delivered by Section 36 of the Financial Services (Banking Reform) Act 2013, which provides for a criminal offence where a senior manager of a bank has taken a decision which caused the failure of a financial institution, if the conduct of the senior manager

"falls far below what could reasonably be expected of"

someone in their position. Overall, this ensures that, as appropriate in the circumstances, there are material consequences for shareholders and senior management when a firm goes into resolution.

More broadly, I can further reassure the noble Lord that the Government recognise the importance of high standards in financial services regulation. The senior managers and certification regime supports high standards by ensuring individual accountability for senior individuals within firms, and by promoting high standards of conduct and governance. The Prudential Regulation Authority sets rules on remuneration and applies these to medium-sized and large banks, ensuring they are proportionate, and there are clear requirements in the PRA's rules for firms to ensure they have policies on malus and clawback in place to align management incentives with that of the bank.

I should also note the intention of the amendment of the noble Lord, Lord Vaux, to ascertain under what circumstances the Bank of England may be able to recover all or part of remuneration to management and shareholders, or require a shareholder to cover all or part of the recapitalisation costs. If recoveries were made from management or shareholders of the failed firm, the amendment would make it clear that these types of remuneration could count towards these recoveries.

I hope I have addressed the broader point about the treatment of shareholders and former management in my earlier remarks. As a point of detail, I would add that the Government expect any recoveries not otherwise specified in the clause to be covered already by the catch-all phrase "or otherwise" at the end of proposed new subsection (2)(a). I hope that addresses the points raised and I respectfully ask the noble Lord to withdraw his amendment.

Lord Vaux of Harrowden (CB): I think the Minister has answered the point about management, and I recognise that the words "or otherwise" are at the end of the new subsection. Where I am not sure that he has answered the point is on the inappropriate dividends paid to shareholders beforehand—the Thames Water situation, and how that would be dealt with. Just saying that the equity would be written down makes no difference; in this situation, the equity is already worthless. We are talking about recouping the costs of the recapitalisation rather than the fact that the worthless company is worthless.

Lord Livermore (Lab): I have managed to get through several groups without promising to write, but on this occasion I will write to the noble Lord.

Lord Sikka (Lab): I thank the Minister for his reply. I will divert slightly to the point made about dividends. The legislation is a complete mess on distributable dividends. The previous Government were going to table legislation about some disclosures of distributable reserves, then just a day before—without any notice to Parliament—they withdrew that, because most companies do not have a clue what their distributable reserves are. This raises all sorts of questions about what are realised or unrealised profits. I will not go into the technicalities at the moment. Any time I hear a Minister talk about dividends or say, "We are going to control dividends", whether it is about water companies or any others, that is just a no-go area at the moment. It cannot be sorted out without major primary legislation.

The Minister said that there is already legislation in place for civil criminal prosecution. I am afraid that legislation delivered hardly anything after the last banking crash. Countries such as Iceland and even Vietnam prosecuted far more bankers for their negligence than the UK did, though we managed to elevate some afterwards to some very senior political positions, so that legislation is not really effective. I take it from the Minister's reply that he is not prepared to consider legislation specifically saying that there will be a clawback of executive remuneration. That is the point—in the absence of it, who knows whether the management concerned will bear any personal cost at all? Is my interpretation of the Minister's reply correct?

Lord Livermore (Lab): I do not have anything further to add to what I said.

Lord Sikka (Lab): I thank the Minister. I withdraw my amendment for the time being, though I may bring it back at the next stage.

Amendment 9 withdrawn.

Amendments 10 and 11 not moved.

Amendment 12

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

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

"(6) When the Bank of England exercises its power in subsection (1), the Bank must make a report to the Chancellor of the Exchequer within 28 days of the date of any recapitalisation payment being made.

(7) The report must comply with any requirements as requested by the Treasury, but must include—

(a) the reasons why the Bank decided to make a recapitalisation payment in preference to allowing the financial institution to go into insolvency;

(b) a breakdown of the costs referred to in subsection (2);

(c) a comparison of the expected recapitalisation payment or payments that will be paid by the Financial Services Compensation Scheme, compared with the expected costs to the Scheme in an insolvency process.

(8) The Bank must make further reports to the Chancellor of the Exchequer within three months of the date of the sale of the institution to a private sector purchaser, or the sale, closure or winding up of the bridge bank, providing such information as the Treasury may require, including the breakdown of the actual recapitalisation payment or payments and the reasons for any differences to the expected costs referred to in subsection (7)(b).

(9) The Chancellor of the Exchequer must lay a copy of each report under subsection (7) or (8) before Parliament."

Member's explanatory statement

This amendment is intended to ensure that the reasons for decisions of the Bank to follow a resolution process in preference to an insolvency process are explained and the explanation laid before Parliament, both at the time of the decision and once the resolution process has been completed, and that the costs can be compared to what would have been expected if the institution had been placed into insolvency.

Lord Vaux of Harrowden (CB): My Lords, as we have heard several times already, the area of accountability around financial services Bills seems to always come to the fore, as the noble Baroness, Lady Noakes, pointed out. She referred in a recent group to the weak accountability that exists in the Bill. My Amendments 12 and 24 in this group aim to improve that.

One of the main concerns raised at Second Reading was to ensure that the Bank of England explains why it has decided to follow a recapitalisation process rather than allowing a failing bank to fail and go into insolvency, which was the previous default. In particular, several respondents to the consultation raised concerns that the costs of the recapitalisation should not be greater than those that the FSCS would face under an insolvency process. Concerns were raised, not least by the noble Baroness, Lady Penn, that recapitalisation might become the default approach to a failing bank, rather than insolvency. At Second Reading, the Minister then referred to the strong expectation that

"any reports required under the Banking Act to ensure ex-post scrutiny of the Bank of England's actions when using the new mechanism would be made public and laid before Parliament ".—[*Official Report*, 30/7/24; col. 933.]

My Amendments 12 and 24 aim to strengthen the required reporting and to make it a requirement that those reports will be made public and laid before Parliament. Amendment 12 adds some detail around the contents of the report. In particular, it would require the Bank to explain why it chose recapitalisation over insolvency; to provide a breakdown of the expected costs, which we talked about in an earlier group; and to provide a comparison of the expected recapitalisation cost with what would have been expected to have been the cost under an insolvency situation. It allows the Treasury to stipulate other matters but, importantly, it also sets a shortish timetable for that report of 28 days. This really does have to be done on a timely basis.

Also, importantly, the requirement to report—again, we discussed this earlier—will apply to any subsequent recapitalisation payments made to the same failing institution. Again, this overlaps with Amendment 3 in the name of the noble Baroness, Lady Noakes, which we have already debated. As I said at the time, it is critical that, any time we further recapitalise, we look again at whether that is the appropriate thing to do or whether insolvency is the appropriate option.

To cover the ex-post scrutiny that the Minister referred to at Second Reading, the amendment also requires further reports to be issued and laid before Parliament once the resolution process comes to an end, whether that is through a sale or through an insolvency process. The whole process could be two years after the resolution process starts—indeed, it can be extended beyond two years—so it is important that what actually happens is scrutinised after the event and that any differences to what we were originally told was going to happen are explained.

Amendment 14 laid by the noble Baroness, Lady Noakes, does something similar but leaves the detail of what must be included in the report up to the Treasury. I would be keen to provide the Treasury with some minimum requirements for the report; what I have laid out are the important aspects.

Amendment 24 in my name simply tries to fix an anomaly, as I see it, in the Banking Act 2009. Under Section 80 of that Act, if a failing bank is transferred to a resolution company, the Bank of England must make a report to the Chancellor of the Exchequer and that report must be laid before Parliament. However, rather oddly—the Minister referred to this previously—according to Section 79A of the Banking Act, if all or part of the failing bank is sold to a private sector purchaser, the Bank of England must still report to the Chancellor but that report does not have to be laid before Parliament.

The eagle-eyed among you in this Committee may have noticed that my initial version of this amendment simply stated that the report had to be laid before Parliament. We are getting to the point of the scope issues that the noble Baroness, Lady Bowles, referred to in her opening of the debate. That amendment was, at the last minute, ruled as being out of scope of this Bill. I find that hard to understand, particularly given that I felt that the Minister rather firmly put it in scope in his Second Reading speech, but it was decided that it was too broad to be in scope. I had to change it so that it refers only to the situation where a recapitalisation payment has been made. I ask the Minister to consider seriously whether he can use his influence to change that. It seems mad to do it only in this circumstance and not in the wider circumstance of a bank being sold to a private sector player. The officials have perhaps been a little overzealous with their interpretation of scope in this case—and in this Bill, more generally.

As I said, in his Second Reading speech, the Minister pointed out the importance of Section 79A for scrutiny of the Bank of England's actions. He also referred to the fact that there is no requirement for reports under Section 79A to be laid before Parliament. However, he went on to say that he could

"reassure your Lordships that in any event where the new mechanism was used the Treasury would intend to ensure that any such reports were made available to Parliament and the public".—[*Official Report*, 30/7/24; col. 933.]

My amendment simply makes that intention a requirement; I hope that I am not pushing at a closed door and that it is not seen as controversial.

However we go forward, it is essential that the actions of the Bank of England are subject to full scrutiny and transparency. At Second Reading, the noble Lord, Lord Macpherson, eloquently described the potential for a conflict of interest in the position of the Bank of England, pointing out that the Bank might choose to recapitalise rather than put a bank into an insolvency process

"less because it is in the national interest and more as a way of minimising the reputational damage of regulatory failure".—[*Official Report*, 30/7/24; col. 914.]

Any decision to recapitalise should be explained to avoid possible creep to this process becoming the default. The noble Lord also raised his concerns that there is little incentive for the Bank to minimise the costs of resolution—after all, the industry, not the Bank, will pay. He gave the example of the Dunfermline Building Society incurring greater costs than the Treasury incurred in resolving the Icelandic banks.

So I think it is essential that we strengthen the scrutiny of the Bank when it exercises these new powers, to ensure that any decisions it takes are clearly justified at the time and examined publicly once the resolution is complete so that any lessons can be learned. These amendments, or amendments like them, would achieve that. The Minister has said he expects all reports to be made public and laid before Parliament, so I hope he will simply accept them.

Finally, I add my support to Amendment 25 from the noble Baroness, Lady Bowles, which is also in this group. We discussed in the first group the concerns around the MREL regime that are raised by the Bill, so it seems entirely appropriate that an assessment should be made of the impact of the Bill on the MREL regime. I beg to move.

3.45 pm

Baroness Noakes (Con): My Lords, as the noble Lord, Lord Vaux, has said, I have Amendment 14 in this group. In substance, it is the same as the noble Lord's amendment. The only real difference, as he pointed out, is that mine is less prescriptive. I am entirely happy with either version, but it is important that we deal with the specific reporting requirements, because the existing provisions are simply not adequate. At Second Reading, the Minister basically said that the Government would use the existing reporting requirements in the Banking Act, but the time involved is simply too long. It could take at least a year after the powers have been exercised. When the recapitalisation powers are used, that deserves more immediate scrutiny and, unless there is awareness of it by way of a report, that is simply not going to happen. So I stand completely behind whichever of these amendments the Minister cares to choose.

I also completely support what the noble Lord, Lord Vaux, has tried to do with his Amendment 24. It is a pity he cannot do it more generally in relation to Section 79A, but at least it rectifies what is clearly an anomaly that Parliament should not have allowed through when the Act was brought in. When the recapitalisation power has been used, it should be a requirement to lay a report before Parliament. This is in line with what the Minister said at Second Reading would happen, so I expect the Minister to accept the amendment with alacrity.

I am not quite sure why the noble Baroness, Lady Bowles, allowed her amendment to be brought into this group. That said, I do think it is an important opportunity to look again at MREL, in particular because those banks that do not have MREL now become potentially subject to the use of the bank recapitalisation power. There ought to be more transparency about how banks can be categorised in that way and more understanding by those in the banking sector of which institutions they might have to pick up the tab for in due course.

It is generally a contentious issue in the banking sector, and the way in which banks trip from no MREL to MREL can be a deciding factor in whether they can scale up, because the cost of raising MREL when you are a very small bank, if you trip over into needing to raise it, can have a very significant impact. I have certainly heard smaller start-up institutions say that they deliberately do not grow above a certain size in order to avoid coming within the MREL provisions, and that cannot be good for the UK. So I am not quite sure about the wording of the noble Baroness's amendment, but I completely support the principle.

Baroness Bowles of Berkhamsted (LD): The noble Baroness, Lady Noakes, asked why I allowed my amendment to be grouped in this way. I was simply trying to expedite matters for us and I thought we did not need another whole group, which would get the Minister up and down again. I agree with the other amendments and everything that has been said on this group. They deal with issues around conflicts and so on, and transparency is one of the best weapons we have that presumably will be allowed or in scope.

My amendment is one of those that do not read as I originally wrote it, because again we came into scope issues. I could not get the exact amendment that I wanted, so this was the best that I could do. Obviously, it is a companion to the amendments in the first group, which were saying that the majority of us want to limit to a threshold equal to MREL. If you therefore want to resolve banks that are a little bigger, you would have to shift MREL. I am not going to cry over that; I will cheer.

That may be an improper tactic but we do not have any other tactics to try to focus the PRA on the damage being done to the growth of smaller banks by putting MREL where it was not intended to be. We are out of line internationally and we do not really have any good justification for that. If there is a division between those banks that can be resolved and those that cannot, I still think that it goes there and the Bank will therefore have to give its view as to why. Perhaps it wants an extension in some way, so that it can get at bigger banks. What do we get back from that? That is the thought process that lies behind my amendment.

I support all these amendments. If they are knocked into a format that is suitable for Report, they would be very good additions to the Bill.

Baroness Vere of Norbiton (Con): My Lords, I am particularly grateful to the noble Lord, Lord Vaux, and to my noble friend Lady Noakes for thinking carefully about reporting and tabling amendments accordingly. I had to support one of these amendments and I am afraid that I picked the noble Lord's on this occasion. This is not favouritism; I was purely trying to spread the love a little. But as we approach Report, we might want to go back and check that whatever we end up putting into the Bill is future-proofed.

Sometimes one can put in too much detail, then people can slide round the edges by saying, "Oh, you didn't tell us to do that". Alternatively, there is being too broad, when people slide round another edge by not putting in the detail that you want to see. There is

[Baroness Vere of Norbiton]
a balance, but this is certainly worth taking forward and looking at. Obviously, the accountability element is key here.

Another thought I had around this was on timing. Again, sometimes one can go too far and have a report too far in the distance, so by the time it comes out no one remembers what the problem was in the first place. The amendment tabled by the noble Lord, Lord Vaux, says "three months"; I was thinking "as soon as practical" or, in any event, within six months. I do not know, but in very complicated and complex circumstances there might still be issues and context to resolve to produce a report that is relevant in timing terms, but also incorporates everything that stakeholders wish to see.

When I was a Minister, my heart would sink when an amendment was put down about producing a report. I would think, "Another report—are we really going to read it?" To me, the question is: we might produce a timely report in a good fashion and with the right amount of detail, et cetera, but how do we then ensure the scrutiny of that report? It goes back to the issue of expenses which, as we agreed, could be quite significant. But who is going to look at those expenses and suck their teeth? Will they look at the legal fees of firm XYZ and say, "Do you know what? That's too much". Who is going to do that? Is there any body at all—not anybody—which would be able to look at it and do that? It has been suggested to me that the National Audit Office might occasionally pay attention to this sort of thing. This is about trying to get us beyond "Just produce a report". Well, just produce a report and then somebody can look at it. I am sure that these are going to be great reports, but even so it is a concern.

I am looking forward to the response of the Minister. I believe that this should be our last group today, fingers crossed, but I am not sure that many of us want to go outside, given the weather.

Lord Livermore (Lab): My Lords, I fully understand the substantial focus on the reporting requirements that will apply when the new mechanism is used. I shall start by addressing Amendment 12 on this point, tabled by the noble Lord, Lord Vaux.

The Government agree that, should the new mechanism be used, it is right for there to be a reporting mechanism to hold the Bank of England to account for its decisions, and that this should encompass estimates of the costs of different options. However, the Government intend to achieve the principles of scrutiny and transparency in a different way; namely, through the existing requirements placed on the Bank of England under the Banking Act 2009. As set out in their response to the consultation, it is the Government's intention to use these existing reporting mechanisms to ensure that the Bank of England is subject to appropriate scrutiny when using the mechanism. The Government have committed to updating their code of practice to provide further details on how these reporting requirements will apply when the mechanism is used; I can re-confirm that the Government intend to include in the code confirmation that, after the new mechanism has been used, the Bank of England will be required to disclose the estimated costs that were considered as part of these reports.

The Government consider that using the code of practice is an appropriate approach to hold the Bank of England to account for its actions, rather than putting these requirements in the Bill. The Bank of England is legally required to have regard to the code and the Government are required to consult the Banking Liaison Panel, made up of regulatory and industry stakeholders, when updating it. Using the code will therefore ensure that a full and thorough consultation is taken on the approach. Given the complex and potentially fast-moving nature of bank failures, this is important to ensure that any approach is sufficiently nuanced to account for the range of possible outcomes under insolvency or through the use of other resolution tools. The Government believe that amendments to the code of practice are more likely to be successful in achieving this outcome. As I committed at Second Reading, the Government will share drafts of these updates to the code of practice as soon as is practicable and will provide sufficient opportunity for industry stakeholders to be consulted on them.

I acknowledge the further amendment from the noble Lord, Lord Vaux—Amendment 24—which would make such reports available to Parliament when the new mechanism was used to facilitate a transfer to another buyer. It is the Government's clear intention that any such reports required under the Banking Act, following the use of the mechanism, will be made public and laid before Parliament. The Government would not make reports public only if there were clear public interest grounds not to do so, such as commercial confidentiality reasons. This may particularly be the case when exercising the power to sell a failing bank to a commercial buyer. While such cases would hopefully be limited, it is important that they are allowed for.

I appreciate the intent of Amendment 14 in the name of the noble Baroness, Lady Noakes, which would require the Bank of England to report to the Treasury more swiftly than under the current requirements. The use of resolution powers is complex; in some cases, the Bank of England may be executing a resolution over a long period, particularly when placing a firm into a bridge bank. It is therefore sensible for the Bank of England to report a reasonable period of time after exercising its powers, ensuring that its report provides a full and meaningful assessment. On reporting more broadly, I repeat the points made in response to the amendment tabled by the noble Lord, Lord Vaux.

Finally, Amendment 25 in the name of the noble Baroness, Lady Bowles, would require the Chancellor to assess in the light of the Bill the appropriateness of the thresholds used by the Bank of England to determine which firms are required to hold additional loss-absorbing resources, known as MREL. As before, I should start by noting that the Government recognise the important role played by smaller and specialist banks in supporting the UK economy. I appreciate the concerns raised by the noble Baroness at Second Reading.

The Government have carefully considered the perspective of such banks in developing the mechanism in the Bill, which is intended to be a proportionate solution. On MREL, the Bank of England is responsible for determining MREL requirements for individual firms within a framework set out in legislation; that is

an important principle, as the resolution authority, the Bank of England, is ultimately best placed to judge what resources banks should hold so that they can fail safely. I point out to the noble Baroness that, as set out in the Government's consultation response, the Bank of England has committed to consider the potential case for changes to its indicative thresholds. Specifically, it has noted that it will consider whether any changes are appropriate in light of this Bill and other wider developments.

I hope that these points provide reassurance to noble Lords. On that basis, I respectfully ask the noble Lord to withdraw his amendment.

Lord Vaux of Harrowden (CB): I will ask the Minister for one point of clarification. He referred to the reports under the Banking Act that will be provided as covering the costs and expenses. I do not think that he talked about the comparison with the counterfactual of the costs of insolvency, which is a critical aspect of this. Would those reports cover that?

Lord Livermore (Lab): If the noble Lord does not mind, I shall add that to the letter to him.

Lord Vaux of Harrowden (CB): My Lords, I thank all noble Lords who have spoken in this short debate and apologise to the noble Baroness, Lady Vere, for failing to thank her beforehand for signing her name to my amendment.

A number of points were raised. The noble Baroness was right when she discussed the timings. They were put in as a starting point; I would be very happy to look at what is appropriate. I still think that we need to beef up the reporting clauses in the Bill. I am encouraged by what the Minister said about the reports that exist being laid before Parliament, but, as the noble Baroness, Lady Noakes, referred to, there is more to do on the timings.

There is some merit in trying to put in the Bill at least some minimum requirements on what those reports should include. That will be important because, although I acknowledge what the Minister said about the code, we will not see it before Report. If we were able to see the proposed changes to the code before Report we might be able to take a different view. It happens quite regularly that we are told that something will be in a code of conduct, a future statutory instrument or whatever else, but we do not see it before we have to make the decisions on the amendments themselves. In the absence of that, I feel that we will probably want to come back to this on Report. In the meantime, I beg leave to withdraw my amendment.

Amendment 12 withdrawn.

Committee adjourned at 4.02 pm.