Vol. 777
No. 87

Monday
9 January 2017

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2017-01-09

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Monday 9 January 2017

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

A159 Wildcat Helicopter
Question

2.36 pm

Asked by ***Lord Ashdown of Norton-sub-Hamdon***

To ask Her Majesty's Government whether they intend to retain the Government-owned tooling and jigs for the A159 Wildcat helicopter within the United Kingdom; and if so, whether these will be installed in the main Leonardo site.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and wish all noble Lords a happy new year.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Government fully recognise the capabilities of the UK aviation industry and the contribution that companies such as Leonardo make to our country. Wildcat airframe production for the UK Armed Forces has now drawn to an end and no decision has yet been taken on retention of the tooling and jigs. However, we are working closely with the company on this issue.

Lord Ashdown of Norton-sub-Hamdon: My Lords, I wish—in a spirit even of the fag end of good will—to say thank you for the Answer that the Minister has given, but I find it difficult to do so. We are asking for a very simple thing here. The Government own the tooling and jigs which support the job. Leonardo wants to ship those jobs out to Poland. The Government have the leverage to insist that, before that happens, there is a proper, competitive study on the comparative production costs between the two. That is not asking very much. I remind the Minister that the Government seriously damaged the future of Britain's only stand-alone helicopter facility by handing out orders to the United States in the early years of this Government, without any competitive study whatever. If they commit that mistake again, we are bound to assume that their promise to do everything they can to preserve jobs in Britain are merely empty words. This will be seen as an insult to the technicians and engineers who spent 100 years providing our armed services with world-beating helicopters in the last period.

Earl Howe: My Lords, I am sure the noble Lord will recognise that decisions on aircraft procurement, as indeed procurement across the defence piece, have to represent best value for the UK taxpayer. On the Wildcat issue, I think the noble Lord will accept that there is no requirement or pressing need for the Government to make a decision yet because no export orders have been received by Leonardo helicopters. However, we clearly have an interest in this. We are working with the company to ensure that UK work content is maintained, and I hope enhanced, for any export orders. The decision on whether to allow the jigs and tools to be relocated offshore will be based on a balanced assessment focused on what is best for UK prosperity.

Lord West of Spithead (Lab): My Lords, does the Minister believe there is a strategic requirement for our nation to have the ability to develop, design and build complex fast jets, and to do exactly the same for helicopters and warships, or is there no strategic requirement for this? Has this issue been considered by the National Security Council?

Earl Howe: My Lords, the Government are committed to keeping the UK as a leading aerospace nation. We are fully engaged with Leonardo on future helicopter work in that region. For example, we have signed a 10-year strategic partnership agreement with Leonardo, which of course is key to maintaining cost effectiveness, driving exports and innovation. The Aerospace Growth Partnership, which is being managed by my colleagues in BEIS, will undoubtedly be of benefit in the long term to the UK aerospace industry.

Lord Robathan (Con): My Lords, on this important matter for our aerospace industry, what optimism does my noble friend have that we may be able to export Wildcats? Is there any real prospect of that? If so, is that not a good thing?

Earl Howe: My noble friend is right. The drive to ensure that Wildcat secures export orders is central to the work that the company and my ministerial colleagues in BEIS are doing. We are working closely with the company to that end.

Lord Touhig (Lab): My Lords, in an uncertain world, Britain needs our Armed Forces to be well equipped, and they need the support of the men and women employed in our defence industries. If the noble Earl agrees with that, will he say what the Government are doing to ensure the highly skilled workforce at GKN is not lost to Britain's defence? He and I both know we will need them in the years ahead.

Earl Howe: The noble Lord is right about the need to maintain high-end skills in this country if we are to maintain our position as a leading player in the aerospace market. The Defence Growth Partnership is one element of this. We have a substantial programme of work already under way to encourage the growth and competitiveness of UK industry. Defence is playing an active part in the cross-government work on the national industrial strategy, which we aim to publish during the next few weeks. It makes sense to allow those programmes to deliver before taking a view on whether any further defence-specific work is needed.

Lord Soley (Lab): Are the Government aware of the talk among several European Union aircraft manufacturers of both civil and military helicopters and jets that they have a real opportunity to take over

[LORD SOLEY]
production from the UK when it exits Europe? Real discussions are going on in Europe about how production can be transferred from the UK to the European Union. How much thought have the Government given to this?

Earl Howe: Naturally, that is being looked at in the context of the Government's wider industrial strategy, but the 10-year industrial strategic partnership arrangement we have with Leonardo will act as a driver and influence to ensure that that company focuses on using the skills and expertise available in this country over the medium to long term.

Lord Berkeley (Lab): My Lords, when the Government published a statement last week saying that the new aircraft carrier to be launched this year would dramatically increase Britain's firepower in the defence of the world, did they understand whether there would be any planes to fly on this aircraft carrier, or are they relying on helicopters, machine guns or whatever?

Earl Howe: We have already taken delivery of seven F35E aircraft for the "Queen Elizabeth" aircraft carrier. There are more to come. Indeed, we accelerated the procurement programme when we announced the results of the SDSR in 2015. The "Queen Elizabeth" aircraft carrier will be fully manned and fully equipped when she is ready to sail.

Brexit: Green Paper

Question

2.43 pm

Asked by ***Lord Maclennan of Rogart***

To ask Her Majesty's Government whether they intend to publish a green paper on their negotiating objectives for Brexit.

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, as the Prime Minister has said, we have committed to publish a plan before we trigger Article 50. The Government want to ensure Parliament has the necessary information so that it can scrutinise the negotiating process while ensuring that our national interest in those negotiations is protected.

Lord Maclennan of Rogart (LD): Will the Government reveal to Parliament and the British people the damage to the economy that will result from Brexit if we leave the European single market?

Lord Bridges of Headley: My Lords, as the Prime Minister made clear in her interview yesterday, we are intent on achieving the widest and best possible access to the single market, and that remains our aim. I am sure that she will say more about this matter in the weeks ahead.

Lord Howell of Guildford (Con): My Lords, given that new global value chains and a completely transformed global pattern of trade have utterly changed old notions of the single market and the customs union, is it not rather pointless now frantically to debate whether we should be in or out of the single market until we know what we are dealing with and with whom we have to negotiate about what?

Lord Bridges of Headley: My noble friend makes an extremely good point—he has written and spoken extensively on this. I have had the good fortune to meet a number of businesses large and small, ranging from very high-tech manufacturers to much smaller businesses, to discuss supply chains. He is absolutely right: this is a very important issue. It is complex and, as my noble friend implies, it suggests that the rather bland terms that we use about the Brexit debate need to be treated with great caution.

Lord Pearson of Rannoch (UKIP): My Lords—

Lord Spicer (Con): How is one more clear about the objectives than the Prime Minister was yesterday, which is to get out of the European Union as soon as possible, which includes the single market?

Lord Bridges of Headley: As the Prime Minister made clear yesterday, a range of options is open to us and we are looking for the best possible deal for this country.

Lord Myners (CB): My Lords—

Lord Pearson of Rannoch: My Lords—

Baroness Hayter of Kentish Town (Lab): My Lords—

Lord Taylor of Holbeach (Con): My Lords, I think that it is the turn of the Labour Benches.

Baroness Hayter of Kentish Town: My Lords, the Minister needs to offer two things to the House. The first is perhaps that he will no longer do what some of his colleagues do. The Secretary of State, Liz Truss, refused to appear before the Joint Committee on Human Rights looking at Brexit, a refusal that the committee described as unacceptable. I hope that the Minister will come to the House with not just the final vote that will happen when Article 50 is triggered, but the detail of what the Government are seeking to achieve out of negotiations when we leave the European Union.

Lord Bridges of Headley: I can certainly assure the noble Baroness that it remains the Government's intention to build as strong a national consensus as possible around our negotiation position, to treat this House and the other place with the respect they deserve as the negotiations continue, and to give the information required for scrutiny to be meaningful and worth while.

Lord Myners: My Lords, we all try to understand why the Government wish to keep a close hand on their negotiating objectives with Europe—we must remain very hush-hush about this in case Johnny Foreigner understands what we are up to—but would the Minister like to hazard a guess on the negotiating objectives of the 27 countries, the European Commission and the European Parliament? Surely that is not a matter on which we cannot comment.

Lord Bridges of Headley: It is very tempting, my Lords, but not on my first time back. In seriousness, the noble Lord makes a very good point. Having reflected on his question, which is a very fair one, I would like to think that our European partners see that a smooth, orderly and timely Brexit is as much in their interest as it is in ours.

Lord Pearson of Rannoch: My Lords—

Baroness Ludford (LD): My Lords—

Lord Taylor of Holbeach: I think that we will hear first from the Liberal Democrats and then perhaps we can then go to the noble Lord, Lord Pearson.

Baroness Ludford: My Lords, can the Minister clarify whether the Government think it important that we are within the single market and not just trading with it? Can he also explain to us precisely why the well-being of the country is being held hostage to squabbles within the Conservative Party and Cabinet?

Lord Bridges of Headley: I totally dispute the second part of the noble Baroness's question, I am sorry to say. As regards the single market, my right honourable friend the Prime Minister set out our thinking on that yesterday. As she said, we are looking for the best possible deal for trading with and operating within the single European market, and we want that prosperity for all businesses.

Lord Pearson of Rannoch: My Lords, since the EU does so much better out of our membership than we do, in pretty well every sphere of our national life—trade and jobs, security, mutual residence, agriculture, fish, the single market; not to mention the £10 billion in cash we give it every year—why do we not just tell it that we are taking back our law and our borders and that we will be reasonably generous about the rest of it if it behaves itself and agrees? Would that not be a nice clean Brexit? It need not take very long at all, need it?

Lord Bridges of Headley: The noble Lord has a unique way of putting things, which I note, but I do not think the Government would necessarily adopt quite that phraseology. It is clear: the Government have set out on numerous occasions over the past few months our intention to take control over our borders, our money and our laws, while achieving the best possible access to the single market for businesses. That is the position.

Lord Forsyth of Drumlean (Con): Does my noble friend not think that it would be simpler to stop referring to the single market and refer instead to what is in the treaty—the internal market—thereby making it obvious that it is absurd to argue that we should leave the European Union and be in the internal market?

Lord Bridges of Headley: As usual, my noble friend speaks with a great amount of forensic attention to detail. He is absolutely right from that point of view, but the words are the words that we seem to be using.

Lord Dykes (CB): Can the Minister confirm that he takes a lot of advice from Iain Duncan Smith and Michael Gove?

Lord Bridges of Headley: I listen to all manner of people, my Lords, on all sides of the political divide and on all sides of the argument on this.

Viscount Hailsham (Con): My Lords, does my noble friend agree that the passage of Article 50 will be enormously facilitated if the Green Paper makes it plain that the final and negotiated terms will be subject to approval by Parliament and, if Parliament so decides, in a further referendum?

Lord Bridges of Headley: My Lords, as the Prime Minister, my Secretary of State and I have made clear on a number of occasions, the Government will comply with all the constitutional and legal obligations that apply to the negotiated deal with the EU.

Pitchford Inquiry

Question

2.52 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government whether a person may be designated as a core participant in the Pitchford inquiry into undercover policing if they are currently under surveillance, or subject to data access requests, for activities unrelated to any investigation of a serious criminal offence.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the designation of core participants is a matter for the chairman of the undercover policing inquiry. The chairman will consider the inquiry's terms of reference and the requirements of the Inquiry Rules 2006 when making his decisions.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for her response. It does not answer my Question, obviously. The problem is whether or not the police are still spying on people they have spied on before, who are now subject to an inquiry. Has the Minister asked for assurance from the police that they do not still have those core participants under surveillance? If she has, has she told the inquiry chair, Lord Justice Pitchford, who really ought to know?

Baroness Williams of Trafford: My Lords, I have not told the police. Obviously, I will not ask from the Dispatch Box whether the noble Baroness has asked the police but perhaps we could have a conversation about it afterwards.

Lord Harris of Haringey (Lab): My Lords, can the Minister tell us what she regards as appropriate oversight by police and crime commissioners of the undercover policing carried out by the police forces for which they are responsible?

Baroness Williams of Trafford: My Lords, with regard to professional practice, the College of Policing published the *Undercover Policing Authorised Professional Practice* for consultation, and the guidance sets out

[Baroness Williams of Trafford]
the roles and responsibilities of police officers. Obviously, the PCC has oversight of the work of both chief constables and police officers.

Lord Hain (Lab): My Lords, I was one of a number of MPs at the time who were named by an undercover police officer as having had a file on them. This was confirmed to me in person by Scotland Yard as being entirely innocent in my case, which some Members of this House may be sceptical about. Is that body of legislators—we were all legislators in the House of Commons at the time—being considered by the Pitchford inquiry? I think it should be.

Baroness Williams of Trafford: I am glad to hear that the noble Lord is absolutely innocent. I never doubted it. Clearly, the Home Office sponsors the work of the inquiry but we do not direct its work. I do not know whether the noble Lord has asked the inquiry whether that is its intention.

Lord Paddick (LD): My Lords, there are about 9 million custody photographs held on a police database, and the police cannot say how many of those pictures are of innocent people and how many are of people who have been convicted. What safeguards are in place to ensure that police databases comply with human rights law and data protection laws, particularly when they appear to contain personal details of those who have never been charged and convicted?

Baroness Williams of Trafford: My Lords, there is a strict code of ethics on how people's photographs are held if somebody has not been convicted. Perhaps I could write to the noble Lord further on the matter that he has raised.

Lord Rosser (Lab): My Lords, do the Government accept that it is possible that the findings of the Pitchford inquiry into undercover policing could lead to revisions or amendments being needed to the recently passed Investigatory Powers Act?

Baroness Williams of Trafford: My Lords, I will not anticipate the outcome of the inquiry, or indeed the report that is due in the spring of next year. Nor will I therefore predetermine what might or might not be in terms of the IP Act.

Register of Hereditary Peers

Question

2.56 pm

Asked by ***Lord Grocott***

To ask the Leader of the House whether she is satisfied that the requirements of the Register of Hereditary Peers are compatible with equalities legislation.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Equality Act 2010 provides that neither a life peerage nor a hereditary peerage, as a dignity or honour conferred by the Crown, is a public or personal office for the purposes of the Act. As such, the register of hereditary Peers is not subject to equalities legislation. As provided for in the House of Lords Act 1999, Standing Orders of the House make provision for the replacement by elections of hereditary Peers who are Members of this House. It is therefore a matter for this House, when regulating its own affairs.

Lord Grocott (Lab): My Lords, I am glad to hear the Deputy Leader confirm that this will ultimately be a matter for this House. I ask him also to confirm that the current register of hereditary Peers—containing as it does the names of all those people eligible to stand in by-elections—contains the names of 199 people, just one of whom is a woman. I would have thought that this statistic alone should bring into disrepute the whole by-election system for the replacement of hereditary Peers. I should be grateful if the noble Earl, Lord Howe, would do the House a favour by announcing that the Government will support my Bill, which costs nothing, hurts no one and has overwhelming support in this House. In so doing, we would be able to consign this whole by-election system to the dustbin, where it deserves to be.

Earl Howe: My Lords, I must declare an obvious personal interest in the context of this Question, as an elected hereditary Peer. But in the context of what the noble Lord seeks to achieve by his Bill, it would not in our view be an incremental reform. Reform of that kind would clearly change the means by which membership of this House is determined, as well as its composition, and would be a fundamental change to how it operates. The Government's position is that comprehensive reform of the House of Lords is not a priority during this Parliament.

Lord Cormack (Con): My Lords, until the Grocott Bill or something like it has a realistic prospect of success, should we not look at the electorate for the by-elections? Can we not also take a crumb of comfort that one of those high on the list on the Labour side is Lord Stansgate?

Earl Howe: My Lords, I am sure that the House will wish to note that fact but I can only say again that the process for the filling of vacancies on the register of hereditary Peers is a matter for this House under its Standing Orders. It is open to any noble Lord to make representation to your Lordships' Procedure Committee and to the Lord Speaker on any relevant matter.

Baroness Smith of Basildon (Lab): My Lords, the Minister said this would not be an incremental change. By my reckoning, if we take the hereditary Peers who are currently in your Lordships' House, if we fail to have by-elections to replace every single one of them as they choose to retire or depart by other means, it would take 60 or 70 years. I think that is a fairly incremental change. I suggest to the Minister that this House thinks we should end by-elections for hereditary Peers—he just has to be here when we have our debates. There are very few noble Lords, including hereditary Peers, who think it is the right thing to have the nonsense of these elections. The other House would agree with us; the public agree with us. Why do the Government not just get on and make this minor, incremental and sensible change?

Earl Howe: My Lords, I say it is not incremental because the end point of such a measure would be to entrench a House—if one excludes the Lords spiritual—composed solely of appointed life Peers. That is where the Government are coming from. I suggest to the noble Baroness that we have an opportunity, through the committee set up by the Lord Speaker and chaired by the noble Lord, Lord Burns, for noble Lords to make representations to the committee on this or any other associated matter.

Baroness McIntosh of Hudnall (Lab): I wonder whether the Minister would care to reflect on what he has just said. It does not seem to me that there is anything in the Bill that my noble friend Lord Grocott is bringing forward which would preclude further and different kinds of reform within, say, the next 60 years during which it would be possible to see the end of the hereditary principle in this House, if only my noble friend's Bill were in operation. Therefore subsequent reforms might overtake that over time, and I think many of us hope that they will, so is that really a reason to stand in the way of this Bill?

Earl Howe: My Lords, as the Government's manifesto made clear, we believe that the size of the House should be addressed, and that is the issue primarily being addressed by the committee set up by the Lord Speaker. However, we also made it clear that with so many pressing legislative priorities, not least those stemming from the result of the UK referendum, comprehensive reform is not a priority during this Parliament. We do not wish to close to our minds to that idea. A good case can be made for comprehensive reform, and it is worth remembering that in the last Parliament the Government put forward a Bill that would have made 80% of the eligible membership elected.

Earl Attlee (Con): My Lords, surely one of the most pressing problems is the fact that we are so horribly Londoncentric.

Earl Howe: My noble friend raises an issue which I believe has often been addressed in the past, but again it is not beyond the scope of the committee that has been established by the Lord Speaker. However, it is difficult to address that issue satisfactorily if one is going to be fair across the whole country.

Lord Newby (LD): I wonder whether the Minister will reconsider the answer he just gave about the amount of legislative time involved in this incremental change and his assertion that in the period ahead, during which this Bill could easily be passed, the House will be overpreoccupied by legislation relating to Brexit. Surely the case is that, even if we have a Bill to trigger Article 50, we know that the Government and the Labour Party agree that that Bill should be through by 31 March. Therefore, would it not be possible for the Government to give time for the Bill proposed by the noble Lord, Lord Grocott, from 1 April?

Earl Howe: As with any proposal to reform your Lordships' House, the key is that we have a prospect of securing broad consensus for whatever is being proposed. Where there are further measures that can command consensus across the House, then the Government are more than willing to work with your Lordships to look at how to take them forward, and we hope to see such proposals emerging from the Lord Speaker's committee.

Lord Soley (Lab): The Minister keeps referring to the Government recognising that this is not the time for a comprehensive review. Does he not accept that step-by-step change might be a lot more effective than a comprehensive approach, which has often failed in the past?

Earl Howe: The Government are certainly not averse to incremental reform, providing we can agree on what incremental reform means, which is the reason for my earlier answer to the noble Lord, Lord Grocott. As proof of that, one has only to look at the two Acts relating to the composition of the House that we passed in the last Parliament—the House of Lords (Expulsion and Suspension) Act 2015 and the House of Lords Reform Act 2014—as well as the Lords Spiritual (Women) Act 2015, which again was a measure in this bracket.

Lord Lucas (Con): My Lords, these days, why should gender have any relevance for the descent of anything to anybody?

Earl Howe: My noble friend makes a point which I am sure would resonate with many of your Lordships. I am sure noble Lords would agree that once Peers reach this House, the equality principle is unquestioned.

Lord Wallace of Saltaire (LD): My Lords, does the Minister recall that the insertion by Lord Cranborne—now the noble Marquess, Lord Salisbury—of this dimension into the 1999 Act was intended precisely to make it more difficult to put in a halfway reform and to ensure that when we moved further on the question of elected hereditaries, we moved towards some form of comprehensive reform? Does he also accept that the main thrust of the noble Lord, Lord Grocott, in this is to get rid of the elected hereditaries, but to stop there and go no further?

Earl Howe: I agree with both parts of the noble Lord's proposition.

Lord Anderson of Swansea (Lab): My Lords, the noble Earl has said that my noble friend Lord Grocott's proposal is best advanced through a change in Standing Orders—presumably not through legislation. What are the implications of that? Will the noble Earl and the Government give my noble friend an opportunity to test the opinion of the House?

Earl Howe: My Lords, it is open to any noble Lord to approach the Procedure Committee or indeed the Lord Speaker with a proposal for consideration. If a proposition then comes before the House, we will of course look at it on its merits.

Higher Education and Research Bill

Committee (1st Day)

3.07 pm

Relevant document: 10th Report from the Delegated Powers Committee

Amendment 1

Moved by ***Lord Stevenson of Balmacara***

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

"UK universities: functions

(1) UK universities are autonomous institutions and must uphold the principles of academic freedom and freedom of speech.

(2) UK universities must ensure that they promote freedom of thought and expression, and freedom from discrimination.

(3) UK universities must provide an extensive range of high quality academic subjects delivered by excellent teaching, supported by scholarship and research, through courses which enhance the ability of students to learn throughout their lives.

(4) UK universities must make a contribution to society through the pursuit, dissemination, and application of knowledge and expertise locally, nationally and internationally; and through partnerships with business, charitable foundations, and other organisations, including other colleges and universities.

(5) UK universities must be free to act as critics of government and the conscience of society."

Lord Stevenson of Balmacara (Lab): My Lords, happy new year, and a particular welcome to our respected guest standing at the Bar, who for those of your Lordships who were not present at Second Reading set a new record for MPs standing listening to debates. I gather he is here again to do a repeat performance. We should welcome his interest and his commitment to this issue, which I know is shared by so many Members of the House. I am very grateful to the noble Baronesses, Lady Garden, Lady Wolf and Lady Brown, for joining me and supporting Amendment 1. I look forward to hearing their comments and those of other noble Lords across the Committee who have indicated to me that they support the amendment.

I declared my interests in higher education during the excellent Second Reading debate we held in the Chamber last month. Even if I had not been to a university, never worked in the university sector or not had my children educated in UK universities, I would have wanted to engage with the Bill because our excellent university sector—currently the second most successful higher education system in the world, with four universities ranked in the top 10—faces substantial challenges in the years ahead. It could, of course, be improved and it could, of course, be more innovative, and we support both those aims, but it also needs to be supported and protected, particularly if we go ahead with a hard Brexit, as now seems inevitable.

The abiding sense I have from our Second Reading debate is that the Bill fails to understand the purposes of higher education. I suggest that without defining these important institutions, there is a danger that the new regulatory architecture, the new bodies and the revised research organisation will do real and permanent damage. Universities across the world have multiple and complex roles in society, and there is no doubt that we all gain from that. They come in all sizes, and that too is good. They are at their best when they are autonomous, independent institutions which have the freedom to develop a range of missions and practices, while at the same time being public institutions, serving the knowledge economy and the knowledge society as well as being tools of economic progress and social mobility. They use the precious safe harbour of academic freedom to seek truth wherever it is to be found and publish it for all to see and discuss. They transmit and project values of openness, tolerance, inquiry and a respect for diversity that are the key to civilisation in an increasingly globalised world.

The purpose of the amendment is simple. The Bill before us does not define a university, and we think it will be improved if it does so. Our amendment does not simply itemise some of the core functions of a university, though it does that too, but also scopes out a university's role, with its implicit ideals of responsibility, engagement and public service. A characteristic of all these functions is the expectation that universities take the long-term view and nurture a long-term stake in their local communities and wider society; that they embed scholarship and original and independent inquiry into their activities; and that they demonstrate a sustained commitment to serving the public good through taking up a role as critic and as the conscience of society.

I am confident that there is support for this approach across the House, based on the real sense of disappointment at the lack of ambition that the Bill currently exhibits. I hope the Government will feel able to accept the amendment. I say to the Minister that if he were minded to do so, not only would he improve the Bill but he would be signalling a willingness to listen to all the expertise, experience and wisdom that this House possesses and give us hope that he wished to use that for the benefit of this important sector and of the country as a whole. If he does not feel able to accept the amendment as it stands, perhaps he could offer to take it back and bring it back in an improved version on Report. If he did this, we would of course be very willing to work with him on how to improve the text—we have no pride of ownership.

I have to warn him, though, that if he does not want to engage as I have outlined, he will have to explain to this House what it is he cannot accept about specifying that universities have a secure and valued place in our society, and why he has difficulty in confirming that our universities should have statutory rights to institutional autonomy, academic freedom and freedom of speech. He will have to explain why he disagrees with his right honourable friend the Minister for Universities, Science, Research and Innovation, who is standing at the Bar, who said in response to questions in Committee in the other place:

"At its most literal, a university can be described as a provider of predominantly higher education that has got degree-awarding powers and has been given the right to use the university title. That is the most limited and literal sense. If we want a broader definition, we can say that a university is also expected to be an institution that brings together a body of scholars to form a cohesive and self-critical academic community that provides excellent learning opportunities for people, the majority of whom are studying to degree level or above. We expect teaching at such an institution to be informed by a combination of research, scholarship

and professional practice. To distinguish it from what we conventionally understand the school's role to be, we can say that a university is a place where students are developing higher analytical capacities—critical thinking, curiosity about the world and higher levels of abstract capacity in their thinking. In brief, that is my answer to what a university is".—[*Official Report*, Commons, Higher Education and Research Bill Committee, 15/09/16; col. 271.]

I confess to a little plagiarism in drafting my amendment, which I acknowledge is clearly based on that Minister's approach, which is the correct one. I beg to move.

Baroness Wolf of Dulwich (CB): My Lords, the Bill we are debating today is an enormously important one. I declare an interest as a full-time academic at King's College London.

The Government are creating the environment in which universities will operate and thrive or decline over many years, probably decades, and are changing it profoundly. Because a country's universities and the nature of those universities are so central to what a country is—to its values, politics, culture, research and innovation—the Bill is truly important to the whole nation. Yet, curiously, the Bill has nothing to say about universities, as you will find if you have a quick search of the document. It says quite a lot about the university title, and at one point it refers to unauthorised degrees at,

"a university, college or other body",

by grant, but that is it. Otherwise it refers consistently to "providers".

Clearly, the Government do not think that the term "university" is meaningless. If it were, neither the Government nor higher education providers nor universities would be so occupied with the university title.

When I dug around a bit, I found that previous legislation also has extraordinarily little to say on the subject. The 1992 higher education Act refers simply to use of the name "university" in the title of an institution, and informs us hopefully that, if the power to change the name is exercisable with the consent of the Privy Council, it may be exercised, with that consent,

"whether or not the institution would apart from this section be a university".

There is nothing more on what a university is. The Minister has kindly confirmed, in replies to Written Questions that the term is not defined in legislation but is a "sensitive" word under company law, which means that you need permission from the Secretary of State and a non-objection letter before you can use it in a business or company title.

3.15 pm

This is surely extraordinary, but does it really matter? Cannot the Office for Students just know one when it sees one, add a little procedural guidance and decide whether to bestow title accordingly? I suggest that that is not a good idea. First, it is a very odd way to proceed with something which is so important and financially valuable to people, and where the Government clearly believe that we need change. Definitions also matter because the term "university" means something special, and we need to know what it is in order to protect and promote it.

Universities are different from other providers of education, whether schools or other tertiary institutions. They are different because the concept of a university has at its core distinctive values and a commitment to society at large. Individual institutions may or may not live up to and deliver on these—and there are far too many countries in the world where Governments systematically obstruct their universities' ability to do so—but that does not change the point. We recognise universities as distinct, while also sharing the quotidian activities of teaching, research and consultancy with other institutions, including many that award degrees and diplomas.

Obviously, we could spend weeks or months defining the term, but the question is, first, do we need a definition and, secondly, is the one we are offering today good enough? Other countries have concluded that they need a definition and have defined universities. I suggest that we also need the term to be defined, because otherwise one cannot distinguish clearly between what one asks of, gives to and demands of a university because it is a university and what one asks of other providers. In the past, universities and tertiary or higher education were pretty well synonymous, but that is no longer true. Across the globe, tertiary education is exploding and well on its way to becoming universal in many parts of the developed world.

Universities have changed the world because of what they are: because they are different and distinctive. That is why dictatorial Governments take them over and close them down. It is why people care so much about how government deals with them, and we should make it clear what we believe a university is.

The second question is whether the definition which stands in our names is good enough. I submit that it is: that it identifies the key characteristics of a university while allowing for diversity and evolution. It highlights autonomy, freedom of speech, freedom of thought and freedom of expression, as well as teaching, scholarship and research and, critically, universities' direct contribution to society.

My favourite document on the topic of what is a university is a papal bull which Bishop Elphinstone succeeded in getting to authorise the University of Aberdeen, well before the Reformation. As people will know, university scholars and teachers were often a thorn in the side of the Church, just as the Church was a constant irritation to monarchs who would have liked to be absolute in the exercise of power. The reason I love this papal bull is not just the eloquence and elegance of its prose but because of how it conceives of a university: not as something that brings private gain to students or economic prosperity to the north but something established for the public and social good, to bring,

"that most precious pearl of knowledge",

to a part of the kingdom deprived of it and,

"to found a university which would be open to all and dedicated to the pursuit of truth in the service of others".

The Bill offers the opportunity to recognise what universities are and what they are for, and I hope that we will do so.

Baroness Garden of Frognal (LD): My Lords, I have added my name to the amendment for all the good reasons that we have already heard from the noble Lord, Lord Stevenson, and the noble Baroness, Lady Wolf. The Office for Students takes on powerful responsibilities to approve and disband universities and other higher education organisations with speedier timescales and lower thresholds. It is only right that criteria for these new organisations should be clearly set out. One reason given for the legislation has been that it is 25 years since the last Higher Education Bill in 1992. We do not question that some updating is necessary to reflect developments and to ensure that teaching has the same status as research, but we question whether 119 clauses and 12 schedules are necessary for this purpose. Could it be that our universities have flourished and retained world rankings because they have not been subjected to government interference? Within education, schools and colleges have suffered from changes imposed by different Governments and by the churn of Ministers seeking to make their mark, regardless of advice from professionals in the sector. Universities for some years have been relatively free of such assistance, and they have flourished as a result.

The importance of setting out the functions of universities is all the more crucial, given that increasing the numbers of universities and opening up new commercial providers sits oddly with other government policy. The country faces acute skill shortages: we need more builders, engineers, carers and technicians. The Government have ambitious plans to increase the numbers, quality and status of apprenticeships. How can that be achieved if they are also set on increasing provision of degrees, in whatever discipline—probably mainly business and other cheaper-to-run programmes—from an expanding range of organisations whose skills could be better focused on training and reskilling for real jobs in real shortage areas? In the interests of joined-up government, could the Minister say what discussions have taken place with the Skills Minister and his team over the unintended consequences for raising the profile of much-needed skills of implying, through this Bill, that degrees are the only game in town?

Without this clause, the first reference to universities comes in Clause 51. Not long ago, universities were pretty well the only option for higher education. Many of the expansions into higher education by colleges, for instance, have been welcome responses to demand and to opening opportunities for non-traditional students. This Bill brings to mind attempts to create corporate universities in the 1990s. There was British Aerospace's Virtual University; Unipart U, which is now a virtual U; and the University for Industry—the misnomer of all time—which came into its own only when it abandoned any claims on the title of university and changed its name to learndirect. But those initiatives morphed into closer collaboration between academia and industry, to the benefit of both, and with both contributing their different skills and ethos. Encouraging more such partnerships would surely be better for students, employers and the country than trying to widen and potentially weaken the range of higher education providers.

The criteria in this amendment provide safeguards that the core functions and values of British universities will be protected. It would be sadly ironic if the Bill produced a double whammy of undermining efforts to raise the standing and importance of skills, while damaging the standing and reputation of UK universities. There is much at stake in this Bill. We look forward to working with Ministers to ensure that market forces, competition and red tape are not allowed to damage our world-ranking universities. I look forward to the Minister's response and hope that he feels able to accept the amendment.

Baroness Brown of Cambridge (CB): My Lords, I have put my name to this important amendment and speak in support of it. I declare my interests in higher education, as indicated in the register, and declare and acknowledge the research support from colleagues at Universities UK and my university, Aston University.

As the noble Lord, Lord Stevenson, says, UK universities have an exceptional international reputation for teaching and scholarship in many forms. They are places where teaching and research are intimately interwoven. Undergraduate programmes benefit from research-based learning, and graduate students and researchers are beneficially involved in teaching. Indeed, the noble Lord, Lord Stern, commented very positively on that in his recent review of the research excellence framework. Universities are places where new academic fields grow from interactions between colleagues in different disciplines, and places where the encouragement of independent thought and the challenge to the status quo delivers technological change and innovation. Indeed, that is why so many large companies, such as Rolls-Royce and BAE Systems, engage closely with universities—for example, through their university technology centres—to ensure that academics can challenge the stove-pipe thinking that can develop in large corporations.

As the noble Baroness, Lady Garden, has commented, the autonomy of UK universities is recognised by our European colleagues as key to their exceptional positions in the ranking tables. Surely a broad and inclusive definition of the functions of something as important as a university in the UK is to be welcomed. That proposed in the amendment encompasses the key ingredients: autonomy; free speech; academic freedom; interdisciplinarity; teaching, scholarship and research; and, of course, the mission to contribute to society. We must recognise that being a higher education provider, delivering high-quality teaching, is a necessary but not a sufficient condition for being a university. I look forward to the Minister's response in this area.

Baroness Deech (CB): My Lords, I made my maiden speech some 12 years ago on the overregulation of universities and I cannot resist returning to that subject. Our worldwide success is now under threat: the Government are risking killing off the goose that lays the golden eggs, instead of cherishing and fostering university autonomy. The autonomy of higher education is not only valuable to the universities and their surroundings; it is the hallmark of a democratic and civilised, progressive society. You can be sure that

when the Government interfere in who may teach and who may study at universities and which universities may exist, the entire system of democratic governance is under threat. In the 1930s, thousands—some of whom were future Nobel laureates—fled central Europe to come here. Now they flee from universities in the Middle East, Zimbabwe and China. Our universities' autonomy is affected by low salaries, short-term employment, lack of tenure and, now, gagging clauses on former employees. The risk inherent in the Bill, which focuses so much on teaching excellence, is that it neglects the very thing that lays the foundation for excellence and established the global dominance of our UK universities, which are a haven for the best threatened academics in the world.

There are some limits in the Bill on ministerial interference in certain respects, but they do not add up to a clear and consistent safeguard for academic autonomy. On the contrary, by protecting that principle only in some cases it is left open to interpretation that other areas are not so protected. If the Secretary of State may issue guidance about particular courses of study, and if a government quango can shut down an existing university, then autonomy is curtailed. The power granted to vary and revoke degree-awarding powers of any university, regardless of its length of establishment, is a dangerous weapon in the hands of the OfS. It could also be used to coerce universities and make them toe the line in the face of, say, pressure by the Government to respond to short-term market forces or perceived national needs.

On uniformity of excellence in teaching, I always say that Isaiah Berlin's PowerPoint would not have been up to scratch, and Stanley de Smith, the originator of the law of judicial review—in the news every day now—would have been castigated for talking way above the heads of his audience while smoking on the edge of the platform, which was acceptable in those days. Nearly all academics who made a difference did so precisely because they did not conform to the bureaucratic ideal. The culture of box ticking and moving lecturers around as if they were footballers for transfer is already taking hold. The system of research funding has boosted elite universities at the expense of others, as a certainty. The teaching excellence framework will make this worse. Wealth creation and higher salaries for graduates needing to be ready for employment in business and market-driven schemes will, in themselves, do nothing to engender the spirit for which our universities are renowned and which brings—and I hope will continue to bring—to them the most ambitious and creative students from the Far East, Russia, the United States and India.

3.30 pm

Lord Winston (Lab): It is a pleasure to see the Minister for Universities standing listening to our debate on this important issue. We are grateful for his attention to our comments. I will make two points from examples of my own experience; sometimes the House benefits greatly from that. I am very much aware of what the noble Baroness, Lady Deech, just said about Germany in the 1930s and the effect of government on the universities, which affected German universities for a long time after the war.

In the mid-1970s, I was a visiting professor for a year at a university in Belgium—one of the oldest universities in Europe. The department in which I worked was one of the world's leading departments in reproductive physiology, to which came Spaniards, Italians, Brits, Americans, somebody from Australia, a large number of people from South America and some people who managed to get out of the Eastern bloc. The department worked on a major world problem—that of contraception at a time when the World Health Organization predicted that there might be as many as 100 billion people on the globe by the end of the next century. In addition, at that time in vitro fertilisation was not possible. It was a Catholic university. The head of the department, who was probably one of the most famous leading scientists and clinicians in reproductive biology in Europe, faced a considerable threat from the Church in that city. Eventually, with government support, not only was he passed over but he had to leave that environment as a result of the extreme pressure which came partly from government and partly from the Church. That kind of thing could happen again. The head of the department ended up mostly in private practice. The numerous foreign students from all over the world left that department and its huge prestige was also lost. Therefore, freedom of speech and expression in universities should be written into the Bill. I hope that the Government will look at this issue very carefully and perhaps encompass it in a definition.

The amendment refers to universities making "a contribution to society". I work at Imperial College London and the huge contribution that has been made to society through connections with schools is extremely rewarding. As we spread our word, that has made a massive difference to the aspirations of young people, not only in the East End of London but right across the United Kingdom. More and more universities are becoming involved in developing greater connections with society. That is important for undergraduates and school students. It is vital to extend those connections. That is another reason why the wording to which I have referred, or something similar, must be included in the Bill.

Lord Krebs (CB): My Lords, it is perhaps not surprising that those of us who are academics are concerned about definitions because one of the things we always teach our students is to define their terms. Hence, I support this amendment which seeks to define what we are talking about. At the same time, we should recognise that over the centuries universities have changed. In England, between the 12th and the 19th centuries, there were just two universities—Oxford and Cambridge—which served largely as institutions for educating people for careers in the Church or in canon law. The modern university as we understand it, an institution which combines research and teaching, was essentially invented in Germany by Alexander von Humboldt in 1810, when he founded the University of Berlin. However, in spite of the changing details of what universities do, they have certain enduring qualities and properties that we should cherish and ensure are retained during the passage of the Bill.

I offer two quotes. We have already heard one excellent quote from the noble Baroness, Lady Wolf.

[Lord Krebs]

One of my quotes is from the then Poet Laureate, John Masefield, when he was offered an honorary degree by the University of Sheffield in 1946. He said, among other things about a university:

"It is a place where those who hate ignorance may strive to know, where those who perceive truth may strive to make others see; where seekers and learners alike, banded together in the search for knowledge, will honour thought in all its finer ways, will welcome thinkers in distress or in exile, will uphold ever the dignity of thought and learning, and will exact standards in these things".

That is the spirit in which, during the passage of the Bill, we should consider what a university is. My second quote reverts to perhaps the most famous treatise on universities, written by John Newman in the middle of the 19th century. I will not attempt to read the whole book to your Lordships, but just one brief quote. He says that,

"a University training is the great ordinary means to a great but ordinary end; it aims at raising the intellectual tone of society, at cultivating the public mind, at purifying the national taste, at supplying true principles to popular enthusiasm and fixed aims to popular aspiration, at giving enlargement and sobriety to the ideas of the age, at facilitating the exercise of political power, and refining the intercourse of private life".

These are high-flown ambitions for universities, but ones that we should uphold today, not resorting to a purely instrumental view of universities that are there for economic benefit and training in technical skills.

Lord Willetts (Con): My Lords, I declare my interests in the Bill as a visiting professor at King's College London, chairman of the advisory board of *Times Higher Education* and adviser to 2U.

We heard at Second Reading, and have already heard this afternoon, the deep concern in the House about the autonomy of our universities. I am sure that in the process of our discussions we will want to find ways of enhancing the protection of the autonomy of our universities. However, this clause is not the right way to set about it. As we have heard, this clause is the first attempt ever in British primary legislation to define what a university is. It is an ambitious project, and if I were to set up a committee to define a university, I could think of none more distinguished than the Committee in this House this afternoon. It has, however, the paradoxical effect that the first clause we are debating is a set of obligations on universities; it is formulated as a series of "musts" that universities have to do. It reflects a view of the university that is rather narrow and traditional. Of course, it is absolutely right that academic freedom is there, but it also says, for example:

"UK universities must provide an extensive range of high quality academic subjects".

When I was Minister, I was proud to have given university status to institutions that focused on particular subjects—the Royal Agricultural College, for example, which is now a university. Are we really going to put into law a requirement that there must be an extensive range of subjects before an institution can be a university? That sets back a set of reforms not only from my time as a Minister; it goes right back to the Labour Government of 2004.

There is a long list of ways in which universities,

"must make a contribution to society".

I do not know quite what this "must" is, but it says that they have to contribute "locally, nationally and internationally". Does that mean that if a relationship with a local authority leader in the area breaks down, you can turn up and tell the university that it is in breach of its obligations to contribute locally? My personal view is that we should be protecting universities by putting obligations on Governments and regulators to respect their autonomy, not trying to define universities and put obligations on them.

Baroness Bakewell (Lab): My Lords, I declare an interest as president of Birkbeck. I support the amendment for the following reasons.

It has taken decades if not centuries to build up the network and infrastructure of UK universities, and it would be folly to damage their standing and reputation in the world as it stands today. That is not to deny that the sector needs updating and amending. But from the start we must assert, as this amendment does, the age-old academic values that are at the centre of what universities stand for. Those are: reliance on reason, argument and evidence; critical and creative thinking uninhibited by limits on free speech; rigorous analysis and use of data; and precise and meaningful communication between academics and pupils. I hope that we will seek to embrace those values as we scrutinise the Bill, and I invite the noble Lord, Lord Willetts, to endorse those values.

Since the abolition of the block grant and the arrival of student fees, other concerns have come to the fore in the sector: universities have increased resources to extend their marketing, and management values have come to matter. Universities have become businesses—there is nothing wrong with that—and competitive listing has been one of their recruitment tools. Now, we are told, new providers will, by increasing competition, drive up standards. However, there is no evidence that that will necessarily follow. Indeed, experience elsewhere—in the energy market, for example—indicates that this may not be so at all. For-profit organisations seek first to please shareholders before they please consumers—which is what we are now told we should call students.

Therefore, from the start and throughout the consideration of the Bill we must reassert and defend the prime values of our university sector and resist the Government's plans to seek central control via their own appointed, unhappily named, Office for Students.

Lord Myners (CB): My Lords, I did not go to university. Some 52 years ago I applied to be an undergraduate at the London School of Economics and was rejected. Fifty years later, it appointed me chairman of its Court of Governors. Clearly, one of those decisions was wrong. I am also chancellor of the University of Exeter.

I should like to add to the good words that have already been expressed about the commitment that the Minister of State has shown in taking this Bill forward in the other place and in being with us today. I can think of no one in the other place better suited than him to lead legislation regarding, and indeed representation of, our universities.

We have heard from the proposers of the amendment about the importance of autonomy in our universities, as well as freedom of thought and expression. The noble Baroness, Lady Garden, spoke about the world standing of our universities. However, we should not disguise from ourselves the fact that in our universities there are some shortcomings, which have become very apparent to me, particularly in my time at the London School of Economics.

I have frequently heard the word "burden" inserted before the word "teaching", and I have found university professors' commitment in terms of hours spent working with students to be extraordinary low. I was told that our aim was to get the figure up to 68 hours. As somebody who was new to universities, I asked myself, "Is that a week? No, surely it can't be a week; maybe it's a month"—but I discovered that on average professors at the London School of Economics teach for only 68 hours a year.

Therefore, it is important that we embody in law the responsibilities of universities. It is important that we talk not only about academic freedom and autonomy and about the importance of universities in the promotion of research and in having a positive impact on people's lives and on society but also about accountabilities. I think that there are major shortcomings in accountability in our universities. In many there is a climate of lassitude in terms of academics' duties and obligations to their institution and to their students, and the Government have quite correctly addressed that as an issue in putting this legislation before us. I also think that the proposals in the amendment are correct—

Lord Forsyth of Drumlean (Con): Surely these shortcomings in teaching times are a matter for the body responsible for governing the university and not for the Government.

Lord Myners: With all due respect, I did not say that they were a matter for the Government; I was pointing out that we should not believe that everything is quite as rosy as is occasionally suggested when describing the excellence of our universities. Like, no doubt, the noble Lord, Lord Forsyth, I commit to the fact that we should never be content and that we should always work to improve. I am simply saying that there are some areas where universities need to improve. This Bill, in talking about the importance of teaching excellence and putting teaching at the heart of the university experience, does, I believe, address the current shortcoming that we see in this area.

I think that the amendment, while being absolutely necessary in explaining the role of a university, suffers from some inadequacies in its drafting. It barely achieves a Lower Second in terms of striking the balance between a higher-level vision of what a university does and very detailed prescription, as the noble Lord, Lord Willetts, pointed out. Therefore, if this is pushed to a vote, I will vote in favour of the amendment, because I think that the Bill would be strengthened by words to that effect at the beginning. However, it is very important to note that, in moving the amendment, the noble Lord, Lord Stevenson, made it very clear that he was willing to listen to the Government and possibly not force the amendment to a vote if there was some sign that they were willing to go away and reconsider the need for an amendment of this sort in the preamble to the Bill.

3.45 pm

Lord Giddens (Lab): My Lords, as a former director of the London School of Economics, I think it is perhaps appropriate for me to speak next. I have to say that I do not wholly disagree with all of what the noble Lord, Lord Myners, said. I disagree on the fundamental point of principle, but the criticism he offered was entirely appropriate. In contrast to him, I strongly support this amendment. In the Second Reading debate, I was highly critical of aspects of this Bill. My objections were not motivated by some sort of stick-in-the-mud desire to resist change and innovation. On the contrary, in some ways the Bill is, in my eyes, too conservative—with a little 'c', of course.

I accept and endorse the need for an overall legislative framework for higher education. We need to clear up inconsistencies and ambiguities in the existing system and, far more importantly, embrace the deep transformations beginning to affect both teaching and research. At the same time, however, as other speakers have rightly said, we must be careful not to undermine the very qualities that have propelled higher education in this country to the very top globally.

In amending the Bill—and there is no doubt in my mind that substantial emendation is necessary—we must ensure that we avoid the huge problems created in the US around deregulated for-profit institutions. They have a place but they are not the future. As in almost every other sphere, higher education is likely to be transformed in a radical way by the digital revolution—and, in my view, in very short order. This is a revolution of unparalleled pace and scope. Much more potent models for exploring what is to come include edX, linked to Harvard and MIT, and Udacity, which had its origins at Stamford. We should be investing in analogues, and some of that has to be public investment.

As the amendment makes clear, a university is not just a knowledge provider but an active creator of knowledge and ideas—even the noble Lord, Lord Myners, stressed that point. That relates to what teachers do, because research and teaching are part and parcel of a combined enterprise in a university. Disciplined research and the active protection of academic freedom are crucial to this task. In my eyes, it would be a major step forward to have these principles spelled out in binding fashion, as this amendment does. The amendment, in fact, looks to have a great deal of support across the House, and I hope that it will not be treated in partisan terms. Perhaps the Minister will be moved to accept it without driving the matter to a vote. Many other pieces of what could turn out to be a very difficult jigsaw puzzle for the Government would fall into place were he to do so.

Lord Waldegrave of North Hill (Con): My Lords, I declared my interest at Second Reading. I am the most junior member of the club of chancellors mentioned by the noble Lord, Lord Myners, as the newly appointed chancellor of the University of Reading. I have a number of concerns about the Bill and without making

[Lord Waldegrave of North Hill]
a Second Reading speech again, I shall look to the Government to strengthen protections against interference with autonomy.

These are not theoretical objections. In this House, we are all in danger of falling into our anecdotage, but I will give just one. I was once the holder of a similar office to the Minister who is so courteously handling this Bill. My Secretary of State was my late friend and former colleague Sir Keith Joseph. The Secretary of State became incensed by the economics teaching at the Open University, so his junior Ministers, Rhodes Boyson and myself, were given the books to read. This had rather extraordinary results. The Open University's reply to what Sir Keith saw as unfortunate bias in its teaching was made much worse by its defence that there was a book by Mr Peter Walker that in its view provided balance, which did not necessarily help Sir Keith. This was slightly comic and Sir Keith was a man of immense courtesy and deep understanding of the autonomy of the institution, and nothing much further came of it. But in crude hands and in different worlds it could have done. I shall therefore be looking through the course of this Bill to various things that will help us to strengthen autonomy.

My interest in this first clause is whether a definition helps us. Do we need a definition to say what it is we are helping to provide special protection for? I am made a little nervous by my noble friend Lord Willetts's comments because the reason that things have not been defined in Bills over the years is the danger of a definition excluding things by accident. Very often when we draw a line we find that we have produced a new boundary and that it is better to leave some things a little greyer. In the 19th century, universities probably meant places where there were multiplicities of departments, but we know of very good liberal arts universities in the United States that do not teach science and are perfectly properly described as universities. Other examples were given by my noble friend Lord Willetts.

I am nervous about the clause as it is defined at the moment, but am interested in the Minister's response. If he can say that he will take it away and think of this problem of definition, I would be happy with that. As drafted, it is not perfect. It would be odd for any small and perhaps specialised university of great distinction in certain areas that the behemoth of the regulator could demand that it was failing because it was not helping overseas markets or something or other, so there is a danger here. I want definitions to be defended. I do not think that we have it quite in this clause, but my support or not for the clause will somewhat depend on the spirit in which the Minister replies and whether he will agree to take this away and work at it to see if something a little more workable can be discovered.

Lord Bragg (Lab): My Lords, I support the amendment put forward by my noble friend Lord Stevenson and his colleagues in what promises to be a full-scale and important debate on higher education. It is indeed odd, and even extraordinary, that universities are not mentioned in the Bill. I declare an interest, having been chancellor of Leeds University for the last 16 years.

En passant, I note the spectacularly impressive number of academics of the highest achievement who have expressed serious reservations and opposition to much of the Bill. Surely, in this House more than any other, we believe that the voices of experts, especially of such calibre—many of whom are in this House now—ought to be listened to and recognised as the best wisdom available on the subject.

The Government seem intent on a pincer movement, first introducing free-market rules that could best be described as downmarket options. New colleges called new providers—George Orwell would have loved that—will be able to acquire degree-awarding powers without having to build up a track record by teaching another university's degree first. None of that boring old research and listening preparation nonsense for this Government, it seems.

The current university system could be called a fine example of the marketplace at its best—there is much talk of the marketplace. There is heavy, open competition for entrance to universities, and heavy competition for lectureships and professorships. When universities put in for grants and funds they realise they are competing with many other universities—sometimes all over the world—and they work out the most competitive as well as the most scholastically satisfactory proposal. This is a marketplace of the mind, but none the less a marketplace and an increasingly key one for the future. Our universities embrace and revel in it.

One of the reasons for this effective balance between learning and earning lies in the autonomy and individuality of our universities. They are not one size fits all, beholden to the state or looking forward to launching themselves on the FTSE 100. They are, to use a phrase of Alan Bennett's, just "keeping on keeping on" at a high level in different but effective ways, with fertile variations, with their primary purpose: scholarship. As we know, the consequences of scholarship can increasingly be very profitable, wide-ranging across the whole of society and, from the evidence we have, increasingly essential to the success of a 21st-century economy, which, in so many other areas, has found this country wanting. But the heart of it is learning, and the heart of that is the curiosity to pursue knowledge for the sake of more knowledge. Key to that is a certain looseness and confidence in individual and often idiosyncratic needs—private space, in short, for what our greatest scientists and writers in the humanities have always needed to generate their best work. This cannot be legislated for: it is an individual-to-individual decision. This heavy-handed state control is the enemy to that free-ranging condition.

The clamp of the Government's decision to create a new body—a central control unit—the Office for Students, is anathema to freedom, of which we need more, not less. It would impose another layer of regulation. Goodness knows, universities in this country, like schools, hospitals and the Government themselves, are all but disappearing under the tangleweed of overregulation. Who will run these new bodies, which will interfere so radically in the affairs of the variety of universities? How will they be trained? Where will they come from? How will they know more than those already working hard inside the universities who are

the best people? They are already there inside the universities. All of these universities, from the ancient to the relatively new, have built up through expertise and expediency individual and ingenious ways to ride the tide of the times. There is danger of strangulation by bureaucracy.

As they take an increasingly important place in our society as one of the few success stories of the last few decades, universities are being asked to do more, which they are doing. They have now become the forum for disputes about free speech, and it is in universities where unacceptable and destructive racist attitudes must be and will continue to be challenged, I trust. In cities thoughtlessly stripped of traditional industries it is universities that have often provided the new hub of hope in the place.

No doubt others will itemise ways universities can be improved, and I look forward to hearing that. First, though, we must declare and itemise their current strengths. Universities must be high on the agenda—as high as they are on the ladder of learning in this country. I look forward to the Minister confirming that he will go along with the amendment.

Lord Bilimoria (CB): My Lords, the amendment is very important for one reason. Having taken part in Second Reading, I declare my interests once again as chancellor of the University of Birmingham, chair of the advisory board of the Cambridge Judge Business School, and honorary fellow of Sidney Sussex College, Cambridge—I could go on.

This is a once-in-many-decades opportunity to improve the higher education sector in this country. One could argue that we have the best universities in the world, along with the United States, in spite of underfunding. The key issue is that we underfund our universities. If we put in the funding equivalence of the United States of America, or of the European Union, or the OECD average it in itself would improve our universities hugely. But, as an entrepreneur building businesses, I live by the mantra not of "If it ain't broke, don't fix it", but of restless innovation, of the world belonging to the discontent.

To that extent, I applaud the Bill's objective to try to improve our universities. I also recognise the Minister, Jo Johnson, for his commitment to this, for listening through the entire Second Reading, and for being here with us today. I know he and his department will listen, as, I hope, will the Minister.

I therefore agree with the noble Lords, Lord Waldegrave and Lord Willetts, that the use of "must" in this clause does not make sense in many circumstances. For example, in India, 1.5 million students apply to get into the Indian Institutes of Technology. The first cut is 130,000. Ten thousand of them make it. Some of the brightest people in the world have come out of that funnel and run some of the biggest organisations in the world today. It has nothing to do with engineering, but it is a specialist engineering science institution. Caltech is always ranked among the top universities in the world. It is a pure science institution. One cannot therefore prescribe that all universities must do everything, but the spirit of this amendment is absolutely right: that universities on the whole must strive for variety.

4 pm

Lord Giddens: Caltech has a range of other departments, including philosophy, history, social sciences and English.

Lord Bilimoria: I was stressing that it focuses on technology—that is its strength and why it wins all those Nobel prizes—but I acknowledge what the noble Lord says.

I go back to areas of specialisation and the purpose of universities. The mindset of certain people, including in this country, is, "You should study at university what you can apply in a job thereafter"—that is, a sort of vocational mindset. Our universities are not what that is about. My oldest son is reading theology at Cambridge. I do not think that he is going to become a priest, but if he wants to, that is up to him. I do not think that that will happen—he will probably become a management consultant—but what he will learn in that environment is phenomenal. He gets one-to-one supervisions with world leaders in his subject. Not every university does that or can afford to do it, but he has that ability. I consulted Cambridge on this. It said that it recognises the importance of diversity in research and teaching and that the success of global competitiveness of the UK's universities relies on the core principles of sustainability, diversity and—here is the crux of it—institutional autonomy. That is what worries so many of us about this Bill and why this proposed new clause, right up-front, is so important. It is the spirit of it that I completely support.

The pro-vice-chancellor for education at Cambridge, Graham Virgo, has spoken about the last part of the amendment, which is about being a critic and conscience of society. To narrow down the definition just to teaching and research will be to miss the opportunity to improve our universities and to miss the point. Professor Virgo pointed by way of example to the New Zealand Education Act 1989, which had five criteria for defining a university. The fifth of those was for an institution to accept a role as a critic and conscience of society. That is so important and it is why the amendment sets right up-front the essence of what universities should strive to be about, so that we do not go down the wrong track in this once-in-many-decades opportunity to improve our already fantastic, best-of-the-best, proud, jewel-in-the-crown universities.

Baroness Lister of Burtersett (Lab): My Lords, I, too, support the spirit of this amendment, and I declare an interest as emeritus professor at Loughborough University and a fellow of the British Academy and the Academy of Social Sciences. I apologise that I was not able to speak at Second Reading, but I suspect that my contribution was not missed among the 70-odd people who did speak. I have read the debate, and very thoughtful it was. The clear thread running through a large number of contributions from all sides of the House was the perceived threat to university autonomy and academic freedom. I fear that those concerns were not assuaged by the Minister's assurances, hence the motive behind the amendment.

The fears have to be set in the context of what is widely seen as the creeping marketisation and consumerisation of universities. As my noble friend

[Baroness Lister of Burtersett]
Lady Bakewell put it, students are now consumers of a product, as if a university were a department store. Many would argue that all that is precious about universities in terms of the development of critical thinking, and in particular encouraging students to think critically and not simply accept what they are given, is being increasingly subordinated to an instrumentalist, economistic concept of a university as in effect a degree factory feeding UK plc.

I suspect the Minister will say that the amendment is not necessary because the Government have said they are committed to the key principles it contains. But surely there would be no better way of demonstrating that commitment than by either accepting the amendment or, given that a number of noble Lords have pointed to possible weaknesses in the wording—and my noble friend on the Front Bench has made it clear that he is not wedded to the exact wording—offering to bring forward their own amendment setting out what a university is and the principles it should pursue. That would show their commitment and establish a clear framework for our deliberations on the Bill. In doing so, the Government would go some way to reassuring both Members of your Lordships' House and the many organisations and individual academics who have written to us to express their fears that the Bill is taking us too far down a road that is incompatible with the basic principles of what a university is and what a university should be.

Lord Lucas (Con): My Lords, the amendment begins very well:

"UK universities are autonomous institutions",

but the rest of the subsection abolishes that effect entirely. I am really worried about the ability in the Bill of a quango to abolish Oxford, to put it in cartoon terms. This proposed subsection gives anybody the right to abolish Oxford. The moment that anybody can argue that Oxford has not upheld the principles of academic freedom, and if that is argued in court and it goes against Oxford, it is no longer a university. That is an astonishing level of control. You really do not need the rest of the Bill. There would be complete government control over all universities just by having this amendment as the Bill. There is so much in here that allows universities to be controlled because it is mostly about telling universities what they have to do.

If we are going to have a clause such as this—and I really support the idea of it—let us have something that gives universities rights, declares that they are autonomous, and other things that we can think of that work, but let us not keep all these unstructured obligations on them, which can go only in entirely the opposite direction from that which is intended by the proposers.

Lord Willetts: My noble friend is making a really important point, which I strongly agree with. Will he accept that when we turn later to, for example, Amendment 65 in the name of the noble Lord, Lord Kerslake, we then have an approach which might be better at achieving this objective than the approach we are debating now?

Lord Lucas: My Lords, I entirely agree that there are some very interesting amendments later on, which may attract me, if not my Chief Whip.

Lord Smith of Finsbury (Non-Afl): My Lords, I remind the House of my interest as master of Pembroke College, Cambridge. I support the amendment. We get the opportunity to legislate on higher education once every couple of decades. It is therefore really important that we get it right. It seems really sensible to put into the Bill a definition of what we are talking about. That is especially important because one thing the Bill does is give a fast-track procedure for new universities to be created. We ought therefore to be framing as part of that legislation a definition of what a new university should be committed to.

I have to say that I am taken by one or two of the points made by the noble Lord, Lord Willetts, about the precise wording of parts of the amendment. I think he has fastened on the one point where the amendment is weak; that is, in allying the word "must" with the extensive range of subjects. Actually, it is right to put "must" in the Bill in relation to the commitment of a university to academic freedom. If Oxford University were to abandon the principles of academic freedom, it would rightly be up in front of the court of public opinion or a court of law.

Lord Judd (Lab): On this specific point, I have read the amendment carefully and it does not say that a university must provide a range; it says that "universities must". This is a very important and somewhat subtle point which needs to be taken seriously.

Lord Smith of Finsbury: I take the point from the noble Lord, Lord Judd. However, I think that it would be important for the avoidance of doubt to ensure that there can be no doubt about the ability of a very focused university, concentrating on a particular range of subjects or type of subject, none the less to stand tall and clear as an accepted university. Laying aside the point about "must" and "extensive range", the whole thrust of this amendment and the principles behind it are absolutely in the right direction. For heaven's sake, let us put this into the Bill and then set about making one or two adjustments at a subsequent stage of our discussions to get it specifically right. The broad principles enshrined in the amendment are absolutely the right ones that we need to focus on. I make two observations in relation to that.

First, academic freedom and autonomy is not a luxury for a university; it is part and parcel of what a university is. It is rightly said that a university does not teach people what to think but how to think, and that happens through debate, discourse, discussion, research and the contestability of ideas. It arises from a clash of minds and, above all, from no one in a university being told by anyone—government or anyone else—what to think. Secondly, in the ghastly jargon of the age, we are, I fear, living in a post-truth society. Universities, par excellence, are about truth and evidence. They are about making sure that we pay attention to knowledge and reality. I particularly like the phrase in Amendment 1 about,

"the pursuit, dissemination, and application of knowledge",

because a university absolutely has to do that: pursue knowledge and research, attend to it and discuss it, test it, then disseminate and apply it. It has a duty to its students, to itself as a research community and to wider society. This amendment gets it broadly right. It does not have every single word right, but let us put it in the Bill and then make it even better when we come to further stages of discussion.

Lord Anderson of Swansea (Lab): My Lords, my declaration is simple: I am not a vice-chancellor, a chancellor or a master of a college but I join in the paean of praise for much of what is done in our universities today and I share many of the concerns.

If one seeks to define the open society, surely the role and status of a university in that society would be an essential part of it. Having lived for some years in a totalitarian society when I served behind the Iron Curtain in the 1960s, I saw the pressures on those universities, and I think there is a great danger that we take for granted the freedoms which we enjoy in our own university system.

4.15 pm

It is surely sad if there is a perceived need by so many Members of your Lordships' House to have a definition of what a university should be. Clearly, we can argue about whether there should be "musts" or "shoulds" everywhere; it will not be actionable in any event. It has surely been taken for granted until now that there is no need to have such a definition, but now some of the principles are being challenged in the Bill. They are also challenged by some activities within universities. I worked with the noble Baroness, Lady Deech, on tackling the anti-Semitism which permeates a number of our universities and is not clamped down on by overweak vice-chancellors, but that is perhaps a by-way in this. In my judgment, this is an admirable summary of the core principles of what a university should be about.

My only reservation, which has already been mentioned, is that by including one excludes, and that by defining there is a danger of excluding. All the principles are admirable. It may well be that the Government will have many ways of saying that they accept that there are broad principles here and that they wish to consider them and reflect on them but will reject the amendment because it is not perfect. I am sure that all Members of your Lordships' House would be happy if the Government were to say today that they agree that there should be an honest attempt at a definition and that they are prepared to return, after due reflection, with a reformulation. Let that be.

Lord Cormack (Con): My Lords, I apologise for not taking part at Second Reading, but your Lordships will remember that 6 December was the day after we had the long debate on the composition of this House on 5 December, and I thought it would be trying your Lordships' patience too much.

I shall speak very briefly. I want to make one point only, and it is this: we have before us a Bill that is riddled with imperfections and an amendment which is far from perfect. We have the great good fortune of having a Minister of State in charge of this Bill—to whom tribute has rightly been paid on a number of occasions, including by the noble Lord, Lord Stevenson—who is following our proceedings assiduously and in person. I think it is impossible to conceive that he will not take note of what is said today when he discusses it with the Minister in this House. It is important that this crucial point—the spirit of this amendment—is taken on board and considered.

However, we have not a convention but a general habit in your Lordships' House not to amend in Committee but rather to give Ministers the opportunity to reflect and consider, and then to press, and to press with vigour, on Report. Many is the time when I have found it necessary to vote against the Government on Report. It may well be that that will occur many times during Report on this Bill, but I do not think that on the very first day that this Bill is before us we should tie anyone's hands by inserting an amendment which it has been admitted even by its advocates needs improvement. Let us try in the conversations that take place both within and without this House to get it right.

There is a great deal to get right. This is an imperfect Bill that threatens some of our cherished academic freedoms, even if inadvertently. There has never been a time when we needed vigorous universities more than we need them now defending freedom of speech. That is necessary, and we are reminded even this very day by some of the comments on how philosophy should be taught and on which philosophers should be exalted and which put down to accept that much is rotten in this state and we need to get it right.

Lord Winston: I take a bit of issue with the noble Lord on this occasion. Does he not think that this definition will pervade the whole of our discussion throughout the Bill, which is why pushing this in Committee may be completely justified, even though it is not usual practice in this House?

Lord Cormack: Of course it will pervade our discussions throughout the Bill, in Committee and on Report, and it may well be necessary to move a refined amendment on Report and to vote on it—of course it may. But do not let us tie a Minister of State's hands when he has shown himself anxious and eager to listen to what your Lordships say. We are having a good debate, and have had some notable speeches. Let us not push this to a vote this afternoon.

Baroness Cohen of Pimlico (Lab): My Lords, I am grateful for the noble Lord's comments, because I have the greatest possible difficulty with this amendment, for a reason that nobody in the Committee has stated this afternoon. The amendment, as drafted, risks disqualifying—and hence turning some into sheep and some into goats—a whole group of bodies that have been given degree-awarding powers and the title of university since the legislation enabling that in 2004. I should declare an interest in that I am chancellor of BPP University, which is one of the biggest of the new, private universities. We were given degree-awarding powers in 2007 and, much to our great pleasure, were awarded the title of university in 2013.

[Baroness Cohen of Pimlico]

What do I find when I read the proposed new clause? We would be supposed to provide a full range of subjects—but we do not and never did, although we have a full range of business subjects. Many of my colleagues in the 60 or 70 institutions that have gained degree-awarding powers are in the same place. This clause would just put us somewhere else. It gets rather worse as it goes on, with the second proposed new clause, at which point "UK universities" become separated from other, for-profit universities. We would somehow have ceased to be UK universities, but surely we are constituted under the 2004 legislation—so what would happen? Would we all be universities, with the title, or would we in some way not be, as UK universities become the sheep and the rest of us become the goats?

I have a real problem with this proposed new clause. The legislation was perfectly all right as originally drafted, when we were all higher education providers, but this clause would, for I think many of us, throw a real spanner into the works right at the beginning of the Bill. I would have to oppose the amendment were we to take a vote.

Lord Broers (CB): My Lords, I speak as a past vice-chancellor of Cambridge, but more importantly, I have associations with universities all around the world and other universities here in the UK. I support the proposed new clause but also support the need to give it further consideration. I will make just one point: it does not mention governance, and whether universities not only are autonomous but have the right to determine how they govern themselves. This has been a matter of some consideration over the years in various universities, and we debated it intensely in Cambridge at one time. Universities should be allowed to determine their own form of governance, and some words need to be included in a clause like this to say that. It would be a good idea not to go ahead immediately with the proposed new clause but to discuss it much further, particularly taking into account the independence of universities in determining how they govern themselves.

Baroness Warwick of Undercliffe (Lab): My Lords, I thank my noble friend Lord Stevenson for tabling this important amendment, and I join others in supporting it. I declare the interests that I declared in my contribution at Second Reading.

This is the first major Bill on higher education for a generation, and it will have far-reaching consequences. One of its aims, as we have heard, is to extend university title considerably. It is a matter of great concern to me that this legislation has so far made no attempt to define what a university is, its role in society more widely or, particularly, what we expect these new universities to do.

There has been so much change in the sector that I can see there is a need for regulatory reform, and I am in favour of it. I am in favour of raising the profile of teaching and of providing incentives for high-quality delivery. I am certainly not against change or challenge—universities have always changed in response to perceived social and economic needs—and new entrants to our higher education sector throughout its long history have ensured its diversity and the spread of excellence that we are so rightly proud of today.

We will have an opportunity to discuss university autonomy specifically and in detail in the next group but the threats to it contained in the Bill, and its proposals regarding university title, seem to undermine what we understand as the function and value of a university. They will endanger both the quality of our universities and the reputation of UK higher education overseas. So although I acknowledge the difficulties in providing a definition, as the noble Lord, Lord Willetts, and others have suggested, I think we have to go down the path of having this clause at the front of the Bill. I believe it is an essential step in mitigating the risks that I perceive.

As others have said, the Minister could go some way to alleviating my anxieties by responding to some questions. Does he agree that offering an extensive range of high-quality academic subjects, delivered by excellent teaching and supported by scholarship and research, is what has given our universities world-leading status? Does he recognise that universities' contribution to society, through the pursuit, dissemination and application of knowledge and expertise locally, nationally and internationally, is made possible by their status as autonomous institutions, free to act as critics of government and the conscience of society? Does he agree that UK universities must uphold the principles of academic freedom and freedom of speech and ensure that they promote freedom of thought and expression? Will he tell us what his Government mean by a university and, if he cannot, will he allow the amendment, or something like it, to stand?

Attempts to articulate the meaning of a university have a distinguished history, from Humboldt and Newman in the 19th century through to the 1963 Robbins report and the Dearing inquiry in 1997. The proposed new clause echoes some of what Robbins said. He defined four objectives essential to any "properly balanced" higher education system. They included "instruction in skills", balanced by the objective that universities must also promote the,

"general powers of the mind",

to produce "cultivated men and women". He said that teaching should not be separated from the advancement of learning and the search for truth, since,

"the process of education is itself most vital when it partakes of the nature of discovery".

Robbins' final objective was,

"the transmission of a common culture and common standards of citizenship".

Some of the wording may now sound arcane, but the principles are still profoundly right. Robbins recognised the importance of universities' autonomy and the principle of academic freedom. He included in that the right of academics to be active citizens and to pronounce on political questions, making universities the home of public intellectuals and a creative and independent cultural force.

The Bologna declaration, signed by the heads of most European universities in 1988, further enshrined principles that the university is an autonomous institution with the distinctive mission of embodying and transmitting

the culture of its society; that teaching and research must be inseparable; and that freedom in research and training is the fundamental principle of university life. For Dearing, the central vision was the need for the UK to develop as a learning society in which higher education would make a distinctive contribution through teaching at its highest level, through the pursuit of scholarship and research and, increasingly, through its contribution to lifelong learning.

Clearly, we attach a great deal to "the university". Having the title "university" carries significant reputational implications because of all that is meant by the word. As UUK and others have warned, it is essential that new providers can demonstrate that they can provide high-quality education. Any new higher education provider awarding their own degrees or calling themselves a university must meet the same high requirements as existing universities. The bar to entry must be high in order to protect students and the global reputation of the sector. We need robust criteria for new entrants that reflect the role of universities in teaching, research and scholarship, as well as wider civic and social roles. I believe the new clause will help to achieve that.

4.30 pm

Lord Storey (LD): My Lords, I feel incredibly nervous speaking surrounded by chancellors past and present, professors, masters, wardens et al, as someone who received a certificate of education and then did a part-time degree while he was working. I agree with the noble Lord, Lord Anderson, that the reason for the clause is the Bill itself and what it might cause to happen, and what we are seeing on some of our university campuses in terms of academic freedom and freedom of speech.

I agree with the noble Lord, Lord Smith, that the wording of any definition has to be precise. Subsection (3) of the proposed new clause states:

"UK universities must provide an extensive range of high quality academic subjects".

It is the phrase "extensive range" that worries me. Your Lordships will be aware that there are specialist universities such as the University for the Creative Arts, the Arts University Bournemouth and, in my city, the Liverpool Institute for Performing Arts, which was set up by Paul McCartney to develop the creative and performing arts. By their nature, they do not have an extensive range of academic subjects; they have a specialist, narrow range. I am sure that the clause was not intended to exclude them, but that irks those colleges and goes to show how important it is to get the wording right.

As the noble Lord, Lord Cormack, said, the Bill is imperfect, and this is the opportunity to make an imperfect Bill perfect. The new clause can be simply dealt with if the Minister responds by saying, "Yes, it is important that we have a definition and state the functions of a university, and we will spend time getting the wording right". If that does not happen, it will presumably have to be pressed to a vote.

Lord Lucas: Does the noble Lord agree that, under the conventions of this House, if we vote on the amendment today, we are stuck with it; we cannot change it any more? If we want to do better—to produce an amendment with the same sort of effects but which takes into account all the good advice from, for instance, the noble Lord, Lord Broers, and the noble Lord himself—we must not vote today; we must aim to vote on a better amendment.

Lord Storey: I agree with the noble Lord, Lord Lucas. That is why I said that when the Minister replies, he must state clearly his intentions regarding the functions of universities. If he spells that out, there will be no need to press this to a vote.

Lord Forsyth of Drumlean: My Lords, I have no offices to declare and I hope I will not bore the House, but I had experience of setting up a new university, the University of the Highlands and Islands, some 20 years ago. I recall that there was huge opposition from existing universities, which did not like the idea of a new university using new technology and the emerging internet, so I have reservations about the amendment. By creating a definition, it appears to be restricting the opportunities for change, variety and diversity in the university sector, so I think it is fundamentally misguided.

I also think that it is a great mistake to have declarative clauses in any legislation. If the amendment were passed, how would it be enforced? What kind of trouble would it cause existing universities, with people bringing judicial review and so on? Then I thought: why are so many very bright, intelligent and knowledgeable people getting up to make speeches in support of it? The elephant in the room is that we are worried about the content of the Bill and the effect that it will have on the autonomy and freedom of speech of the universities. As the noble Lord, Lord Myners, pointed out, we are also worried about the extent to which corporate governance in some universities is strong and effective enough to ensure value for money for the taxpayer. So the Minister has a difficult task.

The problem arises because of the content of the Bill. It would seem better to address the issues that are included in the list by looking at what the legislation says. I am a free market Tory; I do not believe in government interfering in institutions that are doing perfectly well, thank you very much, but I do believe in getting value for money. However, I do not think that it is right to create a situation that we had in Scotland recently—if I can use the referendum word—where the principal of my former university, St Andrews, complained about Mr Alex Salmond putting pressure on the university for political reasons. That is a good example of how things can go very badly wrong.

We should focus on the content of the Bill and what the Bill says to strengthen the autonomy of universities. To pass the amendment would be a very great mistake because, as many people have said—including my noble friend Lord Willetts—by putting in a definition of this kind we may actually achieve the opposite of what is intended in its purpose. I speak in support of the Minister, who has a difficult job. I think that he should reject the amendment, but he should also go back to his colleagues and say, "There is a problem here. What can we do in terms of the substance of the Bill to address the concerns about having autonomy in our universities and keeping government and outside

[LORD FORSYTH OF DRUMLEAN]
organisations from interfering in their day-to-day work and in their views on how they should be run and expanded?".

Baroness O'Neill of Bengarve (CB): Following on from the noble Lord's comments, if the Minister is minded to reject the amendment and go and think about it, could he think in particular about the many institutions that sometimes appear in different parts of the world under the title of university, which may not be universities that this Bill is designed to promote or protect, nor institutions where we would want many of our young people to seek their education? I have in mind not merely the well-known Hamburger University, which has a rather limited set of subjects on the menu, but also those universities that are in fact annexes or derivatives of respectable universities which set themselves up in other parts of the world and which would be most attracted to setting themselves up in a place where students have access to funding for their tuition. Those places offer a very narrow, minimal and perhaps not very demanding set of subjects.

The Minister told us at Second Reading that the big problem currently is that the legislation is needed to update the regulation of universities. I accept the point, but it would be much more helpful to know which specific mischiefs the Government hope to remedy with this piece of legislation. There are specific mischiefs—the noble Lord, Lord Myners, mentioned one of them; there are places where too little teaching is done. But I am very certain that, if the Bill goes through unamended, there will be many more universities, so-called, where very little teaching is done. It is quite ordinary for institutions to compete not to be the best or to have the best offerings but to make the greatest profit and to do it in the most cheap, cheerful and economical way. As the noble Lord, Lord Giddens, said, as we move through a technological revolution, of which MOOCs will be a serious part, we need to think very hard about what is not a university. That may be rather easier than defining what is a university.

Lord Judd: First, I declare an interest. I am an emeritus governor of the LSE and a life member of court of Newcastle University as well as being a fellow and life member of court of Lancaster University.

My experience in those quarters has left me in no doubt that this new clause is definitely needed, and this has been an interesting debate about what its exact shape should be. It should be looked at in relation to Amendment 65, in the name of the noble Lord, Lord Kerslake, and Amendments 165 and 166 in the name of my noble friend Lord Stevenson. They make the crucial point that this legislation should state that the Secretary of State has an inescapable responsibility to uphold academic freedom and freedom of thought. That first principle should be there, right at the beginning of the Bill. I am very glad that my noble friend has tabled those amendments, but it would have been better if their proposals had been included in this new clause.

There are some pressing issues which make this more urgent than ever, and colleagues in the House have spoken about them. The post-truth society is being talked about: there is a desperate need to rebuild and regenerate a commitment of some weight to the search for truth and excellence. That is crucial. I have sometimes reflected that the real test of a good university is the strength of its departments of ethics and philosophy. There is not much ethics these days in most universities. More than this, there is a terrible confusion growing in society about the difference between education and training. If we are to operate our society effectively, of course we need very good training. Some will be vocational training which is sometimes terribly impressive in its quality and its leadership. We also need increasingly to be able to see issues in a multidisciplinary context. It is trite, but it can be said that these days it is a matter of knowing more and more about less and less. We have to have somewhere where things are being brought together and views challenged from different perspectives.

This new clause is very important; we need to make sure that all these ideas are taken on board, as I am sure my noble friend would be the first to agree. His opening speech was very conciliatory and invited suggestions about how the situation could be improved. I hope he meant that because it is important—I am glad and relieved to see him nod his head.

This has been an excellent debate and it would be very unwise not to take these ideas fully on board. Coming back to my first point, we must not, with all our preoccupations, miss the opportunity to leave future Secretaries of State in any doubt about their personal, direct, ministerial responsibility to uphold the principles of academic freedom and autonomy in every way that they can.

4.45 pm

Lord Sutherland of Houndwood (CB): My Lords, many issues have come up in the debate on which I agree with the speaker, but the difficulty is that not all the speakers agree with each other, which results in a bit of a patchwork. However, on one or two points, not least the point about definitions, this illustrates something. The risk with a definition is that you can get the detail wrong and thus invalidate much of what you want to do, and I have much sympathy with the points made by those sitting on the Benches to my left.

That said, I turn to someone whose works I read at university but subsequently lost, the philosopher Wittgenstein, who wrote about definitions. He was not very keen on them because of the risk that you think you have got them right when you have not. He suggested instead—it is a bit difficult if you are legislating, but it has a place here—that rather than legislate through definition we should assemble examples as a reminder of the richness of what we are talking about. Earlier in the debate, we heard an excellent example of what universities are about. Two Members of the House who are professors at King's College London publicly disagreed with each other. That is marvellous; that is what universities should be doing. There should be room for that. The risk with a definition is that it could miss out the University of the Highlands and Islands, the Open University or all sorts of other examples. The Imperial College of Science and Technology was under very close scrutiny when the University of London was asked to set it up, but where would we be today without it? Therefore, I simply sound a cautionary note about the risk of overlegislating through definition.

Lord Hodgson of Astley Abbotts (Con): My Lords, I apologise to the House as I was not able to take part in the Second Reading debate, so I have listened to the debate this afternoon particularly carefully. I always listen carefully to the noble Lord, Lord Stevenson of Balmacara, but also to the other expert Members of your Lordships' House.

In so far as this amendment emphasises the importance of academic freedom and autonomy, I understand and support it, although whether it will achieve that is quite another matter. We have already heard several examples, from my noble friend Lord Willetts and others, of unintended consequences and how the amendment may have the opposite effect to the one that is intended. My concern is that noble Lords' speeches, with the exception of that of the noble Lord, Lord Myners, have made only the briefest acknowledgement of the shortcomings in the way in which universities currently operate. The spirit behind the amendment, and of the speeches on it, seems too often to suggest that things should be left as they are, that things need to be done, but that universities can be left to get on and make the necessary reforms from within their own ranks. I have to say that I do not share that confidence.

Before I go any further, I declare an interest as an honorary fellow—I emphasise "honorary fellow"—at an Oxford college. The noble Lord, Lord Winston, said that he spoke from the experience of his time in Belgium. I speak from the experience of having four children who have recently gone through a UK university, and their friends, some of whom are still at university. From their point of view, the undergraduate experience is all too often unsatisfactory. It does not, in the phrase of my noble friend Lord Forsyth, represent value for money. This is not the place to go into all that, because we shall get into it in more detail later in the Bill. However, it is clear that from undergraduates' point of view the over focus on research leads to them feeling they are being neglected. In science subjects, it is clear that large classes are too often taught by PhDs from overseas whose first language is not English and therefore cannot be understood; and that in the arts there is a lack of a proper framework, with students preparing two or three essays per term and otherwise being left to read around in the library. The noble Lord, Lord Krebs, offered us a quotation. Somebody who wrote to me about this debate said: "I am effectively paying £9,000 per annum for the use of a good library".

My final reason as to why universities will not be able to reform themselves is that when one of my children was at university there was the non-contentious issue of how the organisation could be made to operate more effectively. I went down, not in a litigious or combative frame of mind, to say, "This could be done". If I had been stuck on the shoe of the person I spoke to, I could not have been treated worse. I was given five minutes. I was told that my child was over 18, that I had no reason to interfere or get involved, as it was up to them to make any complaints, and that I should please go away. That is why, living in this bubble, universities will need to understand that there is more to be done. Therefore, change is needed, and in so far as the amendment wishes to enhance the status quo with regard to undergraduates, I hope that my noble friend will not accept it.

Lord Triesman (Lab): My Lords, I should probably have declared my interests in my Second Reading speech—but they are in the register and I declare them now.

I will start with a theme that the noble Baroness, Lady Deech, and other noble Lords brought up: autonomy. I shall not, given how long the debate has gone on, repeat the points that the noble Lord, Lord Smith of Finsbury, my noble friend Lord Winston and other noble Lords made. In particular, my noble friend Lady Warwick made a substantive speech which I hope will command the attention of the House. I remind the House of the mechanisms that we utilised in the past to try to ensure that university autonomy was sustained whatever the Government of the day, however unpopular or controversial the issues that might be raised, and however much public sentiment might not approve of them.

All through the history of modern universities, this country has inserted buffer arrangements between the state and higher education—and that is not an accident. It was an absolutely deliberate intention to make sure that the great qualities of universities could be sustained, irrespective of the calamities—the world wars and the other huge movements in tectonic plates. There was the UGC, later HEFCE, and even, when the polytechnics were going through the process of becoming universities, the work of the CNAA, which was designed to make sure that the older universities played a part in ensuring that the quality of the newer universities would be sufficiently adequate or better than sufficiently adequate to take their place as universities among the entire group—a system which worked well in England, Scotland and, as far as I am aware, in Wales. However, in every single case, and in particular in relation to teaching, the processes were both thorough on the part of those buffer bodies and also a protection of the autonomy and independence of universities so that they could pursue matters with genuine academic freedom.

In the field of research, the work that was originally done on quality assurance was never made prescriptive in a way that interfered with the autonomy of universities but expressed a desire to see great excellence being achieved in those places where it was possible and a broader spread of excellence in those places which perhaps could not do some of the work in particle physics or whatever it might be. I can remember—it is one of the interests I have declared—the negotiations with the noble Lord, Lord Boswell, about the character of the research excellence framework that he wished to see. Even the annual letter from the Secretary of State, first to HEFCE and then through the more recent period, was a general outline of what the expectations of the country were. It was never a set of orders to which universities must subscribe, which would lead, were they not to do so, to them being closed, cut back or denigrated. These were genuine protections. I am not trying to repeat a Second Reading point but these were the values to which this country signed up in 1997 in the UNESCO normative treaty on academic freedom and the independence of institutions, which this Bill would tear up.

I think that very careful thought about this amendment, which I intend to support, would be repaid, and the Minister will have to give very convincing reasons why,

[LORD TRIESMAN]
even in Committee, we should not consider it. Some of the arguments that have been put forward in your Lordships' House this afternoon do not bear much examination. For example, as my noble friend Lady Cohen said, it is not the case that universities must all provide the full range of subjects. The wording is "an extensive range".

I put it to the noble Lord, Lord Willetts, for whom I have great admiration, that it is not the case that many of the more specialist institutions are so narrow that they do not do a wide range of things, as those of us who have had the privilege of being Ministers covering higher education will know. Imperial College London was mentioned a while ago. The college is rich in every science, including all the social sciences, and it has absolutely magnificent ratings in all those areas. Even the conservatoire music colleges have usually extended their range. SOAS is certainly another example—and there are many. For the avoidance of doubt, there may be an opportunity in what the Minister says to achieve greater specificity regarding what we mean, but in my view that is the bottom line.

In conclusion, I am absolutely astounded by our squeamishness in worrying about whether we can define a university. There have no doubt been massive debates right across time about whether we can do that. I remember recently reading an account of whether Bob Dylan really had created literature, and there was a huge debate about what literature might be. There are always debates about these broader concepts. However, broadly speaking, when you go around the world and talk to people about coming to a university in the United Kingdom, they know very well what you mean. It is not an accident that so many people apply to come to the United Kingdom to study in our universities and they do not all complain that the terminology is fusty and old. I can imagine a focus group saying, "If only we didn't call them universities. Let's call them 'higher education providers' and floods of people will suddenly appear. The marketing will be transformed". People come because of their expectations.

I say to the noble Lord, Lord Hodgson, that there may very well be people who are dissatisfied, or whose children are dissatisfied—but, broadly speaking, when you look at the number of people who want to come here and who understand perfectly well what we offer, you do not see a system that has broken down, although of course it could do with some reform. I have looked high and low to see what crisis the Bill is intended to resolve and I do not believe that it can be found. If it could, I can tell your Lordships that three areas for which I used to have responsibility—the Chevening, Marshall and Commonwealth scholarships—would be devoid of people wanting them. On the contrary, every single one of them is fought for.

Baroness Wolf of Dulwich: My Lords, I apologise for taking more of the Committee's time but I feel that we are losing sight of one of the major reasons why my name is attached to this amendment. I believe very strongly that we have to consider, up front, a definition of a university in the Bill. It is a question not of whether we do or do not have a definition but of who controls that definition. Absolutely rightly, the Bill distinguishes between degree-awarding powers and the title of "university". So it should and so it must, because we are now in a world where many institutions which are not and will never wish to be universities give degrees. Further education colleges are a very obvious and important sector.

We are also, I am delighted to say, moving into a world with degree apprenticeships. The question is whether the definition of a university is perhaps not super-precise but clear and perfectly workable, like almost every other definition in legislation all over this land, or whether we leave the decisions about what a university is to the bureaucrats of the Office for Students, who will make those decisions but will never actually have to make them public.

So I come back to the purpose of this amendment and why we feel it is so important. If we do not have a definition in the legislation, there will be a definition but we will none of us have any control over it and we will never know what it is.

5 pm

Baroness Blackstone (Lab): My Lords, I want to speak very briefly at what I assume is getting towards the end of an interesting debate. What worries Members of this House most about the Bill are the clauses about new providers, and my noble friend Lady Warwick made this very clear in her excellent speech. We have a system of higher education in this country that is highly regarded all over the world. We have many great universities from the point of view of research but we also have many great universities from the point of view of the quality of their teaching and the advanced vocational training that they provide. We do not want this great system undermined by too easily recognising new institutions and giving them degree-awarding powers before they have been through a proper probationary period, in which they are associated with existing institutions that will support their development and growth and help them gain the capacity to become institutions of higher education that we can recognise, embrace and support. That is at the centre of the concerns that have led to a wish to place at the front of the Bill a set of propositions about what constitutes not just a good university but a good system of higher education.

The other point I want to make is that for many, many decades, higher education has embraced not only universities but many other kinds of institution. Some of what has been said when discussing the question of whether or not universities should cover a wide range of disciplines has not quite taken into account the fact that there are specialist institutions that have for a long time, as I have said, not been defined as universities. In some ways, I think we may have made a mistake in deciding that some of these specialist institutions should now be called universities. Looking back, we see that colleges of education, medical schools, music conservatoires, specialist arts colleges and, as the noble Lord, Lord Willetts, mentioned, the Royal Agricultural College, were not defined as universities but as being part of a system of higher education. We might be able to bring some new specialist institutions in, but they should not

necessarily—at least not at the beginning of their existence—be called universities.

Most people understand that the concept of a university covers a range of disciplines, allows academics to mix with colleagues from a wide range of subjects and allows students to work not just with those studying exactly the same subjects as themselves but with students studying a wide range of subjects.

There is, in a sense, a bit of a contradiction in this legislation. One principle of all good legislation is that it should be internally consistent and its parts make up the whole in a way that is appropriate and easily understood. On the one hand, Part 3 of the Bill is asking for an umbrella body—UKRI, which would cover all areas of research—in order, we are told, to ensure that there is cross-disciplinary research rather than researchers being in separate little boxes not communicating with each other. That is what good universities do. They are institutions that look at a particular intellectual problem from a variety of different disciplinary perspectives and try to solve that problem. That is why some of the institutions that I mentioned earlier are to me higher education institutions, but they are not universities as normally understood.

To pick up what the noble Lord, Lord Sutherland, said a little earlier, what we should be doing now is not to try to define what a university is, because this Bill should not just be about universities. They are the main provider of higher education, but they may not be the sole providers. Rather we should start with something that sets out what the principles of good, strong, high-quality higher education should be. Of course, that should cover institutional autonomy, freedom of expression, academic freedom and a whole variety of other things that are mentioned in the amendment. But the way in which it has been framed at the moment leads to a certain concern that it is not definitionally perfect.

Will the Minister consider coming back to the House with a new amendment to start this Bill off that covers the sort of issues in the amendment tabled by my noble friend Lord Stevenson, and Cross-Bench and Liberal Democrat supporters? That would reassure us a little that the Government are concerned about these principles and will not rush into a set of legislative changes that will undermine the quality of our higher education system by bringing in new providers that will not meet these principles.

Lord Brown of Eaton-under-Heywood (CB): I speak as a lawyer, not as an academic. Indeed, until recently I thought that I was the only Member of the House who has not ever been a governor, chancellor or vice-chancellor of one of these institutions. As my noble friend Lady Wolf has now twice explained, the only direct relevance of this proposed new clause goes to the title of the body in question. In short, it goes only to Clauses 51 to 55 of the Bill. I understand her concern to be with regard to bodies being allowed to be called universities. Effect would be given to that if one said at the start of this new proposed clause: "For the purposes of Clauses 51 to 55, a higher education institution"—because that is what the whole of the rest of the Bill is about, assiduously avoiding any distinction between universities and those such bodies that are not—"should be regarded as entitled to use the title of university if it is an autonomous institution", to return to the language of Amendment 1, et cetera.

With the best will in the world, although it seems to be the opinion of many in the House that the amendment will affect the view generally as to the autonomous nature of these institutions, as drafted it will not. It goes only to the title. It does not go even to the degree-awarding powers. That has nothing to do with whether a body is or is not called a university. Therefore it is much more appropriate, when concerned not with the title but with the autonomy of these higher educational institutions, to look at the amendments to which others have referred, Amendments 65 and 165, which deal not only with universities but with all higher education institutions.

If we want to give universities some special status, which this Bill as drafted at the moment assiduously does not, we have to recast the thing as a whole and say, "If you are a university, not only will you be able to call yourself such but these consequences follow".

Viscount Younger of Leckie (Con): My Lords, I am grateful for this opportunity on the first day back after the Recess to discuss our vision for universities. However, before I turn to the amendment I want first to thank noble Lords for their strong engagement to date. I have had time to reflect, as I am sure have other noble Lords, on the lengthy debate at Second Reading and I have been working hard over the Christmas period to consider the points that were raised and to engage on the issues, as we have throughout the passage of this Bill. I hope that noble Lords have received my subsequent letters. I and the team have been kept somewhat busy with the not inconsiderable number of considered and thoughtful amendments that have been tabled to date and I look forward to responding to each and every one of them. I also look forward to a good debate over the coming weeks and welcome the scrutiny that a Bill as important as this rightly deserves. As I said at Second Reading, we have been listening and continue to reflect, and I am looking forward to hearing the views and contributions of noble Lords from across the Committee. It is fair to say that we have made a pretty good start on this, the first debate.

The Bill before us today is the product of lengthy and thorough consultation and consideration, from the 2011 White Paper of my noble friend Lord Willetts entitled *Students at the Heart of the System* through to the White Paper published by the Minister for Universities, Science, Research and Innovation in May of last year, supported by a Green Paper that received more than 600 responses. The Bill also incorporates recommendations from Sir Paul Nurse's review of the research councils, the review undertaken by the Higher Education Commission and the report of Professor Simon Gaskell on the long-awaited and much-needed reforms to the regulation of higher education.

Our English universities are some of our most valuable national assets and are powerhouses of intellectual and social capital. We believe that our reforms will help them to continue to thrive into the 21st century and beyond. The noble Baronesses, Lady Wolf and Lady Warwick, and the noble Lords, Lord

[Viscount Younger of Leckie]
Winston and Lord Krebs, have spoken authoritatively and passionately about their history, from papal bulls to the Dearing report. I also want to assure noble Lords that we do not intend to stop consulting and listening. In fact, we have listened carefully to the concerns raised around the pace at which we intend to implement the reforms, and I would like to take a moment to set out how we now intend to respond to these valid concerns.

As stated in the White Paper, we are aiming for the Office for Students to be in place in time for the 2018-19 academic year. This new regulatory framework, rather than being overly regulatory, as the noble Lord, Lord Bragg, suggested, improves on the current piecemeal approach to regulation. It will reduce the overall regulation of the sector for a risk-based approach. However, like noble Lords, we recognise the risks to students and providers of taking forward the implementation of the new regulatory framework in a way that may cause unnecessary disruption and instability to the sector. It is also important that further detailed development of the new regulatory framework is driven by the OfS executive team rather than it being led by the Government and then handed over to the OfS to implement. The campaign to recruit a chair is live and we expect to launch the CEO campaign shortly. The Director for Fair Access and Participation recruitment process will follow shortly afterwards. Therefore, subject to the passage of the Bill, this will allow the OfS to consult on its new regulatory framework in the autumn of this year and to begin accepting and assessing applications from new and existing providers in 2018, in time for the 2019-20 academic year rather than in 2018-19. This allows more time for thorough consultation on the detail of the new regulatory framework and for the sector to be ready for the new regime.

The noble Baroness, Lady Garden, asked whether the Minister had had discussions on these reforms with the skills Minister and I can reassure her that this has indeed happened. Regular discussions take place and the Bill is also complementary to the Technical and Further Education Bill, thus carrying out two reform programmes in parallel. This gives the best opportunity to support young people, a point rightly raised by the noble Baroness.

Let me now turn to this proposed new clause. The noble Lord, Lord Stevenson, has already quoted the definition that was set out by the Minister for Universities and Science in the other place and I agree that it is worthy of note. I note that several definitions have been made. Many of them carry favour.

5.15 pm

I think noble Lords would agree that there are many parallels between this description and what the noble Lord, Lord Stevenson, set out in his proposed new clause. However, I fear that the amendment imposes many more legal obligations on universities than it does government. Yes, it describes universities as autonomous, and, as I will set out in more detail, I wholeheartedly agree with this sentiment. I believe the Bill contains numerous provisions that are entirely consistent with the need to recognise institutional autonomy.

However, I fear that the amendment would, rather than protect, undermine institutional autonomy by placing legal obligations on universities that some would fail to meet and that all should be wary of. The noble Baroness, Lady Wolf, said that the Bill has nothing to say about universities. However, I remind the noble Baroness that a university has never been defined in legislation before. We are not aware that this has led to particular problems in the system. My observation is that towards the tail end of the debate further doubts have been raised about the efficacy of placing a definition in the Bill.

As my noble friend Lord Willetts said, the clause would for the first time see the Government prescribing in statute how an autonomous institution should approach its mission and provide in a uniform manner its purpose, form and functions. While I sympathise with the noble Lord, Lord Stevenson, and agree with much of the spirit behind the amendment, higher education providers, including universities, are rightly autonomous institutions. They must continue to be free to determine how best to meet the needs of their students and employers, and to support wider society. It should not be for the Government to prescribe.

I am similarly wary of imposing wide-ranging obligations on universities of the sort the amendment proposes. As the noble Lord, Lord Sutherland, said, the danger is that, in seeking to set out in legislation what might otherwise seem highly desirable aspirations, we set legally binding standards in a range of areas that universities and other providers will find extremely difficult to interpret as a matter of law and, hence, to meet. This point was alluded to by the noble Baroness, Lady Cohen.

My noble friend Lord Lucas made a very important point about the definition of a university and what it must do, and said that it might create a path for abolishing Oxford. In response, if a student, disgruntled business partner or rival institution brings a legal challenge and convinces a court that a university does not offer, for example, an extensive range of high-quality academic subjects, is it no longer a university? Surely not, but that is what accepting the amendment might lead to. Arguably, it opens up a much greater intrusion into institutional autonomy.

I think we would all agree that we want to see providers of higher education getting on with the job. By having to put in place new systems or processes to monitor and demonstrate compliance with a raft of new and extensive legal obligations, we risk them being diverted from that path. If we impose binding obligations in the areas covered by the amendment, I worry about what would happen if a provider fell short, even perhaps to a relatively minor degree. For example, could a business take a university to court if it decided not to enter into partnership with it? The proposed new clause does not say so, so we cannot be sure, but there must be some consequence for not complying with a legal duty; otherwise, that duty is meaningless. Again, what might on the face of it seem sensible codification might well have highly damaging effects in practice that we should be very careful to avoid.

Having made those general remarks, I turn to the individual themes that the detail of the amendment raises. I will first focus directly on academic freedom. As I said, I absolutely agree with the emphasis placed on the importance of academic freedom and independence. I hope that reassures the noble Baroness, Lady Warwick, and many others who have spoken this afternoon. I refer noble Lords to an article that the Minister for Universities and Science wrote for *Times Higher Education* in December. As he said:

"The freedom to interrogate, discover and learn upholds the UK's prosperity and delivers breakthroughs that can change the way we live and work. Nowhere is this principle more revered and more vital than in universities",

where their "independence and autonomy" has allowed the sector to stand the test of time and "become world leaders". That is why this Bill contains numerous provisions which are entirely consistent with the need to recognise institutional autonomy and which explicitly protect academic freedom. I hope that this reassures noble Lords, including the noble Lord, Lord Winston, and the noble Baroness, Lady Brown, who spoke passionately about this issue.

In this Bill, the Government have gone considerably further to protect academic freedom than in the previous legislation—that is a very important point that I want to make. The Bill defines explicit new protections for the freedom of English higher education providers. These protections are applied at every point in the Bill where the Secretary of State may influence the OfS: through guidance, conditions of grant and directions. The noble Baroness, Lady Deech, raised the question of particular courses of study. We strengthened those protections through amendments on Report in the other place in response to concerns expressed about the Secretary of State having undue influence over the ability of higher education institutions to choose what subjects to offer. The Bill explicitly protects in Clause 14 the principle of freedom for academic staff to question and test received wisdom, and to put forward new ideas and controversial opinions without putting themselves at the risk of, at worst, losing their jobs.

Perhaps I may turn this argument around. Universities already have a legal duty to uphold freedom of speech. Under Section 43 of the Education (No. 2) Act 1986, they must take reasonable steps to secure freedom of speech for staff, students, employees and visiting speakers. Universities must issue and publicise a code of practice setting out procedures to be followed in relation to meetings or activities taking place on their premises. The Bill does nothing to alter this duty and how it applies to universities and other higher education providers.

The noble Baroness, Lady Deech, spoke of the powers in the Bill to revoke university title. The Bill introduces refined and express powers for the OfS to revoke degree-awarding powers in university title to ensure that we do not allow poor quality in our system that would undermine the reputation of English universities—which I am sure we would all agree with—and put students at risk. Let me reassure the House that the powers will be rarely used but they are a necessary safeguard to protect quality. That is a very important point. The powers are limited and subject to rigorous safeguards: first, that they can be used only where they are proportionate; and, secondly, any decision to use them can be appealed to a tribunal. There is also an affirmative process that has to be taken through Parliament.

Several speeches highlighted the importance of university teaching; for example, the development of critical or abstract thinking—the noble Lord, Lord Smith, put it rather succinctly, and many other speakers raised the issue—so I want now to focus on teaching quality. I, too, agree that universities must provide excellent teaching, with teaching informed and supported by scholarship and research which enhance the ability of their students to learn throughout their lives. As set out in the White Paper, *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, only higher education providers that successfully gain full degree-awarding powers will be eligible to apply for university title.

As set out in the criteria for degree-awarding powers, a higher education provider must ensure that its staff maintain a close and professional understanding of current developments in research and scholarship in their subjects and, where relevant, keep in touch with practice in their professions. The noble Lord, Lord Giddens, raised concerns about for-profit providers. We hear that they will not act in the interest of students, but this is simply not true. That is demonstrated by the University of Law, which is a for-profit provider and came joint first for overall satisfaction in the most recent national student survey. We are streamlining processes and strengthening regulation and not lowering quality.

However, while I agree that teaching should be informed and supported by scholarship and research, I have to agree with the changes made under the Labour Government in 2004. As my noble friend Lord Willetts explained, those changes to the criteria for university title removed the requirement for universities to need to award research degrees and also removed the requirement for a university to have students in five different subject areas. The amendment would be a regressive step. The changes were rightly made to allow for a greater diversity of specialist universities in higher education, and recognised that teaching is a legitimate primary activity for a university. If we place barriers in the way of new and innovative universities, we risk diminishing the relevance and value of our higher education sector to changing student and employer needs—becoming a relic of the 20th century while the rest of the world moves on.

There are many excellent institutions that match closely the description set out in the noble Lord's proposed clause, but there are other forms of excellence that are equally valuable to students and to society. We want to set the groundwork for the coming decades: if we want to allow innovation to flourish, we must allow room for different approaches, perhaps ones that we cannot now even predict. In particular, the requirement for a university to offer an extensive range of academic subjects would not only conflict with international experience of excellent single-subject institutions, as the noble Lord, Lord Bilimoria, said, but would exclude current universities which are already making great contributions to the UK.

[Viscount Younger of Leckie]

For example, Harper Adams University became a university in 2013 and focuses its provision on subjects that directly support the rural economy. It has an excellent international reputation and was chosen as the modern university of the year in the *Times Good University Guide 2017*. The Arts University Bournemouth has not only made great contributions to the arts but official statistics in 2013-14 showed that it had the highest percentage in the UK of graduates going on to employment or further study within six months of graduation, at 97.4%. Imperial College, perhaps the greatest example of all, became an independent university in its own right in 2008 but has a much longer and distinguished pedigree as a college of the University of London since the early 1900s, which I am sure I do not need to detail to noble Lords. It focuses on only four main disciplines: science, engineering, medicine and business. In fact, the amendment would prevent many of the prestigious colleges of the University of London seeking independent university status in their own right should they wish to do so.

I agree that our universities have a role to play in supporting local, national and international partners and the wider society. The noble Lord, Lord Winston, and the noble Baroness, Lady Warwick, raised this point, and I agree with a lot of what they said. However, I disagree that all universities need to do this in a prescribed and uniform way. Universities should, and do, support the achievement of this aim in very different ways. Some will need to focus their limited time and resource on their locality to support economic growth in disadvantaged areas of the UK; some will want to focus activity regionally or nationally, to support access to higher education and promote social mobility; others may decide to focus activity across international boundaries to support important knowledge transfer. Universities should not have to do all these things in a way prescribed by government. A number of Peers made this point. For example, forcing a university that does not currently have an international focus to divert time and resource into doing so could quite easily be at the expense of its home students.

I also disagree with the noble Lord, Lord Stevenson, in so far as I believe that protections around academic freedom, teaching quality and freedom of speech must apply to all higher education providers, not only universities. Whether a student is undertaking their higher education course at a university, a higher education college or, indeed, a further education college, we expect that provision to be high-quality. Our reforms seek to set a framework to achieve this. I remind noble Lords that Clause 77 defines what a higher education provider is. I do not believe that we should define separately what a university is. It is not in the interests of students or wider society to create a two-tier system of higher education providers, where some benefit from the protection of academic freedom, or some are expected to deliver high-quality provision, and others are not.

In fact, I would go further and suggest that there is nothing in the criteria that the noble Lord has set out on the importance of supporting the student experience. The role of universities in looking after their students and taking an interest in their welfare is long established, and is important in helping every student get the most out of their time at university and achieve their full potential—the so-called student experience. Universities also have an important duty to take steps to encourage applications from all those with the potential and ability to enter higher education regardless of an individual's background. Widening participation in higher education helps drive social mobility and universities have a significant role to play.

5.30 pm

I therefore cannot agree with the noble Lord, Lord Stevenson, that the Government should best nurture the excellence, innovation and independence of our universities by requiring all universities to follow a single model set out by statute. In fact, I would again go further and suggest that, as demonstrated by my examples of the importance of supporting student experience, social mobility and widening participation, and as my noble friend Lord Waldegrave said, it is dangerous to try and define what a university is by prescribing a statutory uniform that a university must wear. Doing so would risk excluding and undermining the importance of other critical activities. This could never be comprehensive or stand the test of time.

Our international reputation for higher education has gone from strength to strength with each wave of sector expansion. New universities have not sought simply to replicate a single model but to innovate and develop their own unique contributions to their students and to national life. The success of higher education does not reflect a script written by government or Parliament but a complex system of interacting bodies and individuals: some public; some private; some within the scope of our legislation and some not. The Bill is intended to reflect this and to facilitate the development of our higher education sector to accommodate its splendid diversity. The Bill must protect institutional autonomy. It must also allow for the unexpected, for innovation and for diverse providers that reflect the diverse needs of students, researchers, businesses and wider society.

I ask noble Lords to think carefully about the way in which this amendment would undermine and not protect institutional autonomy and, furthermore, how a large number of existing high-quality providers would be likely to fall foul of it, if it were passed. I ask the noble Lord, Lord Stevenson, to withdraw his amendment.

Lord Stevenson of Balmacara: Thank you very much to those who have contributed to this very good debate, which has been high-level and high-quality. I have particular thanks to those who signed up to my amendment. This will set us up well for the rest of Committee. We have already had more than 500 amendments tabled to the Bill and I gather that there are more to come. According to the Public Bill Office, this is the most amendments for any Bill in recent memory—although it then covered itself by saying that it had records going back only seven years, so there may be others. However, it is still quite a lot and a record.

I expected to have put myself up for an attack on my drafting and if you do that, you certainly set yourself up for it. I felt that while most people were

very fair to my efforts, there was a bit of an attempt to play the man and not the ball. I also felt that a red card was due to the noble Lord, Lord Myners, for grading me a lower second for offering a contribution to improve the quality of the Bill. The theme was an offer to the Government to try to work together on this issue, which has obviously caught the interest of the House. Among the 30 Back-Bench speakers and two Front-Bench speakers, I think there were only four or five who could claim to support fully where the Government are trying to get to. I am afraid that the Minister lost the House in his long and rather difficult-to-follow explanation of why he wanted to refuse our generous offer to work with him to improve a statement that would enhance the Bill. I hope that people will remember that as we go forward into other issues.

We clearly have different visions about how to proceed. I agree with the noble Lord, Lord Waldegrave, and to some extent, rather surprisingly, with the noble Lord, Lord Forsyth, that the way forward is perhaps not to push this too hard at this stage because there is an opportunity to improve it later on, if the Government will play ball. But if the Government do not play ball, where are you? You are stuck. In this situation, it is therefore right that we take up the suggestion made by the noble Lord, Lord Smith of Finsbury: we should take the courage of the conviction of those who spoke today, move forward with this amendment and, if necessary, amend around the Bill to improve any infelicities that there may be in the current drafting.

The major point made by the noble Viscount when he came to respond was that we would be placing burdens on universities by the form of the drafting. That point was explicitly refuted by the noble Baroness, Lady Wolf, and picked up by the noble and learned Lord, Lord Browne of Eaton-under-Heywood, who said that it was not the case. The Minister has no argument for not accepting this proposal. As he will not, I wish to test the views of the House.

5.34 pm

Division on Amendment 1

Contents 248; Not-Contents 221.

Amendment 1 agreed.

Division No. 1

CONTENTS

Addington, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashdown of Norton-sub-Hamdon, L.
Bakewell, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L. [Teller]
Beecham, L.
Beith, L.
Benjamin, B.
Berkeley, L.
Best, L.
Bichard, L.
Bilimoria, L.
Billingham, B.
Blackstone, B.
Blood, B.
Blunkett, L.
Boateng, L.
Bowles of Berkhamsted, B.
Bradley, L.
Bradshaw, L.
Bragg, L.
Brennan, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brookman, L.
Brown of Cambridge, B.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Chakrabarti, B.
Chandos, V.
Clancarty, E.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clement-Jones, L.
Collins of Highbury, L.
Corston, B.
Cotter, L.
Craig of Radley, L.
Crawley, B.
Cunningham of Felling, L.
Curry of Kirkharle, L.
Darling of Roulanish, L.
Davies of Oldham, L.
Dean of Thornton-le-Fylde, B.
Deech, B.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Drake, B.
D'Souza, B.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Evans of Watford, L.
Falconer of Thoroton, L.
Fearn, L.
Featherstone, B.
Fellowes, L.
Filkin, L.
Foster of Bath, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Gordon of Strathblane, L.
Goudie, B.
Grender, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Harrison, L.
Haughey, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hilton of Eggardon, B.
Hollick, L.
Hollis of Heigham, B.
Howarth of Newport, L.
Howe of Idlicote, B.
Howells of St Davids, B.
Howie of Troon, L.
Hoyle, L.
Hughes of Stretford, B.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Hylton, L.
Irvine of Lairg, L.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jordan, L.
Jowell, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kerslake, L.
Kestenbaum, L.
Kidron, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Krebs, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Leitch, L.
Levy, L.
Liddell of Coatdyke, B.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Low of Dalston, L.
Ludford, B.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonagh, B.
Macdonald of Tradeston, L.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
Mair, L.
Mallalieu, B.
Mandelson, L.
Mar, C.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
Monks, L.
Morgan, L.
Morgan of Drefelin, B.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Myners, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Neill of Clackmannan, L.
Ouseley, L.
Paddick, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.

Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Soley, L.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tomlinson, L.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Uddin, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warner, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Williams of Elvel, L.
Winston, L.
Wolf of Dulwich, B.
Wood of Anfield, L.
Woolmer of Leeds, L.
Worthington, B.
Wrigglesworth, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Ashton of Hyde, L.
Astor, V.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barker of Battle, L.
Bates, L.
Bell, L.
Berridge, B.
Bertin, B.
Bew, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Boyce, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Broers, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Buscombe, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Byford, B.
Caine, L.
Caithness, E.
Callanan, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chisholm of Owlpen, B.
Cohen of Pimlico, B.
Colville of Culross, V.
Colwyn, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E. [Teller]
Couttie, B.
Craigavon, V.
Crickhowell, L.
Dear, L.
Dixon-Smith, L.
Dobbs, L.
Dunlop, L.
Dykes, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Empey, L.
Evans of Bowes Park, B.
Falkland, V.
Fall, B.
Farmer, L.
Faulks, L.
Feldman of Elstree, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Freeman, L.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Geddes, L.
Gilbert of Panteg, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greenway, L.
Hague of Richmond, L.
Hailsham, V.
Hamilton of Epsom, L.
Hanham, B.
Harding of Winscombe, B.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogg, B.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Listowel, E.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Luce, L.
Lupton, L.
Lytton, E.
MacGregor of Pulham Market, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
MacLaurin of Knebworth, L.
Maginnis of Drumglass, L.
Manzoor, B.
Marlesford, L.
Maude of Horsham, L.
Mawson, L.
Mobarik, B.
Mone, B.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Bengarve, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Phillips of Worth Matravers, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Rose of Monewden, L.
Rowe-Beddoe, L.
Russell of Liverpool, L.
Ryder of Wensum, L.
St John of Bletso, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sheikh, L.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Sterling of Plaistow, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Turnbull, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Waldegrave of North Hill, L.
Warsi, B.
Wasserman, L.
Watkins of Tavistock, B.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Young of Cookham, L.
Younger of Leckie, V.

House resumed.

Mental Health and NHS Performance Update

Statement

5.50 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, with permission, I will repeat a Statement made by my right honourable friend the Secretary of State in the other place. The Statement is as follows.

"This Government are committed to a shared society in which public services work to the highest standards for everyone. This includes plans announced by the Prime Minister this morning on mental health. I am proud that, under this Government, 1,400 more people are accessing mental health services every day compared to 2010 and we are investing more in mental health than ever before, with plans for 1 million more people with mental health conditions to access services by 2020. But we recognise that there is more to do, and will proceed with plans to further improve mental health provision, including: formally accepting the recommendations of the independent Mental Health Taskforce, which will see mental health spend increase by £1 billion a year by the end of the Parliament; a Green Paper on children and young people's mental health to be published before the end of the year; enabling every secondary school to train someone in mental health first aid; a new partnership with employers to support mental health in the workplace; up to £15 million extra invested in places of safety for those in crisis following the highly successful start to this programme in the last Parliament; an ambitious expansion of digital mental health provision; and an updated and more comprehensive suicide prevention strategy. Further details of these plans are contained in the Written Ministerial Statement laid in the House this morning.

However, turning to winter, as our most precious public service, the NHS has been under sustained pressure for a number of years. In just six years, the number of people over 80 has risen by 340,000, and life expectancy has risen by 12 months. As a result, demand is unprecedented: the Tuesday after Christmas was the busiest day in the history of the NHS, and some hospitals are reporting that A&E attendances are up to 30% higher compared to last year. I therefore want to set out how we intend to protect the service through an extremely challenging period and sustain it for the future.

First, I would like to pay tribute to staff on the front line: 1.3 million NHS staff, alongside 1.4 million in the social care system, do an incredible job which is frankly humbling for all of us in this House. An estimated 150,000 medical staff, and many more non-medical staff, worked on Christmas Day and New Year's Day. They have never worked harder to keep patients safe, and the whole country is in their debt.

With respect to this winter, the NHS has made more extensive preparations than ever before. We started the run-up to the winter period with over 1,600 more doctors and 3,000 more nurses than just a year ago, bringing the total increase since 2010 to 11,400 more doctors and 11,200 more hospital nurses. The NHS allocated £400 million to local health systems for winter preparedness; it nationally assured the winter plans of every trust; it launched the largest ever flu vaccination scheme, with over 13 million people already vaccinated; and it also bolstered support outside A&Es, with 12,000 additional GP sessions offered over the festive period.

The result has been that this winter has already seen days where A&E departments have treated a record number of people within four hours, and there have been fewer serious incidents declared than many expected. As Chris Hopson, head of NHS Providers, said, although there have been serious problems at some trusts, the system as a whole is doing slightly better than last year. However, there are indeed a number of trusts when the situation has been extremely fragile. All of last week's A & E diverts happened at 19 trusts, of which four are in special measures. The most recent statistics showed that nearly three-quarters of trolley waits occurred in just two trusts. In Worcestershire in particular there has been a number of unacceptably long trolley waits and two deaths reported in the media while patients were in A&E. We are also aware of ongoing problems in the North Midlands, with extremely high numbers of 12-hour trolley waits.

Nationally, the NHS has taken urgent action to support these trusts, including working intensively with leadership and brokering conversations with social care partners to generate a joined-up approach across systems of concern. As of this weekend, there are some signs that pressure is easing both in the most distressed trusts and across the system. However, with further cold weather on the way this weekend, a spike in respiratory infections and a rise in flu, there will be further challenges ahead.

NHS England and NHS Improvement will also consider a series of further measures which may be taken in particularly distressed systems on a temporary basis at the discretion of the local clinical leaders. These may include: temporarily releasing time for GPs to support urgent care work; clinically triaging non-urgent calls to the ambulance service for residents of nursing and residential homes before they are taken to hospital; continuing to suspend elective care, including, where appropriate, suspension of non-urgent out-patient appointments; working with the CQC on rapid reinspection where this has the potential to reopen community health and social care bed capacity; and working with community trusts and community nursing teams to speed up discharge. Taken together, these actions will give the NHS the flexibility to take further measures as and when appropriate at local level.

However, looking to the future, it is clear we need to have an honest discussion with the public about the purpose of A&E departments. There is nowhere outside the UK that commits to all patients that it will sort out any urgent health need within four hours. Only four other countries—New Zealand, Sweden, Australia and Canada—have similar national standards, which are generally less stringent than ours. This Government are committed to maintaining and delivering that vital four-hour commitment to patients. But since it was announced in 2000, there have been nearly 9 million more people visiting our A&E departments, up to 30% of whom NHS England estimates do not need to be there, and the tide is continuing to rise.

[LORD O'SHAUGHNESSY]

If we are going to protect the four-hour standard, we need to be clear it is a promise to sort out all urgent health problems within four hours, but not all health problems, however minor. As Professor Keith Willett, NHS England's medical director for acute care, has said, no country in the world has a four-hour standard for all health problems, however small, and if we are to protect services for the most vulnerable nor can we. So NHS England and NHS Improvement will continue to explore ways to ensure that at least some of the patients who do not need to be in A&E can be given good alternative options, building on progress under way with the streaming policy in the NHS England's A&E plan. This way, we will be able to improve the patient experience for those with more minor conditions who are currently not seen within four hours as well as protect the four-hour promise for those who actually need it.

Taken together, what I have announced today are plans to support the NHS in a difficult period but also plans for a Government who are ambitious for our NHS, quite simply, to offer the safest, highest-quality care available anywhere for both mental and physical health. But they will take time to come to fruition, and in the meantime all of our thoughts are with NHS and social care staff who are working extremely hard over the winter, and throughout the year, both inside and outside our hospitals.

I commend this Statement to the House".

5.57 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the Minister for repeating the Statement, and welcome him to the Dispatch Box.

Of course we welcome any announcement that will help to improve mental health services in this country, as indeed we welcomed such announcements exactly 12 months ago, when the then Prime Minister made similar promises. But it seems that the more Prime Ministers promise, the less the NHS delivers. I remind the Minister that the Government's record actually shows that we now have 6,600 fewer nurses working in mental health than were inherited. We have also seen a large reduction in mental health beds. I remind him of the report and analysis by YoungMinds just before Christmas, which showed that local children's mental health budgets were raided in order to plug funding gaps elsewhere in the NHS. The survey revealed that when clinical commissioning groups were asked whether the extra £1.4 billion pledged over five years in 2015 for child and adolescent mental health services was going to be spent on CAMHS, nearly two-thirds of CCGs that responded said they used some or all of the money to backfill cuts or spend on other priorities. This has been replicated on a number of occasions when it comes to pledges made by the Government in relation to mental health. The fact is that they simply cannot guarantee that the NHS will deliver. What certainty do we now have that the pledge made today by the Prime Minister is going to be implemented, given the lamentable record of NHS England and the NHS in responding to similar pleas in the past? Why did the Prime Minister refuse to say this morning that she would ring-fence this money to ensure that it indeed went to the services that she said it had to go to?

I turn to the winter crisis. This morning the Secretary of State said that things have been falling over in only a couple of places, but the reality is that one-third of hospitals declared last month that they needed urgent help to deal with the number of patients coming through the doors; we know that accident and emergency departments have turned patients away more than 140 times; 15 hospitals ran out of beds in one day in December; and several hospitals have warned that they cannot offer comprehensive care. We know that we are going back to the dreadful days of the 1990s, with elderly patients left languishing on hospital trolleys in corridors, sometimes for over 24 hours.

Whatever the labels that charities use, whatever the semantics, the Government cannot deny that the NHS is facing a severe winter crisis, the culpability for which lies firmly with the Government. Does the Minister agree that it was a monumental error to ignore the pleas for extra support for social care in the Autumn Statement? Will he now support calls for the £700 million of social care funding allocated for 2019 to be brought forward to help services to cope this winter? Will he urge the Chancellor and his right honourable friend the Prime Minister to announce a new funding settlement for the NHS and social care in March's Budget?

I listened with great care to the remarks the Minister made on the four-hour A&E target. The implication is that the Government are running away from the target and are now going to use different definitions for who is going to be expected to have that target met and who is not. I remind the Government that in 2010 they inherited a 98% rate for the four-hour target being met, which the NHS had achieved. Under his Government, the NHS has reduced its achievements in A&E consistently, year after year. As far as I can see, the Secretary of State's weasel words today about the four-hour target show that the Government are now admitting that they will never achieve that target again. What are the Government doing? We know they are going to change the target and the definitions. On that subject, what guidance has the Minister taken from the Royal College for Emergency Medicines that the so-called new standard is actually appropriate?

I turn to the deaths of two patients at Worcestershire Royal Hospital. They had been waiting on hospital trolleys. Will Ministers lead an inquiry into those deaths? Are they aware whether these were isolated incidents? When does the trust intend to report back on its own investigation?

I have been reading today the draft Herefordshire and Worcestershire sustainability and transformation plan, which Ministers point to as a solution to all their problems. The problems of the Worcestershire acute trust have been known for many years—it simply does not have the capacity to deal with the flow of patients into that hospital—yet the sustainability and transformation plan actually plans for fewer beds in that trust over the next three to four years. How on earth can the Government justify reducing the number of beds in that trust when it is under such tremendous pressure because of a lack of capacity?

There is no doubt that much of the current crisis could have been avoided. Hospital leaders, council leaders, patient groups, MPs across the Commons and noble Lords all urged the Chancellor to give the NHS and social care additional resources in the Autumn Statement, but those requests fell on deaf ears. We now see the dismal consequences. The Government need to do very much better.

Baroness Walmsley (LD): My Lords, I also welcome the Minister to his first appearance in his new role. I add thanks from these Benches to all the health and care staff who gave up their Christmas holidays to care for patients.

We welcome the Prime Minister's attention being turned to mental health, and the emphasis on the roles of schools and the workplace. The NHS of course cannot do the job alone. However, many people are not getting mental health treatment, getting it late, not getting the right treatment or getting it many miles from home, which prevents their families and friends supporting them. As the noble Lord, Lord Hunt, said, the money is not getting through to front-line mental health services, despite the £1.4 billion secured from the previous Chancellor by my right honourable friend Norman Lamb when he was coalition Health Minister. Why is that?

Is it not true that if there were not a shortage of funding for other services, CCGs would not be tempted to raid the mental health budget? That is what they are doing. FOI requests by Young Minds, as has been mentioned, show that half of CCGs are using money allocated to children's mental health to prop up physical health services, which are also in crisis. That is wrong. A recent survey of child and adolescent psychiatrists show that a whopping seven out of 10 of them thought that mental health services for children and young people were inadequate. By any calculation, that is a national disgrace.

Will the Minister ring-fence the money that has been promised to mental health and improve transparency with the publication of the mental health dashboards, which are meant to show how much is being spent on mental health services in every area and on what services? The £1 billion that has already been announced for adult mental health is back-loaded to the end of the Parliament. Will the Government bring it forward to deal with the current crisis? Will they at last acknowledge that there must be a cross-party discussion about how to raise the money needed for health and social care? Will they ensure that the lessons learned in Manchester about integration are spread to other areas? That could save money and provide better service. Will the Government provide more funding for social care? As the noble Lord, Lord Hunt of Kings Heath, has said, without that, nothing will improve.

To return to mental health, I acknowledge that funding is not the whole story. The main point of the report from the values-based CAMHS commission, chaired by my noble friend Lady Tyler of Enfield, was that there needs to be a shared set of values and a shared language across all those involved with children and young people's mental health, thereby enabling the system to have widespread change and a far more joined-up response to mental health issues. Does the Minister agree with that? How could it be achieved?

Lord O'Shaughnessy: My Lords, I thank noble Lords for their kind welcome. First, on mental health, which is clearly the subject of the Prime Minister's Statement today, I think this is a good news day for mental health services. We know that this part of the system has suffered from not being seen by some people as as important as physical health. We have now legislated for parity of esteem, but of course parity of esteem comes about through practice, not just through law, and part of that is about a series of changes to ensure that this is a high-quality system that is available not just for some but for all.

With regard to performance, there is a lot of strength within the system. My predecessor, my noble friend Lord Prior, whose abilities I pay warm tribute to, would always say that there is lots of innovation and quality in the health service. One of the challenges that we face is diffusion. Part of the purpose of the strategy today is about taking best practice and moving it around the system. There is good practice. We have fantastic dementia diagnosis rates, the IAPT system is being copied by other countries and we have a record number of psychiatrists.

As someone who has spent the best part of 15 years working in schools, I think we finally have recognition that something significant and serious is going on with our young people that needs a new approach. With the promise of a Green Paper on children and young people's mental health, I am optimistic that we have an opportunity to deliver what the noble Baroness said—getting everyone who cares about this subject around the table and making sure that we deliver the kind of strategy that is going to do two things. The first is to help schools and young people to identify mental illness where it exists and to access treatment; the second and, arguably, more important, is to build resilience so that young people are better able to resist the various pressures that they are under and to stay in good mental health, because that is our ultimate goal.

There is £1 billion to implement the plan. It is reasonable to ask how it will get to the front line; clearly, this money should not be being diverted to other services. The noble Baroness said that transparency was critical here. CCGs need to report in a much more detailed, open and honest way about where that money is being spent, so that we can ensure that it is going to front-line mental health services.

There is a challenge every winter; that is not unique to this Government. The Statement pays tribute to the incredible work of the staff in the NHS and social care system, and I add my voice to that. They are working at an extraordinary level and under a lot of pressure. Clearly, unacceptable things are going on, such as trolley waits of more than 12 hours. The key is being prepared and, where there are problems, working out what to do about them. The NHS has been well prepared for this winter, with £400 million going into preparedness plans, which it has tested to ensure that they are robust. Although I have been in the department for only five days, judging by the interest, passion and

[LORD O'SHAUGHNESSY]
application of Ministers and officials, I can say that a close eye is being kept on this not just in the department but in NHS England and NHSI. As we say in the Statement, we will continue to support trusts to deal with challenges, particularly in fragile areas—some of which, as the noble Lord, Lord Hunt, said, we have known about for some time. Help is going in.

On social care, there was more money in the Autumn Statement, which I am sure was welcome, and a change to front-load the precept, which will make a difference, and we have the better care fund, so funding is increasing. However, more people are accessing the service, and we know why: because of the demographic pressures. Since 2010 there are now some 1 million more over-65s, so the system needs the extra support the Government have provided. The noble Baroness was quite right when she talked about integration. One opportunity that we have in the five-year forward view through the sustainability and transformation plans is the creation of much better integrated systems which focus not simply on the number of beds, although that is important, but on delivering the best outcomes. As we know, lots of people in hospitals would be better cared for if they were in the community or at home. One challenge that we face is ensuring that those patients who would be better treated in that environment have the opportunity to move out, freeing up those beds for those who need them.

We are committed to the four-hour target, as my right honourable friend outlined in the Statement, and have delivered many more doctors and nurses to ensure that we can deliver a high-quality service. We are dealing with 9 million more visits to A&E every year than we were in 2000. We need to ensure that we are delivering a service which continues to provide the best quality care in whatever setting is most appropriate, and never lose sight of the fact that A&E is there for a specific purpose, particularly for the support of the most vulnerable. About a quarter of A&E admissions are from the over-65 age group, which is growing, so this will get more challenging.

On the specific issue in Worcestershire, it is of course a terrible tragedy. The trust and NHS Improvement are investigating, and I do not think it would be appropriate for me to comment at this time, other than to say that we will be watching very closely what happens as a consequence of those investigations. Plans are already in place to support the trust and ensure that it can improve, but it is not appropriate for me to comment on the specific deaths that occurred.

We know that additional resource is not just about money; it is about service configuration and how we deliver a better service. We are providing £10 billion more in real terms to the NHS over the course of this Parliament. That is what we were asked to deliver, and that is what we are delivering, in concert with NHS England. It is the responsibility of everyone within the system to ensure that we deliver the best possible service.

6.15 pm

Lord Ribeiro (Con): My Lords, from these Benches I welcome my noble friend to his new position on the Front Bench and pay credit, as he did, to the work that the noble Lord, Lord Prior, did before him.

The Statement suggests that, during this period of exceeding challenge to the hospital sector, with clinical leaders attempts will be made to,

"suspend elective care, including, where appropriate, suspension of non-urgent out-patient appointments".

I was rather distressed to hear on the "Today" programme of a patient with oesophageal cancer having either his treatment or his admission delayed—it sounded like it was his admission. As a surgeon, I felt particularly uncomfortable about that. I hope that the Minister can give some reassurance that when it comes to treating patients with cancer, irrespective of the pressures a hospital is under, provision must be made to admit those patients, because any delay can have a long-term effect on them.

Although I accept that there have been 11,400 more doctors since 2010—and that is a very reassuring figure—we must also remember that the intake into medicine has changed significantly over the past 10 or 20 years. There is now probably a majority of female doctors coming into medical school, so the workforce is feminising and changing. Whether we like it or not, many of them will have children, will have family commitments and will wish to work part-time, or less than full-time. When we talk about numbers, it is important that we talk about whole-time equivalents rather than the ballpark figure. It looks like a lot of doctors coming into the system, but we must take into consideration that many of them will work less than full-time, so we may well need to increase the medical workforce, perhaps asking them to work in a different way than they do currently.

I would be grateful if the Minister would comment on that, but I welcome his comments about mental health. I hope that greater provision will be made to ensure that patients with mental health issues have as much support as possible, as he said.

Lord O'Shaughnessy: I am grateful to my noble friend for his kind words of welcome. On the specific issue raised on the "Today" programme, which I believe is the subject of a documentary, and how it relates to the Statement made by my right honourable friend, there is an important distinction, which is that it is at the discretion of local clinical leaders. It is not a blanket mandate to delay treatment where the ethical and clinical responsibilities of those treating a given patient require it to be done speedily.

On the issue of the workforce changing, I take my noble friend's point about what in the education world we called FTEs—full-time equivalents—and will make sure that the workforce figures I use are always expressed in those terms.

Lord Kakkar (CB): My Lords, I declare my interest as chairman of University College London Partners, and join others in welcoming the Minister to his new responsibilities. With regard to the current performance in accident and emergency departments, part of the explanation in the past has been the lack of access to and availability of primary care services. What thought have Her Majesty's Government given to the potential for the provision of GP primary care services within accident and emergency departments? How is that

work going forward and how might it be integrated with the broader provision of primary care services in the community?

Lord O'Shaughnessy: I thank the noble Lord for that question; he speaks with a great deal of knowledge and wisdom on the subject. Clearly, to ensure that we have the best possible services, the system needs to be as flexible as possible to local requirements. As is already happening in some areas, having GPs in A&Es as part of the triage, the streaming service, will provide that kind of efficiency and effectiveness, so that everyone is treated properly. I do not have the detail on where NHS England is on that process, but I will be happy to write to the noble Lord with more detail.

Lord Scriven (LD): My Lords, I also welcome the Minister to his new post and declare my interest as a member of Sheffield City Council. As 80% of those who are in hospital for two weeks or more are aged 65 or over, many require social care rather than healthcare. What is the timescale for the Government to deal with the crisis in healthcare funding rather than the short-term sticking plaster of bringing forward the precepts?

Lord O'Shaughnessy: I thank the noble Lord for his question. There are many strategies, going forward. One is the reform of social care, which includes additional funding, with the precepts being front-loaded now. The second is making sure that, in hospitals, those people in beds who would be better served in a different care setting are able to leave through step-down services, or other such services. Of course, the other factor is to make sure that there is appropriate general practice, and not simply A&E departments, although these can be effective in some areas. We want to make sure that there are more GPs and that we spend more on general practice, as we will in the spending review period, for patients who would be better dealt with without going into A&E, if the kind of care that they are receiving would be more appropriate in a primary care setting. We have to remember that, for patients such as those with dementia, the prospect of going into A&E could in itself be frightening and worrying.

Baroness Pitkeathley (Lab): My Lords, I cannot resist the opportunity to remind the new Minister, as I always used to remind his predecessor, about the importance of Britain's 6 million family carers, when we look at both the issues that he has brought to our attention today. First, he talks about speeding up discharge. You cannot speed up discharge in the social care sector unless you also provide support to the family carers, many of whom are elderly themselves, who will provide that care, when somebody comes out of hospital who is still barely recovered and those carers are expected to perform nursing functions, such as changing catheters. As for mental health, carers are often expected to be full-time carers for young people with very challenging behaviour, and they are often deprived of any information that would help them, on the grounds of confidentiality. What is the Government's position on helping those informal carers in both these situations?

Lord O'Shaughnessy: I thank the noble Baroness for her question. She is absolutely right: millions of people across the country care for a relative who has some care need, be it a spouse, somebody at retirement age or a child with mental health problems. I do not have the specific details to answer her question; I shall write to her with those details—but through the social care reforms being delivered by local authorities and the reforms going forward through the five-year forward view in community health, there is more focus on that ground-level support, in a way that is much more difficult to do from Whitehall. So we are seeing through the early drafts of the STPs—one of the new bits of jargon that I have had to learn—ideas for how to provide family support that goes beyond the statutory support that is available through the benefits system or the community health system.

Baroness Berridge (Con): My Lords, I welcome my noble friend to his new role and welcome particularly his comments on the parity in practice, as well as in law, of mental and physical health. I welcome the Government's commitment of money and the Green Paper on young people's mental health. Can my noble friend please comment on whether there will be a focus on the disparities of outcomes that persist for many in the black and minority ethnic community, who are often diagnosed late, are more likely to be detained for their condition and overall suffer poorer outcomes as a result in mental health? Could some focus be given to these issues of disparity?

Lord O'Shaughnessy: I thank my noble friend for her warm welcome. I take that point very seriously. Clearly, parity of esteem is no good unless it is applicable to everybody who is suffering from a particular illness. I am not fully aware of the details of the nature of the disparity with black and minority ethnic families but, if there is a problem, making sure that we fulfil this ambitious and I hope welcome strategy is going to make sure that we can lift performance of those services for people in minority ethnic groups.

Lord Bradley (Lab): My Lords, I declare my health interests. Can the Minister explain why it will take at least four years to stop the appalling situation where children have to go out of their local area to receive their mental health treatment?

Lord O'Shaughnessy: I thank the noble Lord for his question. I was not aware that it would take four years for that to stop. What we are dealing with here is an historic challenge, which is that mental health services not just in this country but in countries all over the developed world have not been at the same level as services for physical health. The strategy that we have set out today and the further elements to come will be one way of making sure that those young people can be treated close to home. Clearly, there will always be cases and instances where they need to travel. On Friday, I had my first ever ministerial visit to Oxford mental health trust and was able to observe the fantastic work that it is doing across a wide area but with a specific residential school and, interestingly, linking up with the university psychology research department. There were young people who were coming to take

[LORD O'SHAUGHNESSY]
advantage of that from all over the country. I realise that this is, if not unique, an unusual coagulation of good factors. As part of making sure that you can get treatment for mental illness or support to build mental health locally, we need to make sure that there are more centres of excellence that can be accessed by those who are in acute need.

Lord Willis of Knaresborough (LD): My Lords, we welcome very much indeed any Statement that the Minister or indeed the Prime Minister makes about mental health. The issue of parity of esteem has gone through legislation, but in reality we have seen very little in terms of progress towards that parity of esteem.

I welcome the Minister to his place and wish him every success in this key role. One thing that is not mentioned in the Statement is how we train and educate the workforce to deliver the sorts of plans that we have. For instance, in training our nurses, unless they do a specialist mental health programme they might receive less than a morning's training in a three-year graduate programme in terms of mental health. The same applies to children and people with disabilities. What efforts are going to be made to make sure that we have the workforce in place with the right skills and training to deliver the sorts of ambition that he and the rest of the House rightly share?

Lord O'Shaughnessy: I thank the noble Lord for his welcome. He is quite right, of course, that to deal with the problems of mental illness in every setting the staff need to be trained to spot them and do something about it. In the announcement today, a couple of things are relevant to his question. The first is on supporting schools and every secondary school having a mental first aid trained teacher, so they can spot the signs of mental illness and then refer them on if necessary, if they cannot deal with them themselves—although they will have the skills to deal with some instances. The other is the investment of £60 million—£30 million from government and £30 million from trusts—of digitally assisted mental health services, which will bring global digital exemplars for mental health. That will mean that we will be able to provide better information for both staff and patients about the quality of care and safety and effectiveness.

Lord Warner (CB): I welcome the Minister to his new job and raise the issue of CAMHS and the security of funding for CAMHS. It is no good making fine words in this area. The raiding of budgets in this area has taken place in the NHS over a very long period of time. It is not just a question of ring-fencing for a short time; it is guaranteeing budgets over a longish period, so that staffing levels can be built up with people who are expert in this field. Will this issue be addressed in the Green Paper?

Lord O'Shaughnessy: I thank the noble Lord for his question. He speaks with great knowledge and experience, particularly from his work in the Department of Health. There are two separate issues here. First, there need to be more resources, and we are providing those. Secondly, we need to make sure that those resources are applied in the right setting, so that money designed to support mental health goes there. The primary way we deliver that is through transparency: making sure that CCGs—which are, of course, independent of government and making clinical commissioning decisions based on local need—are reporting on the money they are spending and the services they are commissioning in mental health and then making sure that we work with NHS England to look at any CCGs where that is not happening. It is clearly wrong that money which is intended to support mental health does not do so, but the way to deal with that is to work with the CCGs where it is not happening and to make them report on their own performance.

Baroness McIntosh of Pickering (Con): My Lords, I welcome my noble friend to his position and declare an interest as an adviser to the board of the Dispensing Doctors' Association, having been the daughter and sister of dispensing doctors in rural practice. Are my noble friend and his department aware of a chronic shortage of psychiatrists in rural areas, which has particular implications for children waiting to be statemented and treated? Is he also aware that there may be a spike in retirements of GPs over the next five or 10 years? The Government have addressed the issue of new doctors coming through; is there a second round, bearing in mind that it currently takes seven years to train a GP?

Lord O'Shaughnessy: I thank my noble friend for her welcome. The global number of psychiatrists across England is increasing: I was not aware of the particular shortage in rural areas. I will certainly investigate and write to my noble friend about it. I know, from my past work in education and the example of head teachers, that the shape of the public sector workforce is now such that senior positions are weighted towards the over 55s. Although I realise that separate pension arrangements are available in the health service, now that retirement and pension ages are increasing we have a reasonable expectation that people might work longer than they did in the past. Therefore the problem described by my noble friend may not be as acute—not just in health but in other sectors as well—as she says. However, there is clearly an issue about the demography of the service and we are backing up GP recruitment with quite a big increase in extra funding for primary care over the course of this spending review period. A large part of that will go on both recruiting new staff and paying those who are in the system now.

Baroness Hussein-Ece (LD): Is the Minister aware of whether GP referrals to CAMHS are now improving? Last year a number of reports highlighted the fact that in some 15 trusts up to 60% of GP referrals were not being dealt with. Only the very urgent, critical cases—those children who were self-harming or attempting suicide—were being dealt with. Has this situation improved and is there now proper access? GPs are the gateway to these services and if their referrals are not being taken seriously, these problems will mount up and we will be failing the next generation. Can the Minister give that assurance?

Lord O'Shaughnessy: Mental health is an issue that spans education and health. I recognise the problems that the noble Baroness is describing. I do not know the specific details about the performance of referrals but I will write to her with that information. One of the purposes of the strategy, and the adoption of all the recommendations of this review, is to make sure that we make the system work better so that what the noble Baroness describes—which is not what we want to happen—happens less frequently.

Lord Brooke of Alverthorpe (Lab): My Lords, I too welcome the noble Lord to his new appointment and wish him well. I place on record my gratitude to his predecessor, the noble Lord, Lord Prior, who was always open and honest in his dealings with us and straightforward in answering our questions. I hope we are going to have an open and honest discussion about the role of A&Es in the future and whether there is any likelihood that we are going to lose the four-hour limit. Over the holiday period, Sir Simon Stevens commented that A&E is not to be used as a "national hangover service". Is there a possibility that we are to lose some of the terms we have had in the past because of the number of drunks who are being treated on Fridays, Saturdays and Sundays throughout the year—not just over bank holidays? This is creating immense problems within A&E, yet the Government refuse to do anything about the fundamental cause of that: to use Mr Cameron's phrase, "cheap booze". Back in 2012 he was advocating a change to try to stop this. Unless that is addressed, there will be a scandalised outcry about changes in the fundamental terms relating to A&E.

Lord O'Shaughnessy: I thank the noble Lord for his welcome. On A&E, the Statement is very clear that the Government are,

"committed to maintaining and delivering that vital four-hour commitment to patients".

As the noble Lord described, there has been a change in the case load going into A&E. You only need to spend a bit of time in an A&E to know that alcohol is a factor. I do not know whether this is increasing, but I shall endeavour to find out. I absolutely agree that any proper strategy for relieving pressure on A&E must include cracking down on problem drinking.

Family Court

Statement

6.37 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I shall now repeat in the form of a Statement the Answer to an Urgent Question tabled in another place on family courts. The Statement is as follows:

"I am grateful to the honourable Member for the chance to update the House on this important issue. The issues at stake in family proceedings are sensitive and often complex, and the decisions of the court can have far-reaching implications for the individuals involved. The presence of domestic abuse only exacerbates an already traumatic situation. That is why the Government have already taken steps to make sure that victims of domestic abuse in the family justice system have support and protection. We have protected legal aid for individuals seeking protection from abusers; we continue to invest in the court estate to improve both the physical security of family courts and the emotional support available for users; and we have placed renewed emphasis on training for those who work in the family justice system, making sure they understand the nature and impact of domestic abuse, and act appropriately when they encounter it.

But we know that there is more to do. As my colleague the Minister for Victims, Phillip Lee, made clear when these matters were debated in Parliament on 15 September, this Government are determined to improve the family justice response to domestic abuse and we have been working closely with the judiciary and others to consider what additional protections may be necessary. We are particularly concerned about the fact that unrepresented alleged perpetrators of abuse can directly cross-examine their alleged victims in family proceedings. I want to make family court processes safer for victims of domestic abuse so that they can advocate effectively for themselves—and for the safety of their children. That cannot happen while a significant number of domestic abuse victims face cross-examination by their abusers.

The Justice Secretary has therefore requested urgent advice on how to put an end to this practice. This sort of cross-examination is rightly illegal in the criminal courts, and I am determined to see it banned in family courts, too. We are considering the most comprehensive and efficient way of making that happen. That will help family courts to concentrate on the key concerns for the family and always put the children's interests first—which is what they are supposed to do. This work, which is being fast-tracked within the department, is looking in particular at the provisions in the criminal law which prevent alleged perpetrators from cross-examining their alleged victims in criminal proceedings, and we are considering how we might apply similar provisions in relation to family proceedings.

Members will appreciate that such a proposal requires thought, but we want to resolve it as soon as possible. We will make further details available shortly, once the work is complete. I would like to thank the President of the Family Division, Sir James Munby, who has argued passionately that this practice should be outlawed for good".

6.40 pm

Lord Beecham (Lab): My Lords, while the Secretary of State's announcement is welcome, this issue was highlighted in a report in 2014, and was pursued by the All-Party Parliamentary Group on Domestic Violence, which, in a report last April, listed seven recommendations, including one on this issue, none of which appears to have been implemented. In 80% of cases in the family court, one or more parties is unrepresented, a major problem being access to legal aid. How much has been saved on legal aid in the family courts, given the minimal grants of exceptional funding in domestic violence and abuse cases? In the first six months of last year, only five out of 125 applications for exceptional funding were granted. Will the Government now act on the other recommendations of the all-party

[LORD BEECHAM]
parliamentary group? Do they have a view on the perhaps more controversial proposal of Sir James Munby for family court hearings to be in public, for which he is proposing a trial run?

Lord Keen of Elie: We are, of course, aware that this has been a matter of concern. That is why we are determined to address it as urgently as we can. On the matter of legal aid, clearly there are many circumstances in which individuals will seek to represent themselves in family proceedings. Even where that is done, there has to be some degree of control over their conduct. I believe that everyone in this House would agree with that. I point out that we spend in excess of £1.5 billion a year on legal aid. That was the figure for last year. We have increased the availability of legal aid in domestic violence cases—for example, by increasing the period during which evidence of abuse can be produced from two years to five years. As regards the other recommendations under consideration, I invite the noble Lord to await the outcome of the urgent work being done by the department and the conclusion of that work.

Lord Marks of Henley-on-Thames (LD): My Lords, we too welcome the Secretary of State's announcement. Direct personal cross-examination of alleged victims of domestic abuse by their alleged abusers is unacceptable and must stop. It causes distress and damage to victims and their children and deters victims from seeking protection and redress from the courts. It has become more common with the reductions in legal aid.

Can we be assured that the department's work will be both swift and thorough and will address a range of possibilities: questioning through a court-appointed lawyer or other third party; strict limits on the ambit of cross-examination to restrict it to what is necessary and relevant; comprehensive witness support; and the use of video links so that parties are in separate rooms? Will the department also establish a procedure to ensure that in future, when a judge in a position such as that of the President of the Family Division presses for a change, as Sir James Munby has pressed for a change in this area since 2014, they are listened to? We should not have to wait for a newspaper campaign, however creditable, to ensure that change happens.

Lord Keen of Elie: I am obliged to the noble Lord. Of course we are concerned about the distress that can be caused to victims as a result of cross-examination in cases of this kind. The investigation, inquiry and work that the department is undertaking in this regard will be swift and thorough. It would not be appropriate for me to anticipate the outcome of that work at this time, but clearly a number of options will be available. For example, one can take some guidance from what happens in the criminal courts, where the judge may determine what questions are to be put to a witness, may decide to put those questions to a witness himself, and the circumstances where the judge may determine that a third-party advocate should instead be employed to put such questions. However, as I say, I do not seek to pre-empt the urgent and swift investigation and determination that is being undertaken at present.

Lord Mackay of Clashfern (Con): I should have thought that the principle which precludes the victim in the criminal courts being cross-examined by the alleged abuser would apply equally in the family court. That principle should apply. Will the Minister confirm that cross-examination is intended to be an opportunity to ask questions to ensure that the tribunal has a proper balance on the facts and is not an occasion on which to offer insults to the party being cross-examined?

Lord Keen of Elie: I am obliged to my noble and learned friend, who has a great deal more experience in these areas than I would ever hope to achieve. Clearly, the purpose of cross-examination, whether it is to challenge credibility or reliability or a particular account, should be pursued by way of questions. It is not an opportunity to make statements to the court or to give evidence and should never be an opportunity to resort to abuse, whether of a victim, a witness or the court itself.

Baroness Burt of Solihull (LD): My Lords, this issue is widespread, serious and urgent. Research by Women's Aid found that one in four women in this situation faced direct questioning from their alleged abusers. We welcome the urgency of the Government's review, but does the Minister agree that some things could be done now without the need for legislation—for example, having the victim and the alleged abuser in different rooms, with questions being put via a video link? Will the Minister commit to look at what the Government can do now, and place whatever legislation is necessary before Parliament at the earliest possible moment? Will he also look at what can be done in the interim?

Lord Keen of Elie: I am obliged to the noble Baroness, who makes a very good point with regard to how we may attempt to tackle this matter, by way not only of legislation, be it primary or secondary, but also by way of the procedural rules which apply in the context of family cases. That will be looked at in the context of the present review and work. If we consider that steps can be taken, we will make representations to the judiciary so that it can properly examine how these procedural rules can be considered. I understand that the President of the Family Division has arranged that certain work should be undertaken with regard to children in the context of the procedural rules.

Lord Ponsonby of Shulbrede (Lab): My Lords, I sit as a lay family magistrate in Greater London. Sir James Munby has introduced Practice Direction 12J whereby abusers cannot cross-examine people in court. However, my experience is that while the parties in the family court are very often unrepresented for various reasons, not least because they have not applied for legal aid, there are other opportunities for interaction and potential abuse in the court system, not just in the courtroom itself. Therefore, while I welcome the emergency review announced recently, I think that there needs to be a more wide-ranging review of the family court process as a whole if one is to address these issues. It is certainly my experience that the practice directions that we operate in Greater London prevent the sort of cross-examination which a lot of pressure groups are talking about. The issue is about the wider context. I hope that the Ministry of Justice will expand its review of the family court practices.

Lord Keen of Elie: I am obliged to the noble Lord, who makes a sensible observation about the fact that this extends beyond the immediate issue of the cross-examination of vulnerable witnesses and victims. We continue to invest in improving the court estate to improve physical security in the family courts, which is important. In addition, we have placed renewed emphasis on the training of those who work in the courts in order that they are alert to the sort of issue the noble Lord alluded to, and that work is ongoing.

Baroness Newlove (Con): My Lords, while this news from the Government is welcome, and for the work I do as Victims' Commissioner, the important word for victims of the horrendous crime of domestic abuse is "swift". Coercive behaviour by perpetrators in our family courts is so rapid that we need to work quickly to ensure that we protect these victims. It disheartens me to hear about families being broken up. In the Secretary of State's Statement she says that it is about the child. I visited the grooming victims in Rotherham and parents of these children who have been groomed, and the coercive behaviour, the courtrooms and the Cafcass officers—who are supposed to think of the child—have actually broken the family relationship between the mother and child. So while we work to make this swifter, I want to ensure that the Government look at the wider approach, ensure that there is proper training and make that swift, because at the moment victims have no protection whatever. They go into a different courtroom, having gone through the criminal courtroom, and it would be good if we could make the criminal court transfer issues to the family court so that it gets the evidence quickly to support the victims of domestic abuse. The coercive behaviour is horrendous for these victims.

Lord Keen of Elie: I am obliged to my noble friend. Of course, it is necessary to maintain a fairly clear distinction between criminal process arising out of criminal acts and the consequent need to deal with the family consequences in the context of civil proceedings that involve divorce, separation, custody and access to children. The primary interest is always the children themselves, but let us remember that when we talk about abuse, we are not just talking about the abuse of a partner. Sometimes, unfortunately, we are dealing with the abuse of the children of the family unit itself and the coercion against the partner to avoid disclosure of that abuse. Therefore, we have to look to the partner and the children as all being potential victims in these circumstances.

Higher Education and Research Bill

Committee (1st Day) (Continued)

6.52 pm

Amendment 2

Moved by ***Lord Stevenson of Balmacara***

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

"UK universities: establishment

(1) UK universities must be bodies corporate, primarily located in the United Kingdom, and established on a not-for-profit basis.

(2) UK universities are public bodies, contributing to society through the pursuit of education, learning, and research at high levels of excellence.

(3) UK universities (whether established by Act of Parliament, Royal Charter or by the Privy Council) may be awarded degree awarding powers in accordance with sections 40 to 50.

(4) Private universities, colleges of further education and other higher education providers established by Act of Parliament may be awarded degree awarding powers in accordance with sections 40 to 50.

(5) Only bodies under subsection (3) or (4) which have met the criteria relevant to the granting of degree awarding powers under section 40(1B) for at least four years may be registered as higher education providers, in accordance with section 3."

Lord Stevenson of Balmacara (Lab): My Lords, the amendment we discussed prior to the Statement was originally part of a combination of amendments, of which this is the second. It might be helpful, for the convenience of the House, if I explain a little more about that, as some of the questions that were raised during the earlier debate also have resonance here.

The issue that we faced in drafting these early amendments was that to promote a debate and discussion—eventually, that was successful—around the role that universities should play in the United Kingdom, we had first of all to assess what that role should be. It also raised questions about establishment and the position of universities with regard to the way in which previous regimes have created them and continue to do so. In Amendment 2, which I stress is a probing amendment, to which I hope the Minister will be able to give answers that will help to formulate our thinking as we go forward, we had to think first about whether universities were essentially put in a position where they had to be based or primarily located in the United Kingdom, which is the first point in the amendment, and what their constitutional or legal formulation was. Most of them—not all—are bodies corporate, and all of them are primarily located in the United Kingdom but have establishments overseas. So this is not just an idle question; these things are happening today and we need to make arrangements.

The third limb of proposed subsection (1) of the new clause in Amendment 2—the establishment on a not-for-profit basis—is, as we will have picked up from the earlier discussion, controversial. In all the analysis I have seen—I look forward to hearing from the noble Viscount when he comes to respond, as well as other contributions—as education is a charitable object, it would be odd if bodies established for educational purposes were also to be profit-seeking. However, I fully admit and accept—we were reminded of this in the earlier debate—that when in government my party previously accepted that it would be possible for some institutions to be established on a profit-seeking basis. However, the quantum of the profit to be distributed from the profits made is capped and specified, so there is an assessment of the issue but it is not a completely binary not-for-profit/for-profit operation. The noble Viscount mentioned this in his response to Amendment 1, and my noble friend Lady Cohen has views on this, which I hope she will share with us.

[LORD STEVENSON OF BALMACARA]

It is true, and it is important to bear in mind, that no institution will survive if it cannot make an excess of income over its outgoings. In a sense, therefore, all universities, whether they are for profit or not for profit, are in the business of ensuring that their income is greater or at least equal to their expenditure. Therefore, the issue that needs to be addressed is whether we are talking about profit distributed to the owners of the company or profit reinvested in an institution's activities. That might include teaching, research and other things that we are in favour of with regard to what universities should be.

I raise this as a genuine issue, because in promoting this amendment, I suggested in proposed subsection (3) of the new clause that whether universities are established by Act of Parliament, charter or Privy Council, it will be a restriction on the universities that may be called UK universities that they are not for profit. I am not sure, having made that statement, that my argument will sustain itself through this debate; I look forward to that debate and to the Minister's response. I have difficulties with it myself, and if I have difficulties, as a promoter of the amendment, clearly others will do too, and I am quite ready to be knocked down on this point. It is important that we understand better what we are trying to say about institutions.

It is, perversely, the area of the Bill where I agree with the original drafting. The Minister has now left us—maybe it was something we said; he is no longer in sight, although he may be around. It is easier to talk about "higher education providers" in this context, although it shames me slightly to say that, given that "university" is an important term and we should hold on to it. Presumably, we are trying to ensure that for bodies providing higher education of the type specified earlier in the Bill—it is extensively discussed later on—which are doing it either for profit or not for profit, to a sufficiently high standard and in a way that meets the criteria of the regulator, which we will establish later, it is sufficient that the question of whether these have to be for profit or not for profit is left open. Therefore, if you follow that logic, it is important to have definitions for both. I will pause at that point, because that is as far as my thinking has got. However, we should address this issue and bottom it out, because it will be important later on in the Bill.

I will make three other points. In proposed subsection (4) of the new clause, private universities are specified, but it also includes, importantly,

"colleges of further education and other higher education providers",

which I have specified should be established by Act of Parliament. However, I also have a greenish edge about that proposal, because it may be cumbersome and practically not possible to require Parliament itself to review the body that sponsors the institution that we will allow to become degree-awarding and autonomous. But if we are not to require Privy Council or royal charter issuing to take place, which is what is in the Bill, we need some other mechanism, which needs to be robust and at an arm's length from Ministers. Whether it is through secondary legislation or primary legislation, there has to be a check on Ministers' ability, not just to create universities but to close them down, because these will be important decisions.

The second point in the list—we will go on to discuss it later but it is raised here because it is important—is that there has to be a provision relating to the length of time that challenger institutions need to exist before they are given the responsibilities of a university. At the moment, the Bill provides for that to happen immediately on a provisional basis, but this amendment and others in the group would hold that back, requiring four years to have elapsed.

7 pm

Finally, the question which I thought might come up during debate on the first amendment but did not but which will definitely come up in this debate is that the Bill is primarily an English-only Bill, although it deals with the UK primarily in relation to research because research is a reserved function. Part of the argument made in Amendment 1 and again in Amendment 2 is that universities as a sector would be better considered as part of an overall and overarching provision within the United Kingdom. Therefore, use of the term "UK" needs to be present and understood but it also needs to be referred to in the Bill. Therefore, in this opening speech I am addressing Amendment 514, which appears towards the very end of the Marshalled List.

I should have said at the beginning—I will say it now—that this grouping is not conducive to a very helpful discussion. I want to explain to the Committee that I will therefore pause at this point, even though I have amendments further on in the group which conventionally I would have addressed now. My Amendment 2 and the interesting Amendment 514, which I am sure nobody has yet looked at, although I recommend that they do, stand together, and it would be interesting to hear comments and responses to that later amendment if possible.

Later we will come to other amendments which were included in this group because it was felt appropriate to have a discussion about institutional autonomy. I am not the main proposer of those amendments, and indeed I would like to wait to speak to them until the noble Lord, Lord Kerslake, has spoken because I wish to follow his amendment. I beg to move.

Baroness O'Neill of Bengarve (CB): My Lords, I should like to ask the noble Lord, Lord Stevenson, what meaning is intended by,

"primarily located in the United Kingdom".

There is a large number of examples across the globe of franchised campuses, sometimes franchised by extremely reputable universities in this country and in the United States but operating in other countries. Is it a matter of where the majority of their students are in the world, where the governing body is or where the financial control is? I feel that some clarification may be needed.

Lord Willetts (Con): My Lords, perhaps I may put three questions to the noble Lord, Lord Stevenson, about this proposed new clause. First, there is a classic model of a university—a kind of trusteeship model—in which the university has no interest in profit, it is located in a particular place, and its academic staff and the people running it at any one time wish to

enhance it and pass it on to the next generation in roughly the same form. That is a completely noble and understandable model of a university and it is what most British universities are like. However, it is not the only form of universities. There are enterprise universities, global chains of universities and for-profit chains of universities.

Personally, I rather regret the fact that there is not a single British-based global chain of universities, as that is probably the only way in which we will meet the surge in demand for higher education around the world. Organisations such as Amity and Laureate meet this demand but no British organisation does so. Pearson College perhaps comes closest to the model but it is not the same. The amendment seems to propose a kind of anti-globalisation measure. If MIT or an American chain wanted to set up a university in Britain, we would not allow that. If an organisation is not located primarily in the United Kingdom, it does not count.

My second point concerns the not-for-profit stipulation in the proposed new clause. It is very important that a higher education institution and a university have very high academic principles. Personally, I do not think that we should require that they should not be for-profit organisations, given that we know that if you really want to provide higher education on a large scale and grow rapidly, some combination of commercial management and access to commercial capital markets is probably the way to do it. Again, the amendment takes a view about what a university is and eliminates a model. It is a model that barely exists in the UK, although we now have some examples of it, and it is a pity that the amendment tries to stop the process of creating enterprising universities alongside trusteeship universities.

My third point concerns the assertion:

"UK universities are public bodies".

There is a very attractive rhetoric about the public value of universities, and they do indeed contribute to society in the way that is described here. If, through legislation, we define them as public bodies, we are no longer simply making an attractive rhetorical point about their public purpose; I presume that we are saying something real about their status. We went through this very issue only in the past few years with FE colleges, which were defined as part of the public sector. When people realised what that meant—the colleges being subject to public expenditure controls and borrowing counting as part of the PSBR—even some of the people who rather liked the idea that these were public bodies ran away from the implications. Are we really saying that we think that universities are part of the public sector and subject to the rules and constraints of being in the public sector? You could argue that one reason why our universities have done rather well is that they are not part of the public sector. If this is to be anything other than rhetoric, I assume it means that we think that in future universities should be part of the public sector. Therefore, we are invited to consider a future where universities are not part of global chains and not allowed to make a profit, and, instead, we are going to define them as part of the public sector. Sadly, I do not think that that is the future of higher education in this country.

Baroness Cohen of Pimlico (Lab): Perhaps I may add to my earlier remarks. This proposed new clause is absolute anathema to those of us who are chancellors of substantial private universities set up under the 2004 legislation and regulated to the hilt. My organisation, BPP, has 20,000 students, we have 5,000 to 6,000 undergraduates and we make a profit. We charge £5,000 a year, which is very much less than £9,000 a year, for a three-year degree, and £6,000 a year for a two-year degree. We have part-time degrees all over the place and we offer degree-awarding apprenticeships. We are fairly specialised. We stick within the general field of law and business, although we have just branched out into nursing and medicine—so tomorrow the world.

However, none of that is envisaged in the clause produced by my noble friend Lord Stevenson. I cannot believe that this House intends to outlaw this kind of university. Indeed, you can hardly do so because BPP was granted university status in 2013 after four heavy-duty years of regulation—and we are still heavily regulated, which we do not mind at all.

We would all be perfectly happy with the autonomy clause. For BPP, autonomy is guaranteed by a very tough academic council. You try telling the academic council what to do. That is just impossible—and occasionally it frustrates things that the management would like to do.

Therefore, we really do have to rethink this and, as my noble friend said, bottom out what we mean by "for-profit universities". I cannot believe that BPP is the only organisation that would be affected by this proposal, yet it is the only one of any size that I can describe. Further on in the debate I will want to emphasise that we went through four years of heavy-duty regulation to get there. To be honest, that is about what it took to convert us from a first-class, long-established training establishment to something that had proper academic qualifications and worked as a university. Therefore, I suggest that we look very carefully at probationary degree-awarding powers. I feel equally strongly about the idea of outlawing private sector universities. There would be one set of things called UK universities, which would be the gold standard, and then there would be the rest of us. What would that say about the 2004 legislation—or indeed about the future of universities in this country? We will have to think about this rather carefully.

Baroness Garden of Frognal (LD): My Lords, I added my name to this amendment on the basis that it seemed to contain some things that were very worthy of discussion. As we have heard, this is obviously a rather controversial area, but it gives us another chance to look closely at what we understand by universities and at what characteristics in them we value.

There is much to support the ongoing role of the Privy Council in the establishment of universities, providing as it does impartiality, expertise and universal standing in the awarding of royal charters. This clause would also allow for Acts of Parliament—but, again, it is open to debate as to whether there should be other sources of authority. There is a general anxiety that there should be authoritative powers to set up new universities because there is a concern that the Bill as it

[Baroness Garden of Frognal]
stands seems to give a fairly free hand for new universities to be set up without necessarily the standards that we have all grown accustomed to.

The other amendments in this group to which I have added my name are all to do with autonomy, which we discussed at great length in the debate on Amendment 1. The success of universities depends on their ability to take their own decisions, so that they can be flexible and responsible to the environment in which they are working and decide for themselves on courses, staffing and admissions. The Bill as drafted includes a number of areas where a future regime could seek to intervene in matters that are for individual institutions. Autonomy has been recognised as providing a key competitive advantage and, indeed, has been identified as a critical factor in making the UK the top performer in the efficiency and effectiveness of public spending in tertiary education. These amendments would enshrine university autonomy in the Bill.

We welcome the Government's amendment that states:

"Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study".

This addresses concerns about the Government directing individual institutions on which courses they can open or close. However, autonomy is such a fundamental principle of the UK higher education system that we would want the Bill to go further. The amendments in this group enshrine that.

Lord Kerslake (CB): My Lords, I will speak in support of Amendment 65 and give my general support to the other amendments in the group. I first declare my interest as chair of Sheffield Hallam University's board of governors.

Free institutions are a fundamental part of a truly democratic society. We sadly know that simply having the power to vote is not in itself a guarantee of a democratic and free society—you need only to look at Russia to see an example of that. For me, the issue of free institutions is not simply about the benefit to the institution itself but is fundamental to an open society. That is true of a free press but, in my view, it is equally true of free universities. This has been a fundamental tenet of thinking for a long time. Indeed, there is unanimous agreement across all parties about the issue of institutional autonomy.

The question therefore is: why does the issue arise now? I am afraid that it arises precisely because of the Bill. The noble Lord, Lord Storey, put it well when he said that the Bill itself has raised concerns and questions about institutional autonomy. Yet we would all sign up to the freedom of universities to decide which courses they run, which staff they employ and which students they choose to admit or not admit.

The very particular concern goes to the powers given to the Secretary of State and to the new Office for Students. Others have spoken on this at length and I will not repeat that. However, I will cite three examples that concern me. First, the threshold for the OfS to undertake action against a university is if it appears to the OfS—I emphasise "appears"—that it has breached the conditions of its registration. Surely that is too broad a basis on which to intervene. Secondly, the Bill gives the OfS the power to search and enter the premises of an HE provider registered with it, subject to a court order. Surely that should be limited to situations where there is a concern about fraud or severe financial mismanagement. It is too open at the moment.

Thirdly, the Bill allows the Secretary of State to frame the guidance given to the OfS by reference to particular courses. As this House will know, that contrasts sharply with the current legislation—the 1992 Act—in which the Secretary of State is specifically forbidden from setting guidance to HEFCE in this way. Those are three very specific examples of why this Bill causes concern.

7.15 pm

I should say straightaway that I have no sense that Ministers are seeking to undermine institutional autonomy. I absolutely accept their assurances that that is not their intent. However, the problem is that that is the effect of the Bill, even if it is not their intent—so we have to address this issue. We cannot give powers to a Government or a government body on the basis that future Ministers will always use those powers well and wisely. We have to be more circumspect than that.

In many ways, my amendment is a simple one, which I really hope Ministers do not object to. It sets out a duty on the Secretary of State and the OfS, when issuing guidance and directions, to uphold the principle of institutional autonomy in the exercise of their powers—very simple. In the amendment, I have defined "institutional autonomy", but I am perfectly open to alternative wording that might do the same thing. The noble Lord, Lord Willetts, put the point very well that this is an obligation on the Secretary of State and the OfS, not on universities themselves. This is about how the duties of government, if you like, are exercised—and limiting those duties in a way that can be tested in the courts if needed.

We will come later in the Bill to amendments that are specifically about the powers that the Secretary of State and the OfS will be given. I am not suggesting that this amendment alone is enough to address the issue of institutional autonomy. However, in the meantime, it will provide a simple but important safeguard for the way that those duties are exercised. I sincerely hope that the Minister will accept the amendment—or, alternatively, undertake to come back with a very similar amendment when we get to Report. If that is not forthcoming, I think we will return to this issue. It is crucial for this House. Fundamentally, we are at risk of carelessly undermining a vital freedom in this country. We must guard against that very carefully.

Baroness Deech (CB): My Lords, I will speak in support of Amendment 65 in the name of my noble friend Lord Kerslake. The most relevant interest I have to declare is that I was the first Independent Adjudicator for Higher Education. I dealt with student complaints, which gave me a great deal of insight into what was going on.

Twenty-nine years have passed since the late Lord Jenkins—Roy Jenkins, the chancellors' chancellor—secured an amendment to the Education Reform Act 1988.

That Act ended the tenure that had been enjoyed by British academics. His amendment protected in law the freedom of academics to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or the privileges they may have at their institution. That is repeated in the second half of the amendment being moved this evening, which is directed towards the OfS and the Secretary of State.

Why is it necessary to draw attention to that principle again and to re-enact it? The answer lies in the width of the risk presented in the Bill to the independence of UK higher education and in the amount of power granted to the Secretary of State and the OfS—so much more extensive than in the 1988 Act. Staff have to be free to criticise without fear the opinions of their colleagues and government policy and to publish without fear of reprisal through the closing of departments at the behest of the OfS. In later amendments to be debated in a few days' time, we will return to the freedom of speech that universities should be securing. However, this amendment is directed, in an overarching way, to the structure that will govern our universities in future.

The Bill would allow untrammelled direction from the Secretary of State for research themes and the appointment of individual council chairs. That could, for short-term gains, limit the scope of the UK's research functions and its innovation. When my husband was a young scientist in the 1960s, he worked for years on a strange, new and apparently useless but fascinating invention: the laser. We know now how that turned out and how it might have been nipped in the bud had there been in place an OfS regime at the time. The proposed UKRI—the new all in one—will reduce funding routes and may impact on the variety of research that is funded. If plurality of funding is diminished, the risk of taking the wrong decision is magnified, the decision process will be narrower and the diversity of perspective reduced.

We have proof of how things can go wrong: the binary line between universities under the UGC and polytechnics under local authority control and the placing of them in one funding pot; the introduction of central regulation and the auditing of teaching and research; the subordination of academic planning to deep financial controls and the increases in staff workloads despite what has been said earlier this evening—because one hour of teaching may well represent days of research, days of marking, days of seeing students, and days of working in the library and on committees. Indeed, the pressure to research that has been dominant up to now and that was brought in by the Government is responsible for the fact that people now think that teaching is not getting all the attention that it should. What the Bill is trying to do—but should not do in too rigid a way—is swing that pendulum back towards good teaching for the students.

Now we have a sad situation. In the guise of efficiency gains, so much has been lost and cut—and now the miserable replacement of grants with loans to cover living costs will knock all hopes of social mobility on the head. The amendment does no more than keep UK university regulation in line with domestic and international human rights law. The amendment is embedding freedom of thought, conscience, opinion, expression, association and assembly—familiar terms from our European and national human rights legislation. Academic freedom requires freedom from discrimination and harassment and prejudice. It is inextricably bound up with freedom of speech. It also means proper whistleblowing procedures and collegial decision-making, with academic excellence at its heart.

It also involves adherence to the principle of the universality of science—the freedom to share and carry out research without illegitimate hindrance based on irrelevant discrimination. No group of people should be excluded from scientific enterprise under this principle for reasons extraneous to the science itself—so the European Union would be in breach of that principle of the universality of science were it to place barriers in the way of contributions of UK scientists to global research, and vice versa. Of course, no university should discriminate against or boycott the scientists of any one nation. There is everything to be gained from this amendment and nothing to lose. I urge the Government to accept it.

Lord Hope of Craighead (CB): My Lords, I just add a few brief words in support of the amendment of the noble Lord, Lord Kerslake. I declare an interest as a former chancellor of the University of Strathclyde, although I do not think that his amendment would extend to Scotland for the reason that the noble Lord, Lord Stevenson of Balmacara, mentioned. In that connection, I should point out that since Clause 117 makes it clear that the Bill extends to Wales as well as England, it may be that the noble Lord, Lord Kerslake, should extend his amendment to cover Wales as well, because I am not sure that there is any difference between Welsh institutions and English institutions for this purpose.

That aside, I commend the way in which the amendment is crafted, particularly the first paragraph because, as it was pointed out, it is directed to the duties to be performed by the Secretary of State. One of the problems revealed by the earlier debate is that of universities being required to do certain things that might attract all sorts of extremely unwelcome litigation. However, this amendment is directed where it should be directed and for that reason, as well as all the other points made by the noble Lord and by the noble Baroness, Lady Deech, I hope the Minister will take it very seriously.

Lord Winston (Lab): My Lords, I am wedged between two lawyers. I absolutely support the amendment spoken to by the noble Lord, Lord Kerslake. One thing concerns me and it may concern the noble Baroness, Lady Deech, as well. The rise of racist, anti-Muslim and anti-Jewish behaviour in universities in recent years causes us great concern. I wonder whether the phrase,

"the freedom of academic staff within the law",

will be adequate to control some of these outbursts, which are not necessarily exactly illegal but are certainly very discreditable and dangerous for universities. Would the noble Lord like to address that?

Baroness Deech: I take it upon myself to answer the noble Lord. Amendment 469, when we get to it, deals with precisely that point.

Baroness Kennedy of The Shaws (Lab): My Lords, I, too, support the noble Lord, Lord Kerslake, in his Amendment 65. There should be such a duty on the Secretary of State, although it makes me think about the duty on the Lord Chancellor to protect the independence of the judiciary. We do not see that being lived up to in the way that we would like, so just placing duties on Secretaries of State does not always deliver the outcomes that we want. But I certainly support the noble Lord, Lord Kerslake.

I want to give some comfort to my noble friend Lord Stevenson because I share many of the concerns expressed in his amendment. I am not in favour of for-profit universities: I should make that very clear. The ideal of the university is so precious and important to our nation. We should ask ourselves this question: where is a world-class university that is for-profit? The answer is that there is not one—not Harvard, Yale, Oxford or Cambridge.

Lord Winston: MIT?

Baroness Kennedy of The Shaws: MIT has some provisions in its statutes that ensure that the money is fed back into MIT for research at the highest level. If that were part of the standards that we expect of the new private universities, one might feel rather differently. But my concern is that, if you speak to Americans in the field of education and higher education in particular, they look with envious eyes. Yes, they have grand universities, wonderful new liberal arts colleges and some great state universities, but they feel that in Britain we have, across the board, a much higher standard of university than can be seen in parts of the United States.

One thing that concerns them is that they went down this road themselves some 10 years ago. They let the business world bring all its entrepreneurship into the university world and by God, they are regretting it now. They have started having scandals. It has even reached our ears about Trump University, but only because Mr Trump's name has of course become rather more familiar for other reasons. He was sued by students on the basis that the university set itself up claiming that it would deliver education in the world of business, but in fact the students were absolutely short-changed and exploited. Many of them were ordinary working folk who had thought that it would advance their careers, and in fact they were taken to the cleaners.

A pay-off is now taking place, but there are other cases in the pipeline. We should be very wary about where this will take us. There is the idea that universities could set up without any probationary period to show that they are acting in a proper way. My noble friend Lord Stevenson suggests in Amendment 2 that there should be a period of four years. I certainly agree that there should be a serious period of time to see whether these new institutions will be up to the standard we want this country to be recognised for.

I rather like the idea that "UK universities" will become the kitemark for institutions that follow the traditional pattern, but I am afraid that I must say to the noble Lord, Lord Willetts, that the pursuit of modernity has to be approached with some caution. I say this particularly when remembering so well the New Labour years. I regret the mistake made by New Labour in its enthusiasm for markets. I have great enthusiasm for markets and I like all aspects of them in their right place, but I do not like their consolidating interests such as the utilities. I do not like markets where you do not get real competition, and I certainly do not like their entering areas of our public life like education and health, where the result is in fact a diminution of investment. So I am very concerned about what the Bill means.

I appreciate what the noble Lord, Lord Hodgson, said earlier about his children and their friends going to universities where they felt rather short-changed because they did not get the teaching they expected. I am happy that the Government are seeking to pursue good teaching by creating the right kind of framework, and I have no objection to some of the things proposed in the Bill. However, I am concerned about autonomy and the potential for interference by Government and bodies that are basically a part of Government. I am also really concerned about this business of introducing into the sector profit-making universities which basically will be a milch cow for hedge funders and the like. I have no hesitation in saying that I am concerned about us going down this road, and I support the attempt by my noble friend Lord Stevenson to find a way through that will reconcile the mistake that Labour made when it said that profit-making universities could be brought into the system. I do not think we will relish that in the years to come.

7.30 pm

Lord Smith of Finsbury (Non-Afl): My Lords, I rise very briefly to support the amendment tabled by my noble friend Lord Kerslake. The noble Baroness is right to say that placing a duty on Secretaries of State does not necessarily mean that you get the right outcome, but it helps, and this amendment would certainly help. It also sits rather well alongside the new clause we passed earlier today. That was a declaratory provision which affects the title of "university", and if anything it places a duty on universities. However, this amendment elegantly places a duty on the Secretary of State and on the OfS in exercising the very considerable powers the Bill is likely to give them. It would be sensible to accept it because the autonomy of higher education institutions is so massively important that the more belts and braces we have in the Bill to ensure that that autonomy is safeguarded, the better.

Lord Bilimoria (CB): My Lords, I rise to support the amendment tabled by my noble friend Lord Kerslake on institutional autonomy. In passing the new clause earlier today, we have reflected at the beginning of the Bill the spirit of what a university is all about. Although many of us might disagree with the wording of the new clause, its spirit and essence are in place and at its crux is the autonomy of universities. As chancellor of the University of Birmingham, before Second Reading I consulted our vice-chancellor, Sir David Eastwood, who is one of the most respected figures in higher

education in this country and probably in the world, frankly. He is also a former head of HEFCE. When I asked him about the Bill, he said, "The UK has a co-regulatory approach that has maintained the autonomy of universities and relies on their own governance arrangements where appropriate, allowing universities such as Birmingham to be flexible and responsive to the needs of their students and employers, including shaping the curriculum in the light of the latest research findings, to think long term about global challenges and remain free from direct political interference. It is vital that that cornerstone of UK higher education is preserved throughout the Bill". That is absolutely crucial to the whole Bill, and this amendment puts autonomy at the heart of everything.

When Universities UK was consulted about this, it said that in order to be successful, universities need to take their own decisions and indeed it used David Eastwood's words: "flexible", "responsive" and "autonomy". They provide the key competitive advantage of our universities. Who is the number one competitor in the world when it comes to universities? We have the top two institutions, along with the United States of America. Later this week I will be at Harvard Business School, which I have been attending for 15 years because I am an alumnus. Harvard is the wealthiest university in the world by miles. On Saturday I will see new facilities that did not exist a year ago which are the result of $1 billion of investment. The university is very wealthy and privately funded, but there is a huge distinction between state universities in the United States and institutions like Harvard. We have a wonderful mix that gives us the best of both worlds. We have universities that receive state funding but yet have always been autonomous and can do their own thing in their best interests. We must not jeopardise that, so we should support this amendment.

Viscount Hanworth (Lab): My Lords, I wish to speak to my own Amendment, Amendment 66, and in doing so I declare my interests as I did at Second Reading. In common with many commentators, I fear that the Bill gives unprecedented powers to the Secretary of State to interfere directly in the academic business of universities and providers of higher education. As it stands, the Bill will allow the Minister to give direct instructions to the Office for Students and it will allow that office in turn to convey specific instructions to universities and other providers. A separation of powers is required to prevent any agency acting in a manner that exceeds its competence or expertise and infringes on other domains for which independence should be guaranteed.

The Office for Students should be an executive body and not be allowed in its own right to pass judgment on academic standards. An independent body of experts should be relied on to assess the quality of the provision of higher education and to judge the standards of accreditation. My proposed amendment would clearly limit the power of the Secretary of State to give specific instructions to universities. The Bill already proposes that any guidance given by the Minister must apply to the providers of higher education in general, but it would also allow the Minister to declare, for example, that, "the course in epidemiology at the University of Middleshire does not conform to the guidelines issued by the Secretary of State under Section 3 of the Higher Education and Research Act 2017". In other words, the Minister could refer to a specific university relative to the general guidelines that have been enunciated. My amendment would preclude the Minister from making such statements in respect of a specific institution. It should be for the Office for Students to make observations about the conformity of courses with guidelines and standards, and it should be allowed to do so only on the advice of a designated body of experts. This point will be reinforced in later amendments that I intend to bring forward.

Baroness Wolf of Dulwich (CB): My Lords, I rise to speak to Amendments 55, 62, 72, 426 and 432, tabled in my name and those of the noble Baronesses, Lady Garden of Frognal and Lady Brown of Cambridge, and I will be very brief. I want to say how excellent is the amendment tabled by my noble friend Lord Kerslake because it encapsulates all our concerns about autonomy. I also agree with the eloquent speeches made by my noble friends Lord Kerslake and Lady Deech.

Importantly, these amendments deal with the whole of higher education, not just with universities. We will probably say this on a number of occasions in the weeks ahead, but we are in a new world in which higher and tertiary education is involving more and more of our citizens. Allowing institutions to decide which courses they teach and to be in control of how they deal with their academic staff and their students is absolutely critical to their ability to maintain standards and retain the autonomy that has served us very well.

Baroness Blackstone (Lab): My Lords, I, too, strongly support the amendment in the name of the noble Lord, Lord Kerslake, which is extremely well worded and very appropriate for the legislation in front of us. I am absolutely convinced that the current Minister responsible for higher education will respect the institutional autonomy of universities, but some future Minister may not. As a former Minister responsible for higher and further education, I was rightly constrained by the 1988 Act and what Lord Jenkins managed to do with his amendment. There were sometimes times when I did not agree with what was happening, but I was unable to interfere, which would have been wholly inappropriate. That is an extremely good thing.

There is a second reason why I support the noble Lord's amendment. I, along with Jo Ritzen, a very distinguished former Dutch Minister of Higher Education, and two other former European Education Ministers—Eduardo Grilo from Portugal and the former Hungarian Education Minister—embarked on a project led by Jo Ritzen entitled Empower European Universities. It looked at the position of universities across Europe—north, south, east and west—in particular at some of the problems some universities in eastern Europe experience, as in southern Europe. There was an incredible amount of state control over what these institutions could do. One of the outcomes of that is you get no innovation. Therefore, one of the reasons why we should promote autonomy in our higher education institutions is that we should be concerned to make

[Baroness Blackstone]
sure universities do not stand still, that they take into account a changed environment and that they are innovative. By being autonomous they are far more likely to be innovative than if they are controlled by Governments, as we saw from the project we did across Europe.

Lord Lucas (Con): My Lords, I join those who like Amendment 65, as my noble friend Lord Willetts predicted I would. I join him in saying that I do not share the fears expressed in Amendment 2. To take the example of BPP, which is the company that trained me as an accountant, it has been going a long time. It is the first among equals of a group of companies that have grown up providing professional training services to some very demanding customers. It has therefore developed an ethos of providing very good courses. It also sponsors women's football, which I am grateful for. It has a broad and very encouraging ethos, which thoroughly justifies its status.

We have to be very careful about the quality of what is provided to students. Noble Lords will no doubt remember Ian Livingstone's *Next Gen* report on training for the computer games industry. It found that 85% of courses provided by British universities were not up to scratch. We need to do a lot in the Bill and otherwise to provide students with better information about the quality of their courses, but the people who can demonstrate the best track record in this, who have the best sets of information and who have the most demanding customers are these commercial training companies and those who have come up by that route. We should not be frightened in any way by the fact that they are for profit. Despite that, they have proved that they can provide excellent education.

Lord Judd (Lab): My Lords, it seems absolutely logical that if we believe that the considerations in the amendments before us are vital to the carat gold, the quality and the value of our higher education system, let alone its international standing and reputation, someone somewhere has to have specific responsibility for ensuring that everything done is to protect that role. We have seen in recent weeks a very interesting comparison. Our system of judges came under disgraceful and unprecedented attack in the media. Largely everybody in this House felt that it is a duty of Ministers to protect that system to the hilt. It is therefore absolutely self-evident that, to guarantee that what we want to happen will be protected, the responsibility of the Minister must be spelled out in the Bill.

7.45 pm

Lord Hannay of Chiswick (CB): My Lords, when the noble Viscount winds up will he address a question I will put to him in supporting my noble friend Lord Kerslake's Amendment 65 and Amendment 71 in the name of the noble Baroness, Lady Garden, which are about autonomy? The Government say very firmly, which I do not dispute, that they support the idea of institutional autonomy, but will the noble Viscount address how that squares with the consultation the Home Secretary is currently undertaking, which seems to me, on the face of it, to be designed possibly to interfere with the right of universities to decide what courses they will offer and what subjects they will teach? It would be a very serious intervention if the Government were, in granting visas to overseas students, to take account of restrictive views of their own about which courses universities ought to be teaching. Will he address that? It is germane to Amendments 65 and 71.

Lord Mackay of Clashfern (Con): My Lords, so far as the concepts which are in issue in these amendments are concerned, I am entirely in favour of the autonomy of our higher education institutions, but autonomy does not mean they can do what they like. There is a severe restriction on that autonomy in the provisions for academic freedom, because they prevent universities trenching on the freedom of their academic staff in the way described.

This question of academic freedom is grounded on my heart. As a new Lord Chancellor I had been given the rather unpleasant responsibility of taking the universities section of the 1988 Bill through this House. There were about as many chancellors of universities then in the House as there are now. It was rather a difficult task. One of the things I was determined to have was protection for academic freedom in view of the provisions relating to university tenure. I therefore promoted in government an amendment to deal with academic freedom. When the Bill came to Committee, at a very early stage Lord Jenkins decided he had a good definition of academic freedom, which he put to the vote. From my point of view, it had the great effect of not requiring further consultation in the Government.

Academic freedom became a statutory provision then and remains, but it is an innovation on the complete idea of autonomy. One of the other things we have to remember relating to autonomy is a matter raised in the debate this afternoon on the governance of universities and higher education establishments. The form of the governance can be extremely important.

I was involved long ago in litigation about the governance of Scottish universities where they have a rector. For the first time in the history of Scottish universities, a certain student was nominated to be a rector of Edinburgh University—it does not take a lot of guessing to know who that was. He graduated to be the rector of Edinburgh University notwithstanding the judicial proceedings and later became the Prime Minister, so he had excellent preparation for that office. It has therefore to be borne in mind that autonomy does not necessarily mean that you can do exactly what you like, but it means that there is considerable freedom in how you do what you are there to do.

One issue raised by the first amendment in the name of the noble Lord, Lord Stevenson, was that of profit. As he said, every institution that wants to be ongoing has to ensure that its income is at least somewhat greater than its expenditure—as Mr Micawber pointed out to us long ago. Every institution that is a university or a higher education establishment has to have that. Why should it make all the difference that the people who set that establishment up want a return on the capital that they put into it? I agree with the noble Baroness who said that exploitation is quite wrong—nobody, I think, could dispute that—but it

does not necessarily follow that because you run an establishment for profit you will exploit those who come to it. In a free-market situation, which is what we had until fees were controlled by the Government, universities were free to charge what they thought appropriate. I imagine that if a university is fee-paying, as is one of the institutions of which the noble Baroness, Lady Cohen, is chancellor, it must have some effect on the fees that are charged to the students.

I think that the law is that the purpose of education is a charitable one, but it does not follow that every institution set up as educational is itself a charity, because to be a charity you have to be established for charitable purposes only. One purpose that is not charitable is distributing profits to those who set the establishment up, so that university and any others that might follow in the same pattern would not be charities. I do not think that that matters too much; what matters is whether you can guarantee the quality of the teaching and research—if it does research—that such an establishment can bring forward. I do not feel that the provision that was made by a previous Government is necessarily incorrect. We have had a good example of what such an establishment can achieve. I think I am right in saying—I am depending very much on my recollection—that at least some of the examining boards are now set up by organisations that are for profit.

Protection from government of the autonomy of an institution strikes me as fundamental. I do not think that the Bill infringes on that directly, but I can see the advantage of making sure by way of negative provisions that it does not happen in the future, because we never know who may come along after the present Government. Proper protection for autonomy strikes me as highly appropriate, although there may be some dispute with my noble friend the Minister about the extent to which it is necessary. Such principles seem fundamental and I hope that they will be followed in consideration of these amendments and many later amendments.

Baroness Brinton (LD): My Lords, the autonomy outlined in both this and the previous debate has been one of the guiding stars of our universities in this country for hundreds of years. The balance in their relationship with either the Government of the day or other local interests has been vital. That is why I support the amendment in the name of the noble Lord, Lord Kerslake.

The noble and learned Lord, Lord Mackay, spoke about profit and not-for-profit and why whether a university or institution might be a charity was irrelevant. I spent more than a decade as a Cambridge college bursar and I know many other finance directors of universities. Getting into a debate about charity and about trading arms ends up being a debate about VAT. That is not the business of this House today, but I could bore your Lordships in some detail on that. It is available to most large charities to find mechanisms that allow them to trade, but the big difference is that they then reinvest profits from any trading arm into the charity. That is why I prefer the word "surplus" to "profit". That has been the guiding star of our university sector for some time.

I was rather taken with the idea put forward by the noble Baroness, Lady Cohen, of a probationary period. I hope your Lordships will forgive me for coming back to my own experience, but 20 years ago this year, Lucy Cavendish College achieved full college status with its own statutes—which went through the Privy Council—and part of my role in the preceding five years was to ready the college for that and to prove that the college would be here in a hundred years' time. That included demonstrating the standards that everybody has talked about—making sure that the base finances were solid enough and that access to students and provision of courses met the demands of Cambridge University. The problem for Lucy Cavendish was that it was a 30-year probationary period, but we are talking about the University of Cambridge and perhaps time moves slightly more slowly there than for others. However, the key lesson that the college learned as we prepared for getting our own autonomy was that we had to be able to demonstrate a whole range of standards that would ensure that provision, and then we could accept the responsibilities that come with the autonomy that the noble and learned Lord, Lord Mackay, outlined.

I think that the reason that this debate and the debate on the previous amendment have gone on so long is that there is a great fear that in the Bill as outlined, such autonomy is undermined. That is the debate that we need during the passage of this Bill in order to negotiate our way through difficult words such as public and private. I have a slight concern—I would never have described myself at university as being part of the public, but I accept that there was a duty towards the public. It is that language that we need to look at.

Baroness Cohen of Pimlico: My Lords, I would not have spoken again but for the fact that I should have known the noble Baroness, Lady Brinton, had been so heavily involved with Lucy Cavendish, of which I am an honorary fellow and, I hope, partly responsible for its financial stability. One thing is being missed out of this debate on autonomy—it is my fault because I have not mentioned it: we find ourselves heavily constrained by the role of the academic council. We also find the role of our owners and financiers considerably stood off by the role of the academic council. The academic council is a great defence against anybody trying to tell us to do things—not that our owners do that. It stands firm. I am sure that this must be true for other universities. It is an important part of autonomy. We do not seem to have discussed academic councils. Perhaps they will be mentioned later in the Bill.

8 pm

Viscount Younger of Leckie (Con): My Lords, I am grateful for the opportunity to speak to this important group of amendments. Our universities are a key part of national life and contribute significantly to the public good and economic prosperity. I fully understand that protecting the sector's reputation is at the heart of many of the amendments. I assure the House that the Government's reforms are designed to ensure exactly that and that, like now, only high-quality providers will be able to enter the market, award their own degrees and obtain university title. Once again, I assure

[Viscount Younger of Leckie]
noble Lords that the Government are determined to protect institutional autonomy in the Bill every bit as much as the current legislative framework has protected it for the past quarter of a century or so, and I will say a little more about that later.

First, I will address the new clause in Amendment 2. The Government agree that our universities should be expected to have high standards and to do more than simply teach courses. They benefit the communities they are based in, and there is a strong correlation between opening universities and significantly increased economic growth. However, we believe that what matters is this contribution, not the form of the institution. Universities are private, autonomous bodies, not public bodies as such, although of course they contribute greatly to the public good. They therefore come in a variety of forms, as has been discussed, and we value this diversity immensely, as I mentioned in the first debate. We would not wish to exclude excellent institutions such as the University of Law from having full university status simply because it is for-profit. My noble and learned friend Lord Mackay asked why profit is so vilified; he makes a fair point.

Our reforms do not seek to overhaul the current framework for obtaining degree-awarding powers or university title in any major way. Currently any provider, regardless of its corporate form or background, can obtain degree-awarding powers if it passes rigorous scrutiny. Only providers with degree-awarding powers can apply for university title. Again, they need to meet specific criteria but these are not tied to corporate form. The proposed new clause would in effect introduce a two-tier system of universities or degree-awarding providers, when what we are trying to achieve is a more level playing field. It would be a step back in time, rather than further developing a well-functioning system.

To ensure that only high-quality providers can obtain degree-awarding powers, we are planning to keep a track record requirement of three years for all those that seek full degree-awarding powers. However, in parallel, we are also planning to introduce, as has been mentioned, a new route of obtaining degree-awarding powers on a probationary basis. This would mean that high-quality providers that have the potential to achieve full degree-awarding powers can be permitted to award degrees in their own name from the start—crucially, subject to close supervision. As the noble Baronesses, Lady Cohen and Lady Brinton, mentioned, under the current regime new and innovative providers have to wait until they have developed a track record lasting several years before operating as degree-awarding bodies in their own right, no matter how good their offer is or how much academic expertise they have. This stifles innovation, and the new clause would further entrench this system of new providers usually having to rely on incumbents.

However, I assure noble Lords that quality is still paramount. As we set out in one of the published factsheets to accompany the Bill on market entry and quality assurance, in order to be able to access time-limited probationary degree-awarding powers, providers will also need to pass a new and specific test for probationary degree-awarding powers. I realise from the tone of their remarks that this may not necessarily please the noble Baronesses, Lady Cohen and Lady Brinton, but we believe that this is important as a quality check. We absolutely do not intend a complete overhaul of the system of degree-awarding powers. We fully intend that the current criteria will continue to exist in a broadly similar form.

Returning to institutional autonomy, noble Lords will know that, while this concept has been central to our higher education system for many years, the Further and Higher Education Act 1992, which establishes the current legislative framework, does not explicitly mention institutional autonomy. The Bill goes considerably further by placing in legislation explicit new protections for the freedom of English higher education providers. Those protections apply to all the ways in which the Secretary of State may influence the Office for Students: guidance, conditions of grant, and directions. In each case, the Bill places a statutory duty on the Secretary of State to,

"have regard to the need to protect academic freedom … of English higher education providers".

We strengthened this further on Report in the other place.

I assure noble Lords that there is no disagreement, as I see it, over the importance that we place on institutional autonomy and academic freedom. We have sought to protect these fundamental principles in the Bill. I agree that they are the cornerstone, as many noble Lords have said this afternoon, of our higher education system's success. We have heard considered and well-informed debate—more so on this group of amendments—and I am grateful for the views that have been put forward, but we believe that the Bill enshrines and protects academic freedom. Having said that, I recognise the strength of feeling that has been expressed about institutional autonomy. I continue to listen and reflect on views from noble Lords and will reflect further on this issue. I hope that gives some reassurance regarding the concerns raised on this issue. These provisions represent the most comprehensive suite of explicit statutory protections for institutional autonomy ever contained in a single Bill.

Amendment 55, spoken to by the noble Lord, Lord Kerslake, places a duty on the OfS to have regard to,

"the need to act in a manner compatible with the principle of institutional autonomy",

when it discharges its statutory functions. I understand and sympathise with the motivation of the amendment, but in the light of the new and additional protections I have just described, the Government do not feel that a statutory duty on the OfS is appropriate. I reassure noble Lords that the existing provisions in the Bill already require that academic freedom and institutional autonomy be taken into account by both the OfS and the Secretary of State. As such, the amendments are unnecessary.

The noble Lord, Lord Kerslake, asked whether it is right that the Office for Students can intervene "if it appears" that registration conditions have been breached. Intervention based on "if it appears" is standard legislative drafting and is underpinned by the usual public law considerations so that the OfS cannot act irrationally.

As a public body, the OfS must at all times act reasonably and proportionately in accordance with public law when exercising its powers.

Similarly, I find myself in agreement with the main intention of the amendments relating to the Secretary of State's powers to set conditions of grant and give directions to the OfS. But I assure noble Lords that the Bill as drafted does not leave any room for a future Secretary of State to be lackadaisical about this duty. The amendments, while well intentioned, do not add much by way of strength to the duty as it stands. As I have outlined, the Bill includes new and additional protections for institutional autonomy. I sympathise with the motivation for these amendments but I am not sure that adding a duty to have regard to institutional autonomy adds much in practice to the protections already in the Bill. I fear that the amendments may require future Secretaries of State to become rather more interventionist than they are now, guiding or directing the OfS to act in particular ways in particular cases to protect institutional autonomy.

Amendments 425 and 431 relate to the Secretary of State's powers to set conditions of grant and give directions to the OfS. These amendments, while well intentioned, do not add much by way of strength to the duty as it stands and may risk inadvertently weakening other duties of the Secretary of State in the Bill which do not have this amended formulation.

I am entirely sympathetic to the intention behind Amendment 66, which seeks to build on existing protections within the Bill to ensure that when the Secretary of State gives guidance to the OfS, it is prevented from naming individual higher education providers. However, the restrictions on the Secretary of State already in the Bill will have the effect of preventing individual institutions being named in the Secretary of State's guidance to OfS. Clause 2(6) requires that guidance,

"which relates to English higher education providers must apply to such providers generally or to a description of such providers".

It is hard to conceive of a scenario where the Secretary of State could comply with these restrictions and yet name individual institutions. On that basis, I assure noble Lords that this amendment is not necessary to ensure the protections it seeks, and that we may rely on these being implicit in current drafting.

I am grateful for the thorough and thoughtful nature of Amendments 65, 71 and 165. The desire and determination of noble Lords to ensure that the Bill protects institutional autonomy is both evident and impressive—again, as we have discussed extensively today. However, I do not believe that these definitions of institutional autonomy and academic freedoms add anything substantive to the protections already enshrined within the Bill. Furthermore, as detailed in my letter to noble Lords following Second Reading, the Bill holds the Haldane principle at its core. The Government are fully committed to the fundamental tenet that funding decisions should be taken by experts in their relevant areas. The amendment risks compelling the Secretary of State to issue guidance to the OfS on issues beyond its remit, which I believe is unintended.

Amendment 165, tabled by the noble Lord, Lord Stevenson, seeks to include in the definition of institutional autonomy the right of providers,

"to constitute and govern themselves",

as they consider appropriate. It is of course quite correct that providers have this right. However the powers of the OfS, or indeed any other body empowered by the Bill, to influence how providers constitute and govern themselves are already very limited. The public interest governance condition in Clause 14, for example, merely seeks to ensure that the governing documents of providers subject to this condition have best governance practice embedded within them. As now, the public interest principles are not intended to prescribe in any detail how providers are to be governed. We expect that they will continue to operate in tandem with sector-owned codes, such as that of the Committee of University Chairs.

Finally, Amendment 65, as put forward by the noble Lord, Lord Kerslake, would add specific protection for academic staff to speak and challenge freely. Again, there is no disagreement from the Government about the importance of this protection. However, institutions are autonomous and the Government cannot interfere in any decisions regarding academic staff, therefore only the institution itself can protect the freedom of its academics. The Bill already takes steps to ensure that this will continue to be the case by allowing the OfS to place a public interest governance condition on all registered providers, which will ensure that their internal governance must include the principle of freedom for academic staff. We therefore believe that the amendment is not needed.

The amendments that I have just spoken about—and there are quite a few—have understandable and laudable motivations, which the Government share. But on the whole they do not substantively add to the protections for institutional autonomy already contained in the Bill. In some cases, they may interfere with the OfS and UKRI's distinct areas of responsibility, or create a risk of requiring more intervention from the Secretary of State rather than less. None the less, I will consider carefully the points that have been raised, as the Government agree that it is fundamentally important to ensure that the Bill protects institutional autonomy. The suggestions from noble Lords have been very helpful in understanding some of the concerns about this aspect of the Bill.

Amendment 73 would require providers to operate—

Lord Hannay of Chiswick: My Lords, I think that the Minister is drawing to a close. He has not yet addressed the question I put to him about the compatibility with institutional autonomy of the consultation that is taking place about student visas for certain subjects. Will he please address that matter, because there is a genuine potential contradiction here? I am not suggesting a contradiction in his intention but it does not look to me as if the findings of that consultation, if they were turned into an attempt by the Government to tell universities which courses they could offer to overseas students, would be compatible with institutional autonomy. Can he please now respond to that?

Viscount Younger of Leckie: Yes, of course. I doubt that I will be able to give a response such that the noble Lord, Lord Hannay, will nod and agree that it is a full response. I will endeavour to write to him with a fuller response but the situation at the moment is that we have no plans to cap the number of genuine students who can come to the UK to study, nor to limit an institution's ability to recruit genuine international students based on its TEF rating or any other basis. I know that the noble Lord's question was much more detailed than that. The best thing I can do is to meet him offline and/or write a letter giving him a full answer. I am well aware that he is very exercised about this issue, as are a number of other noble Lords in this Chamber.

8.15 pm

In future, being on the OfS register would mean that a provider is approved and recognised. Although registration is voluntary we would expect most providers, whether degree-awarding or validated, to register to have access to the various benefits that registration brings. If new providers had no choice but to operate outside the register, and thus outside effective regulatory oversight, they would be unable to access any student loans from the Student Loans Company. Students may see such providers as more risky and less attractive, thus preventing even high-quality new providers getting a foothold in the market. Let me reassure the Committee that only those which can demonstrate the potential to deliver high-quality provision will be able to register. All providers with access to student loan or public grant funding will need to continue to meet at least the current baseline financial, management, governance and quality requirements.

As the new system is firmly based on risk-based regulation, the OfS and the designated quality body will assess the risks attached to all providers that apply to be on the register, with the ability to attach specific conditions of registration to providers that are directly matched to the level of risk that a provider represents. This will allow the OfS to carefully manage the entry of new providers to the regulated sector, for example by using levers such as the imposition of student numbers. Being registered is therefore intended to be an important indication of recognition. The OfS will have the necessary tools to ensure that those registered maintain high-quality standards or face deregistration. We should expect excellence from all our universities and hold them to the same high standards, rather than focusing on their legal form or their profit or non-profit status. With that more detailed explanation, for which I do not know whether I should apologise, I ask the noble Lord, Lord Stevenson, to withdraw his amendment.

Baroness Deech: Before the Minister sits down, may I take him back to his statement that there cannot be any interference by the OfS and the Government in the governance of universities because they are autonomous? However, as has often been mentioned this evening, under the 1988 Act university commissioners were sent to rip up the charters of Oxford and Cambridge colleges, and perhaps of other universities too, in the interests of ending academic tenure. Despite protests, they were rewritten. It was the Government's will, and no amount of protestations at the time about academic freedom made any difference.

Viscount Younger of Leckie: Let me give what I hope will be further reassurance that when the Office for Students is set up, as set out in the Bill in different clauses, academic autonomy will be exceptionally important. However, if there is a failing institution, the OfS will have the right to step in, but the steps it must take are long and quite onerous. I reassure the House that many steps have to be gone through before it goes down that route. I am sure we will have more debate about that.

Lord Kerslake: My Lords, I express my thanks for the support that I received from all parts of the House for Amendment 65. I am very aware of the hour and will not rehearse every argument made, but I will pick up on one point, which is that this amendment is not in itself a guarantee that Ministers or the Office for Students would act properly, but it would help. This is the crucial point for me. I am disappointed with the Minister's response. I see this as a practical, simple and necessary amendment to secure institutional autonomy. Just to be clear, the amendment states:

> "The Secretary of State, in issuing guidance and directions, and the OfS, in performing its functions, have a duty to uphold the principle of institutional autonomy".

It is hard to see any situation in which that would lead to greater intervention rather than less. In the circumstances we are in, I shall not press the amendment. I hope there will be an opportunity for further conversation, and I give notice that I will return to this issue at a later stage.

Lord Stevenson of Balmacara: I thank all noble Lords for their contribution to this rather extended debate. I prefaced my opening remarks by saying that this is a complicated group, and it certainly proved to be so. We have got there, but by a rather circuitous route, and I am a bit confused about some of the things that the Minister said when responding. I am sure a lot of us will want to read *Hansard* very carefully.

It is clear that the position that we are moving towards—it is clear to me and I am going to advance this as a thesis as I withdraw my amendment—is that we want a healthy system of higher education provision in this country. There is no doubt or dissent about that, but it is not clear who decides which institutions that are providing higher education are going to be universities and what the criteria are. The university title follows a particular process which we have discussed and we know about, but who does it? Is it Ministers or civil servants, or is there another body yet to be set up? I would like the Minister to write to us setting out very clearly the structure he has identified today. Who maintains the register? The Minister said that it will be not a statutory register but a voluntary register. I agree that the carrots and sticks are very substantial, but it is a bit of a strange decision to have a regulator—the Office for Students—that does not have a regulatory function because it is voluntary. That needs to be unpicked.

We need to know who assesses the criteria under which higher education providers get on to the register, who assesses the threshold standards for degree provision that they are obliged to have, and who assesses the quality of the degrees they subsequently grant. There are amendments about this later on, but we must also ask who regulates the body appointed as the regulator for the system. Is there another body that we do not know about? A lot of this will be answered by transparency, and I would be grateful if the Minister wrote to us about that.

I was asked three specific questions that I am not going to be able to answer, but I will record them so noble Lords know that I have them in mind. I do not understand the issue about where an institution needs to be located, but I think it is intimately connected with the points made by the noble Lord, Lord Willetts, about who gets the benefit of the subsidy and the tax provisions that are available. It would be quite inappropriate for a body to be registered as a university within the United Kingdom and to receive tax benefits if it is not also providing a public benefit. It is obviously a circular argument; we are making the same point, and we need to have that bottomed out. I do not have a solution, and my amendment would not have taken us to that point. The situation needs to be looked at again.

The trustee model has served us well. The noble Lord, Lord Willetts, was not knocking it and recognises its value, but he wanted there to be other bodies such as enterprise institutions. I would like to see the evidence for that. He has no responsibility in this respect, and it is about time he told us where he thinks all these brilliant institutions are. Comments were also made on this side about that issue. I am very sceptical about whether that would be worth while, but it is a fair point to question.

My noble friend Lady Cohen and others on our side need to resolve our differences about this issue. I am not against an institution making a profit, provided that the arrangements under which it is made are transparent. Transparency is the issue, and I am sure we will come back to it. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

House resumed.

Armed Forces Covenant

Question for Short Debate

8.24 pm

Asked by ***The Lord Bishop of Portsmouth***

To ask Her Majesty's Government what is their assessment of the role of the Armed Forces Covenant in ensuring that those who serve or who have served in the Armed Forces, and their families, are treated with fairness and respect.

The Earl of Courtown (Con): My Lords, I remind the House that there is an hour of debate. The right reverend Prelate has 10 minutes, my noble friend the Minister has 12 minutes and everybody else has two minutes. Once the Clock goes on to two minutes, the speaker will have had their time and should sit down and let the next speaker speak.

8.24 pm

The Lord Bishop of Portsmouth: My Lords, it is both a privilege and a responsibility to ask this Question and open this debate on the impact of the Armed Forces covenant. It is a privilege because, despite my day job, opportunities to talk about good news do not occur as often as you might think, and a responsibility because it is clear that there is work to be done as service personnel and their families still suffer disadvantage and do not always receive the consideration that they need. I am delighted by the range of expertise and interest of those who will be contributing this evening, albeit very briefly given the substantial and encouraging interest in the debate, and by the Minister for the personal commitment he has shown to the covenant. I await the debate and his response with eagerness.

First, the good news: those on lowest incomes in the forces have seen their wages increase despite the public sector pay freeze. Many have benefited from changes in mortgage agreements and mobile phone and broadband contracts which no longer penalise them during deployments. The advances made in healthcare at Camp Bastion are now mirrored by specialist centres, particularly in Birmingham. Also, partly as a result of the excellent e-Learning for Healthcare module, there is increasing awareness in general practice of both the needs of service personnel and the special access to healthcare available to them.

Service pupil premium payments have enabled schools to fund projects which support the children of forces families. A superb example of this can be found a short distance from my own home in the diocese I serve. The Crofton Cabin was built with a £20,000 grant. It provides a space for children to Skype parents while they are overseas and specialist counselling to help with the stress of deployments. Home life has been improved for many through the £68 million spent on improving and upgrading accommodation, and 9,000 families have bought their own homes through the Help to Buy scheme. The covenant has helped to raise awareness in the business sector of the needs and opportunities presented by service personnel both as customers and as future employees.

The ripple effect of the covenant should not be underestimated. Only last month the Karimia mosque in Nottingham signed up and ushered in a wave of Muslim-owned businesses that are now contributing to supporting members of the military. By signing, that mosque is encouraging this young community to play its role in defending its country, and making clear how much it values those who serve. This appreciation is vital and much deserved, not just for work done overseas but for the invaluable assistance provided by service personnel during emergencies here—for instance, following the floods.

Where is change still needed and where should we look for further improvement? There have been undoubted improvements in surgical care and rehabilitation for physical injuries, but mental health care provision lags behind. It depends on a health service which has been underfunded in this area. Despite the Prime Minister's

[The Lord Bishop of Portsmouth]
welcome announcement today, mental health provision is strained at best and provision for military personnel is often less than adequate. Can the Minister give us reassurance on the way this essential provision can be better delivered? This applies with as much or greater force to reservists, who are increasingly important to the Armed Forces yet are scattered and less visible. Can the Minister reassure the House on the awareness of the Government as regards the special challenges of this remarkable group?

Mental health problems are known to put a strain on relationships, and it sadly remains the case that the divorce rate among military families is double that of the civilian world. However, it is likely that mental health is not the only reason for that, when the main reason cited by those leaving the forces is the impact of their job on family life. A crucial part of that is where you live. Jesus said:

"Foxes have holes, and birds have nests, but the Son of Man has nowhere to lay his head".

He is therefore not my primary source of advice for what makes for good housing but, like the Armed Forces, the Church has a great deal of experience with housing its people and is aware of the impact of poor housing on morale. The Public Accounts Committee in the other place concluded that families have been let down by the inadequate performance of CarillonAmey. Accommodation remains by far the number one issue reported to the families federations, and service personnel will welcome reassurance from the Minister, if he is able to help today, about the Government's appreciation of the concern about this and how it will be addressed.

Service personnel can also be disadvantaged when they leave. The variable interpretation of the Armed Forces community covenant scheme by local government means that ex-service personnel and their families are still sometimes faced with the hurdle of "local connection" to overcome before they are housed. There are examples of good practice but at best the situation is patchy. What encouragement can the Government and indeed the rest of us give to raise the level of local government understanding and action?

Family life is of course wider than the house you live in, and it is unfair that those seeking to adopt children, and those seeking to get their children into new schools, still face huge hurdles because of the special circumstances of service life. I hope the schools admission problem might be adequately addressed by the Children of Armed Services (Schools Admission) Bill, which is to be debated for the second time later this month in the House of Commons. Perhaps the Minister could indicate if the Government have sympathy and if they perhaps plan to reduce and remove these problems.

The principle of the covenant is that those who serve in the Armed Forces and their families should face no disadvantage compared to other citizens in the provision of public and commercial services. For that to be the case, there has to be a clear understanding of what is fair and achievable. Communication of these aims has been helped by an improved website, covenant champions and access to the gateway, but this is an ongoing task, not a once-only one. Both local government and business need to train new members of staff as well as reminding their existing staff about the key features of the covenant and its implications. We are talking here about a culture not of entitlement or advantage but of fairness and equity.

As I resume my place—within time—and await your Lordships' speeches with anticipation, I remind the House that the covenant has admirably begun to redress injustice, unfairness and disadvantage. We all need to ensure that none of us fails to pay due respect to the men and women, with their families, who are prepared to lay down their lives in our protection.

8.33 pm

Baroness Hodgson of Abinger (Con): My Lords, I am very grateful to the right reverend Prelate for the debate today and his excellent introduction. As a member of the Armed Forces Parliamentary Scheme, I am privileged to observe the work of our outstanding Armed Forces at first hand. We have a duty of care to those who serve and give so much, and to their families, and the Armed Forces covenant is an important national contract to address that.

Time is short and there are three issues that I want to raise. First, to be effective, the covenant needs to be widely recognised and understood, yet almost half of service personnel actually know nothing about the covenant, when they should be benefiting from its impact.

Does the covenant or its delivery need amending? I have heard that there is a perception by some on the ground that the covenant is tokenistic. Although it contains noble principles, does not the lack of penalties for failing to fulfil them make it toothless? I know that there are concerns about how effectively local authorities and companies that sign up to the covenant are delivering, so I ask my noble friend whether the covenant's effectiveness has been studied and whether there has been any audit of delivery.

Lastly, do the Government do enough for military families? It is difficult to live on one salary today, and many wives are highly trained. However, regular moves mean that it is very difficult for them to continue in employment. The moves also impact on children, who have to either change school frequently or be sent to boarding school. As we have heard, housing is an issue. Fifty-nine per cent of respondents to the 2015 AFCAS survey felt that their family life was disadvantaged through their service, and it is far the biggest factor influencing decisions to leave the forces, at a time when we need to retain the best.

To conclude, the covenant is to be welcomed, but does it have proper accountability and could it be more effective to help both our serving personnel and their families?

8.35 pm

Lord Thomas of Gresford (LD): My Lords, the military covenant embraces a principle of fair and just compensation for injury and death in service. Basic awards are currently made under the Armed Forces compensation scheme without proof of negligence on a tariff basis: the amounts awarded for a specific injury are laid down in the scheme. Claims for damages

for negligence are therefore frequently brought against the MoD as an alternative. The claim, if successful, will attract general damages based on common law principles which will generally greatly exceed a tariff award, because a lifetime of losses will be considered. However, at present, the defence of combat immunity will defeat a negligence claim for injuries or death sustained in combat.

The Government announced, on 1 December last, a new policy in the spirit of the military covenant to introduce an enhanced compensation scheme which will provide the equivalent of common law damages for injury or death in the field of combat without proof of negligence. The proposals are out for consultation until 23 February. Claims where negligence has to be proved will be redundant. I very much welcome these proposals.

But what is combat? Should combat include deployments on secret missions; or peacekeeping operations, as in Bosnia; or against terrorism, as in Northern Ireland; or anywhere else where British forces are deployed against insurgents? I would argue that planning for specific military operations should stipulate a date or an event when the troops deployed should come within the scope of the new enhanced statutory compensation scheme. On that clear-cut basis, an individual serviceman and his family would have, in effect, an insurance against injury or death at the level of common law damages during the period of deployment in return for the loss of his rights to sue for negligence. Litigation would be greatly reduced.

The Minister has already agreed to participate in a seminar of the Association of Military Court Advocates, of which I am chairman, on the issues raised by the consultation, when I hope to pursue the concept. Further, having regard to experience I have had of the Criminal Injuries Compensation Board when, until 1994, the equivalent of common law damages was awarded for criminal injuries, I also hope to address the problems of administering the new scheme. I look forward to a date and time when the seminar can be held within Parliament for all noble Lords to attend.

8.38 pm

Lord Craig of Radley (CB): My Lords, my amendment, with government support, to the Armed Forces Bill in 2011, inserted the section in the 2006 Act which requires the annual covenant report. This section refers to removing,

"disadvantages arising for service people",

and,

"the principle that special provision … may be justified by the effects on such people",

of their service. The Act requires the Secretary of State to have regard to those principles.

Earlier annual covenant reports made numerous references to disadvantages, but the recent report lays stress on treating people fairly. Fairness is a subjective and immeasurable concept, which bears too little relationship to dealing with or correcting a disadvantage; a disadvantage is more measurable. Morphing from disadvantage to fairness in the work of the covenant is confusing; it is agin the statute.

COBSEO and others in the recent report questioned a proposal to remove the service and medical members from the panel of the War Pensions and Armed Forces Compensation Tribunal. In 2008, I tabled an annulment Motion to an affirmative SI because it threatened to disband the then War Pensions and Armed Forces Compensation Tribunal and transfer its work to a social entitlement chamber—a totally inappropriate chamber. Before the debate on the SI, a Written Ministerial Statement said:

"The Senior President of Tribunals … requires the continued use of service members on hearing panels within the war pensions and armed forces compensation chamber and maintains their present role without diminution or alteration. … A decision made at a hearing of an appeal in this chamber will normally be dealt with by a three member panel of one judge, one service member and one medical member".—[*Official Report*, Commons, 16/10/08; col. 51WS.]

The Government changed their mind and retained a separate chamber. I moved my annulment Motion but did not divide on it.

Similar tribunals in Scotland and Northern Ireland remain tripartite. It would be an immeasurable disadvantage to have dissimilar tribunals to judge claims. Will the Minister assure the House that the 2008 tripartite tribunal arrangement for England and Wales is to be continued by this Government without variation or diminution?

8.41 pm

Baroness Scott of Bybrook (Con): My Lords, our country is rightly proud of and grateful to our Armed Forces, both those serving and those retired, as well as their families, and I thank the right reverend Prelate for bringing this debate to the House. First, it is not enough for us just to be proud and grateful; we need to give the covenant the attention that it deserves, and we have a moral obligation, at both a national and local level, to support these men and women and their families, to ensure that they are treated fairly and are not disadvantaged from serving their country. The covenant is there to do just that, yet it must not be seen as just an event, but rather an embedded way of how we do things.

In Wiltshire, we have a large military presence. I declare my interest as leader of the local authority. By 2020, there will be 19,000 Army personnel in the county, so it is perhaps easier for Wiltshire, as opposed to some other areas, to ensure their importance in our communities. For this reason, I believe that it is vital that all our policies as a local authority take account of the particular needs of the military community. For example, there are policies on areas such as: housing allocation; school admissions; the council's human resources policies to encourage and support reservists; targeted fostering campaigns to encourage military families to consider fostering; working with the Army and local employers to support transition into work, ensuring that service leavers are well equipped with the skills necessary for civilian life when they leave the military. However, there is much more that we can do, even in a place such as Wiltshire. Interestingly, the biggest challenge is always the continued communication to ensure that the public, private and voluntary sectors understand the needs of the military community and that the military community understands what is available to it.

[Baroness Scott of Bybrook]

My concern is that in those areas with little clear military presence, it is often more difficult to identify veterans and families so that they get the same consideration. In such circumstances, this relies on the local authority community and the Local Government Association to have a really strong role in ensuring that there is an understanding across all local authorities of their role to deliver the promises stated in the military covenant and a dissemination of good practice in local authorities.

Part of the problem is data, particularly on the veterans; those data are very difficult to collect. In Wiltshire, we understand that 12% of our population are veterans, but I think that it could be higher. What are the Government's latest views on the Royal British Legion's campaign, Count Them In, a campaign to ask for a question in the 2021 national census about veterans' status? This would be of enormous help to local authorities in understanding their communities better.

The covenant is working well in many places, but we must not be complacent. This document must not just be signed; there must be a challenge to ensure it is embedded in policy at both national and local level for our service men and women.

8.45 pm

Baroness Dean of Thornton-le-Fylde (Lab): My Lords, I thank most sincerely the right reverend Prelate for this evening's debate. It is a long time since we had one on the covenant and I very much welcome it.

The covenant says:

"The first duty of Government is the defence of the realm. Our Armed Forces fulfil that responsibility on behalf of the Government, sacrificing some civilian freedoms, facing danger and, sometimes, suffering serious injury or death".

It is not a bureaucratic document; it is a compact between the Government, on behalf of the nation—supported by local authorities, a lot of agencies and, indeed, companies who sign up—and our Armed Forces personnel. A substantial number of these personnel do not even know that the covenant exists, so this evening's debate is terribly important. We have a big defence debate on Thursday, and our Armed Forces personnel are absolutely central to our nation's defence.

I was chairman of the Armed Forces' Pay Review Body for six years and I know that when you talk to our Armed Forces personnel about the covenant a lot of them just laugh. They do not know what you are talking about or, where they do know about it, they feel it is not being met. What they want to know is how their family is being looked after back at home while they are serving in an operation. Are they getting decent housing? That is central to the covenant.

I recognise that there has been a lot of progress, but there is an awful long way to go. It might be a good idea, in considering where we are, to actually ask the serving Armed Forces personnel themselves what they think about the covenant. Is it working? Is it successful? At the same time, we could ask the veterans as well. This might be a worthwhile thing to do, perhaps asking the Armed Forces' Pay Review Body to carry it out in its annual visits.

8.47 pm

Lord Browne of Belmont (DUP): My Lords, I congratulate the right reverend Prelate the Bishop of Portsmouth on securing this important debate. I declare an interest as a member of the Reserve Forces and Cadets Association, Northern Ireland, and as a trustee of the Somme Association. I fully concur with the view that the military covenant is a necessary and important support for serving personnel, veterans and their families. I firmly believe that we need to ensure that both the covenant and associated initiatives are effective vehicles for delivering on their important aims.

One important element of the covenant in Great Britain is the community dimension focused around local authorities, which are responsible for housing, health and education. However, there is a problem in Northern Ireland in that the local authorities do not possess any of these powers. Unfortunately, the political constraints in Northern Ireland remain an impediment for full implementation. However, it is welcome that Northern Ireland is set to secure a place on the covenant reference group and I am pleased that the work of the Veterans Support Committee in Northern Ireland is gaining traction. Its primary focus is to pragmatically deliver, in spite of the local constraints.

In conclusion, I would be grateful if, in his closing remarks, the Minister could give assurance that sufficient resources will be made available so that the Northern Ireland Veterans Support Committee can continue its good work and fully realise its aspirations.

8.49 pm

Lord Blencathra (Con): My Lords, it is impossible to deliver a balanced discourse on this important subject in two minutes, so let me get off my chest what I believe are some grave injustices which are making a mockery of treating our former soldiers with fairness and respect. Take the case of a former soldier who fired at an armed terrorist,

"whilst bullets rained down in all directions".

He either fired or waited until the IRA terrorist had killed the other soldiers on guard duty. That soldier received a "certificate of appreciation" from the GOC Northern Ireland—but now he has been questioned about committing possible murder in that attack, which happened in 1972. The soldier is aged 75 and is a Chelsea Pensioner. What in the name of God has happened to decency, justice, fairness and common sense when we are interrogating Chelsea Pensioners for doing their duty to this country?

But it gets worse; two former soldiers are being prosecuted for the alleged murder of IRA killer and terrorist Joe McCann. The soldiers were investigated at the time and were rightly cleared. Will they get a fair trial? Of course not. Of the three soldiers who opened fire that day, one has since died and two RUC officers who may also have fired cannot be found. There are no forensics linking the shots to any particular soldier, so no one knows who actually fired the shots—but that does not matter to the Northern Ireland prosecution service. The Northern Ireland prosecution service is headed by Barra McGrory, the former lawyer of McGuinness and Gerry Adams. You could not make this up if you thought about it.

As the former soldier said, he feels that he is being treated like a terrorist. But of course, he is totally wrong in that regard. If he had been an IRA terrorist, he would have been granted immunity by Tony Blair in one of the grubbiest deals that has ever been done by a UK leader. No wonder that soldier says that he feels betrayed by the Government, with all IRA killers granted immunity and more than 1,000 soldiers being investigated for possible crimes against them. He says, "I'd like a Minister to stand up in Parliament and say something". I know that my noble friend is not permitted to do that and that it is not his department's responsibility. That is why I am making this little speech tonight. I am ashamed of what is being done to those brave men who have served us so well. The time has come to stop this betrayal of our soldiers, and to stop it now.

8.51 pm

Baroness Smith of Newnham (LD): My Lords, I thank the right reverend Prelate for initiating this important debate. The BBC may have perfected the art in a long-running television series called "Just a Minute", in which contestants are required to speak for a minute without hesitation, repetition or deviation. They sometimes make that minute go on for a very long time indeed. On Christmas Day that series celebrated 50 years of transmission. The fact that we are constrained to two minutes is the sort of thing that causes frustration in your Lordships' House. It is testament to the importance of this topic that so many Members wish to speak in this debate. The Minister may like to consider initiating a longer debate in government time on the 2017 report and the Armed Forces covenant. Our Armed Forces are vital to the security and safety of our country. We owe it to them to allocate sufficient time to such a debate.

We all express our gratitude to the Armed Forces. Like the noble Baroness, Lady Hodgson, I am a member of the Armed Forces Parliamentary Scheme, and so have seen the work that our Armed Forces do but also some of the stresses that membership of the Armed Forces puts on them and their families. Longer and ever more frequent deployments raise questions for families. Should service men or women come home mid-tour if they have a brief opportunity to do so, or will that unsettle the children? All sorts of things need to be thought about. Some of the challenges of being in the forces are inevitable and there is little we can do about them, but others can be dealt with. That includes accommodation in particular. The summary report suggests that the Government are looking very closely at this. CarillionAmey has not performed well. The detailed report suggests that our service men and women are still dissatisfied with maintenance. What are the Government doing to deal with this?

8.53 pm

Lord Bilimoria (CB): My Lords, not one member of the UK Armed Forces was killed in operations in 2016. It was the first time since 1968 that no one had died—although, sadly, there were deaths on exercises. The Chilcot report exposed the way in which the MoD and Ministers ignored the strict controls known as harmony guidelines on the frequency and length of operational tours of duty that are there to protect the physical and mental health of our troops. Will the Minister talk to us about these guidelines?

The Chilcot report also revealed that in 2006 the then Sir Richard Dannatt, who was then commander-in-chief of UK land command, said:

"As an army, we are running hot, and our operational deployments are well above planned levels … Quite properly, we often talk about an implied contract—the 'military covenant'—that as an army we have with our soldiers and their families and I fear that it is somewhat out of balance".

Policy Exchange, in its report *The Fog of Law*, says that,

"human rights laws mean British troops operating in the heat of battle are now being held to the same standard as police officers patrolling the streets",

of London. Is this applying the covenant? Surely, when it comes to our troops we should be applying IHL—the Geneva conventions—with primacy over human rights laws. Does the Minister agree?

I thank the right reverend Prelate for initiating this debate. Armed Forces families are living in squalor, with leaking roofs and broken toilets. The latest covenant report admits to this. A poll commissioned by SSAFA found that,

"seven out of 10 wanted to see more support given to veterans".

It is so important that veterans are part of this.

The introduction of the Armed Forces covenant is so positive but it lacks bite. It provides excellent guidance but there is no guarantee of enforcement. Can the Minister tell us how well this is being enforced by councils around the country?

To conclude, our servicepeople are not mercenaries. They do not fight for money but to serve our country and because of appreciation. It is great that the covenant is enshrined in law, but what are the Government doing to publicise this covenant report every year? Doing so will help morale and recruitment. We can never take our services for granted. The covenant is a promise by the nation, and we must always appreciate the amazing and priceless service of our troops, and the sacrifice they make.

8.56 pm

Baroness Sugg (Con): My Lords, it is an honour to follow the noble Lord for my second speech in this Chamber, as I did for my maiden speech. I hope to learn from him how to fit in so much content in such a little time.

Tonight I will focus on military spouses. They make a significant personal sacrifice to be able to effectively support their partners and families, both practically and emotionally. It is important that we publicly recognise this contribution and continue to improve the support and assistance provided through the covenant and the work of many government departments.

One area on which we can make progress is practical and effective assistance in finding employment. A recent grass-roots survey of 2,000 military spouses by Sarah Stone, herself a military spouse, shows that 84% of military spouses would like to be working, but only 58% are. Many feel penalised for being a military spouse. I quote one of the responses:

[Baroness Sugg]

"In the first 5 years of marriage we were required to move 4 times—abroad twice. I had no chance of holding onto, never mind developing, my career. With a degree and piles of experience, I am forced to take minimum wage jobs to get by. It is soul destroying".

We should ensure that we are doing all we can to help those who want to work—for their own sake and for the national economic picture. This is a hidden pool of talent: 70% have management experience and 35% have professional qualifications. An excellent example of real, practical help is Recruit for Spouses, an independent social enterprise started by Heledd Kendrick. Recruit for Spouses has seen many examples of spouses who have been turned down for a job because their partner is in the military, or who have lost a job because of their sudden need for flexible working when their partner has been sent away at short notice. More can be done to inform employers on the potential of employing military spouses, and to assist them in increasing flexibility.

Improving communications around the covenant is a continued challenge, acknowledged in the latest annual report. The excellent new covenant website provides a one-stop shop for information and advises on best practice, including for spousal employment, but we must ensure that this information gets to the people who need it and expand and improve this resource. I welcome the MoD's spouse employment support trial, and I look forward to seeing its findings shape future policy. Of course, we should acknowledge the impressive work done by forces charities and families federations in supporting military families.

Military spouses face a set of unique challenges. As well as recognising the often unacknowledged contribution and sacrifice they make, we must ensure that the covenant really delivers for them, and I would welcome more focus on their particular needs in future annual reports.

8.58 pm

Lord Rogan (UUP): My Lords, the Armed Forces community in Northern Ireland numbers over a quarter of a million people, including serving personnel, veterans and their families and people who have served from the Second World War right up to more recent conflicts in Northern Ireland and around the world. They have unique needs in terms of education, healthcare and social housing, and the Armed Forces covenant is an appropriate framework for addressing those needs. It therefore saddens me to say that Northern Ireland lags behind the rest of the United Kingdom with regard to the implementation of the Armed Forces covenant. While Scotland has been effective in funding bespoke services for veterans and Wales has put in place mechanisms for fast-tracked access to the NHS, no such action has been taken by the Northern Ireland Executive. In fact, because of political disagreement between the DUP and Sinn Fein/IRA, the Northern Ireland Executive are not currently represented on the covenant reference group, which means that Northern Ireland does not have oversight of, or the ability to scrutinise, how funding from the £10 million per annum covenant fund is spent.

We are the only part of the United Kingdom not represented on the reference group and have therefore waived our opportunity to influence decision-making. The consequence is that service personnel, veterans and their families in Northern Ireland are disadvantaged compared with their counterparts in other parts of the United Kingdom. I find this wholly unacceptable.

Appointing a representative to the reference group would not cost the Northern Ireland Executive a penny. It would give our Armed Forces champions on local councils someone to work to, and it would provide a valuable link between Stormont and Westminster, ensuring that Northern Ireland receives its fair share of funding for those who serve or have served and their families.

I therefore use this opportunity to call upon the Northern Ireland Executive—or perhaps I should address this to the new Executive, if and when they are functioning—to nominate a representative to the covenant reference group so that we can deliver fairness for our Armed Forces community in Northern Ireland.

9.01 pm

Baroness Redfern (Con): My Lords, I am pleased to have the privilege this evening to highlight and champion the Armed Forces covenant, and I thank the right reverend Prelate for initiating this debate. I declare my interest as leader of North Lincolnshire Council, as set out in the register of interests.

This debate provides an opportunity to reflect on the good progress being made but it is also an opportunity to hear about best practice throughout the UK. As we know, the covenant is a promise by the nation to ensure that those who serve and have served, together with their families, are treated with fairness and respect. It is particularly important that they are not disadvantaged as a result of their service.

My authority is proud to have signed the covenant on 19 September 2012. Since then, it has upheld the principle of promoting the fact that it is an Armed Forces-friendly organisation. As we know, there are 15 themes within the covenant but, in the time allotted, I should like to focus on just three elements: housing, work opportunities and business support.

Everyone needs good housing and a home to call their own, so included in the aims and objectives of the Homechoice Lincs policy is a recognition of the contribution made by the Armed Forces. If members of the Armed Forces are made statutorily homeless or if they have urgent medical or welfare grounds for moving, they have top priority. Importantly, members of the Armed Forces and former service personnel are treated as having a local connection if their application is made within five years of discharge. Bereaved spouses and civil partners of members of the Armed Forces leaving service family accommodation following the death of their spouse or partner are also treated as having a connection, which is very important.

Our action station, situated near the main shopping precinct, offers support with CVs, job searches, interview skills and techniques, the use of computers and IT. Dedicated advisers can also offer more structured one-to-one plans and work with individuals to help

them gain employment and work experience, as well as build confidence. The action station also offers DHP advice for those who have various financial difficulties and it works with them to help them gain financial stability.

Last November we pledged to promote the covenant to our suppliers through procurement, signposting suppliers and prospective suppliers to the covenant using digital and web media, as well as procurement resource materials. At the end of this month we will invite the council's construction partners to sign the pledge, and a wider promotional programme will then follow. As part of the FOSO, we held a jobs fair, to which serving Armed Forces personnel and veterans were invited, and local employers were there to offer live vacancies. I think that real progress is being made in meeting the challenges brought by service life so that no member of the Armed Forces community faces disadvantage.

Finally, the essence of today's debate is not just to note where we are now but to demonstrate how the Armed Forces covenant is a vehicle for today and tomorrow, spreading covenant delivery best practice across the UK.

9.04 pm

Baroness Jolly (LD): My Lords, I too would like to join others in thanking the right reverend Prelate for instigating this fascinating debate and for his outline of the effects and benefits of the covenant. I will speak on veterans' health. Many men and women leave the Armed Forces and have no problems as a result of their service, and they integrate and assimilate into civilian life happily. However, others do not have that same benefit. Local authorities can be signatories to the Armed Forces covenant, but NHS bodies cannot. Veteran health is a responsibility of the NHS, not the military. Once they leave the service, veterans can drop out of the system.

When we think of veterans, it goes almost hand in hand with thinking of the Royal British Legion. As the noble Baroness, Lady Scott of Bybrook, stated, it has called for two distinct changes in population data collection. First, it calls upon GPs to ask a new patient to their list whether they have served in the Armed Forces. This helps the GP to understand what issues might arise, knowing their background. Secondly, it requests that a new question is added to the census, again asking whether an individual has been a member of Her Majesty's Armed Forces. These measures make planning easier for local authorities, which have the responsibility for drawing up a joint strategic needs assessment on health, as well as their public health duties. These were granted under the Health and Social Care Act 2012.

Local authority public health duties include sexual health services, NHS health checks, health protection and a certain number of discretionary services. These are dependent on the local population and can include alcohol and drug abuse services, smoking cessation services, public mental health programmes and dental public health. These are areas in which we know that many veterans have a defined need but, unless the local authority knows about the population, it cannot plan.

Will the Minister give some indication of where in the corridors of Richmond House, or perhaps the Cabinet Office, the Royal British Legion request on the census and on GP registration has reached and when a decision will be made?

9.07 pm

Lord Tunnicliffe (Lab): My Lords, I thank the right reverend Prelate the Bishop of Portsmouth for securing this debate. It is fortuitous that it comes shortly after the publication of the covenant's annual report. In its submission to that report, the Royal British Legion says:

> "During this year we have encountered some confusion as a result of the Covenant rebrand and use of the term 'treat fairly' rather than the principles of 'no disadvantage' and 'special treatment'. We would welcome both clear and regular reiteration from government of the enduring principles of the Covenant, and the prominent inclusion of the wording of the Covenant online".

I agree with the legion. I deplore the softening of the covenant's primary statement from "no disadvantage", which is in part a measurable concept, to the much less precise "treat fairly". Will the Minister accede to the legion's proposals?

The biggest practical problem that emerges is housing. This includes for serving members and their families, for which the latest *UK Regular Armed Forces Continuous Attitude Survey* shows a substantial decline in satisfaction, but it is also particularly important in the transition to civilian life. The Government made an important statutory intervention by introducing the Allocation of Housing (Qualification Criteria for Armed Forces Personnel) (England) Regulations 2012. The regulations specifically require of a housing authority that the "local connection" may not be applied to persons who are serving in the Regular Forces or have done so in the five years preceding their application; to members or former members of the Reserve Forces suffering from a serious injury, illness, or disability which is wholly or partly attributable to their service; or to bereaved spouses or civil partners leaving Ministry of Defence accommodation following the death of their spouse or partner where the death is wholly or partly attributable to the spouse or partner's service.

I have looked into the housing allocation policies in my local area and found that performance varies between complete compliance in Wokingham and Bracknell, weak partial compliance in Rushmoor, formally Aldershot and Farnborough, and no mention of this regulation whatever in the policies of Windsor and Maidenhead. What action will the Government take to secure complete compliance in all English housing authorities of these important regulations, which seek to secure the covenant's fundamental "no disadvantage" rule?

9.09 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, before I respond, I am sure that the House will wish to join me in paying tribute to Lance Corporal Scott Hetherington of 2nd Battalion The Duke of Lancaster's Regiment, who died while on operations in Iraq on Monday 2 January 2017.

[Earl Howe]

The covenant is a big subject and time is unfortunately short, but I begin by thanking the right reverend Prelate the Bishop of Portsmouth for securing this debate and providing us with the opportunity to examine how effectively we, as a nation, are repaying the very great debt that we owe to our brave service personnel and their families. This is a debt that we can never repay in full, but we can at least begin to honour it by ensuring that those who sacrifice so much in our defence are treated with fairness and respect.

That is exactly why the Armed Forces covenant was introduced—to set down, unequivocally and in law, the nation's pledge that former and current members of our Armed Forces—including reservists—and their families, should suffer no disadvantage because of their service to our nation and that special provision may be appropriate for those who have given so much, such as the injured or bereaved. That is why we are working tirelessly across government to implement and improve the Armed Forces covenant, drawing together society so that we can all fulfil our moral obligation to our military family.

A seminal part of that process is, of course, the publication of the *Armed Forces Covenant Annual Report*. It is a definitive guide to the covenant that outlines its key principles and achievements, explains what actions have been undertaken over the past 12 months and sets out targets for the coming year. The fifth and most recent report was published just last month, on 15 December, and I am delighted that it demonstrated considerable progress across government in the work that we are doing to support service personnel, their families and veterans, most notably in the key areas of healthcare, education and accommodation.

For example, 2016 saw NHS England launch its veterans' trauma network, a new system to provide an extra level of support for trauma-recovering veterans and transitioning service personnel, so that their specific and lifelong healthcare needs are met more efficiently. Meanwhile, the Department of Health has developed a new integrated personal care for veterans system to help the most seriously injured service personnel and veterans transition into civilian life. In the devolved Administrations, NHS Scotland established 19 Armed Forces champions, while the Welsh Government provided annual funding of £585,000 to Veterans NHS Wales to improve support and treatment for veterans suffering from mental health issues.

On education, the Department for Education allocated around £22 million in service pupil premium payments to support the pastoral needs of over 73,000 service pupils in state schools in England, and it changed the rules for student funding so that service personnel and their families can now access student funding for distance learning courses while posted overseas. On accommodation, the Department for Communities and Local Government extended the period within which ex-service personnel and surviving partners are given priority for government-funded shared ownership schemes from 12 to 24 months after service.

Those are only some of the cross-government achievements, but they all serve as examples of just how far we have come since the Armed Forces Act 2011 enshrined the covenant into law. The challenge now is to build on this momentum, which is why the Government are establishing a new inter-ministerial group ensuring that all government departments continue to work together to fulfil the covenant vision. But it goes without saying that the MoD's efforts remain central to achieving all of this and my department continues to work hard to galvanise each and every one of us into action, as the House would hope and quite rightly expect.

Let me turn now to exactly what defence has been up to over the past year. Last year saw the launch of a new UK Armed Forces families strategy setting out how we intend to improve the lives of service families in the round by addressing issues including housing, employment, education, health and welfare. The strategy is underpinned by an action plan, developed alongside the single services and families federations, and a £4 million commitment over the next two years to fund projects supporting families of service personnel in times of crisis or distress.

When it comes to supporting our veterans community, I am glad to reassure my noble friend Lady Scott and the noble Baroness, Lady Jolly, that the MoD is working closely with the Office for National Statistics and the Chief Statistician to include a question on veterans in the national census so that there will be a fuller picture of where former service personnel are in the UK. The Armed Forces Covenant Fund has £10 million each year to support the covenant by funding projects that address specific priorities, one of those being the creation of a veterans' gateway. The aim of the initiative is to provide a single point of contact via a fully transactional website, mobile app and telephone number which will help veterans of all ages find and access specific advice and support for a whole host of issues.

That said, I should stress that most service leavers continue to make a smooth transition to civilian life. The Career Transition Partnership provides one-to-one guidance, training and employment opportunities to about 15,000 service leavers. Its success rate is significant: 95% of those who want to find employment do so within six months of leaving the Armed Forces, which compares to a 73% employment rate in the rest of the UK population. All personnel, without exception, are eligible for this support for two years after their date of discharge.

Underpinning this work on veterans and families is a concerted drive to ensure that the letter and the spirit of the covenant are applied correctly and consistently across the UK. Our goal is that anyone from the Armed Forces family based anywhere in the UK should know what they can expect from local authorities and their partners in the local community in terms of support and services. At the same time, front-line staff in any local authority should know just what is expected of them under the covenant. This is not always the case, as the noble Lord, Lord Tunnicliffe, rightly noted.

With this is mind, the Local Government Association, in partnership with the Forces in Mind Trust, last year commissioned a review with more than 400 representatives of local authorities to identify areas of good practice and create a covenant toolkit. This will help to raise the standard of covenant delivery across the UK. As I

speak, the covenant team is developing an action plan to implement the recommendations of that review across the UK. And on the subject of consistency across the UK, to address a point raised by the noble Lords, Lord Browne and Lord Rogan, I am delighted that the Northern Ireland Executive recently reached a consensus on sending a representative to the Cabinet Office-chaired Covenant Reference Group—a body that is key to co-ordinating the efforts of all covenant stakeholders across the nation.

At a more tactical level, the MoD has been working to resolve some of the practical difficulties encountered by our service personnel in their day-to-day lives, particularly in the commercial field. For example, in a victory for common sense, 47 of the UK's biggest banks and building societies have now signed up to an initiative that will mean that service personnel posted away from home will be able to rent out their property without having to change to a buy-to-let mortgage, saving them time and money. Meanwhile, 86% of the UK's motor insurance industry has now committed to waive cancellation fees and preserve no-claims discounts for up to three years when personnel and their families are posted abroad. More than 1,300 businesses and organisations have now signed the Armed Forces covenant.

Finally the team has been focusing on a subject raised by the noble Baroness, Lady Dean: improving communication about the covenant. Trying to co-opt the whole of society into delivering our covenant vision is nigh on impossible, as she said, if people do not understand what is being asked of them. Likewise, ensuring that members of our military family can take full advantage of the covenant is impossible if they do not know what is on offer. So 2016 saw a rebranding of the Armed Forces covenant. In April we launched a new website to make information about the covenant easier to find. On the ground, we saw the introduction of a 200-strong network of Armed Forces covenant champions across Armed Forces units. These military champions act as the focal point for their local community, helping to deliver information about the covenant directly to personnel and their families.

I will try to answer as many questions raised by noble Lords as I can. I will write on those that I do not address. I am happy to reassure the noble Lord, Lord Tunnicliffe, and the noble and gallant Lord, Lord Craig, that there has been no softening of the Government's primary statement, which refers both to fair treatment and to no disadvantage.

The right reverend Prelate raised mental health. The best available evidence suggests that the mental health of veterans is as good as or better than that of the rest of the civilian population—but where problems occur, the highest standard of support is made available. More than £13 million from the LIBOR fund has been awarded to programmes specifically supporting mental health in the Armed Forces community.

A number of noble Lords referred to accommodation. We continue to invest in improving accommodation for our people and their families. Standards have significantly improved. Regarding social housing for service leavers, the MoD works closely with the Department for Communities and Local Government and the devolved Administrations to ensure that service personnel do not experience any disadvantage as a result of their military service when applying for social housing. The MoD referral scheme assists service leavers and their families with social housing applications following discharge.

Considerable help is available on education and schools for service children; I will write on that subject. My noble friend Lady Sugg rightly emphasised the contribution of Armed Forces families and spouses. Again, I will write on that subject.

I listened with great interest to my noble friend Lord Blencathra on the Northern Ireland legacy issues. I can tell him before I write that the Defence and Northern Ireland Secretaries are working to create a Stormont House Agreement Bill to ensure that veterans are not unfairly treated or disproportionately investigated.

The noble Lord, Lord Browne, asked whether I could give reassurance that the Northern Ireland Veterans Support Committee will be able to continue its good work. I cannot commit funding from the Dispatch Box at the moment, but I will find out the details and write to him.

The noble and gallant Lord, Lord Craig, asked about the composition of war pensions and compensation tribunals. I have today written to the noble and gallant Lord on this subject. In brief, it is something that we will look at as part of the wider MoJ-led transformation of tribunals. It is very much a matter in its focus.

The noble Lord, Lord Bilimoria, asked about harmony guidelines. We are working to ensure that the three services' harmony guidelines are met, but I fear there will continue to be occasions when that is not possible. Our job is to minimise those occasions and that is what we are trying to do.

My time is up. I hope that the House will accept that a great deal is going on. There is more that we can do and room for improvement, but we remain steadfast in our commitment to work with all our partners on removing disadvantage, instilling fairness and respect, and meeting the unique needs of our Armed Forces community.

Higher Education and Research Bill

Committee (1st Day) (Continued)

9.23 pm

Clause 1: The Office for Students

Amendment 3

Moved by ***Lord Lipsey***

3: Clause 1, page 1, line 5, leave out "Office for Students" and insert "Office for Higher Education"

Lord Lipsey (Lab): My Lords, I chair Trinity Laban Conservatoire of Music and Dance, which is part of the university sector. I feel, rising at this stage, a bit like an actor rising to play the porter in "Macbeth". There have been hours of drama and extraordinary debate about matters of deep principle. I have to make a speech, if I can, that at the same time is amusing but makes a serious point. I am supposed to do it when

[LORD LIPSEY]
three-quarters drunk. Unfortunately, I am not three-quarters drunk—there was not time during the dinner break to get that way—so I hope your Lordships will forgive me if I try to square this circle as the porter did.

A well-reputed blog of the higher education sector called, even more peculiarly than the office, Wonkhe, this morning said that there was no chance that the House of Lords would accept this amendment because the resulting body would be called OfHE. I must say that I thought that that was quite a strong argument for the name that I was proposing because "offie" is somewhere you really want to go down to—"go and buy a bottle from the offie"—whereas going for a meeting at the Office for Students sounds extraordinarily tedious and dull. However, it is not on that that I am relying in going for a change of name.

I say "going for a change of name" because I am not convinced that the name that I propose is in every regard absolutely perfect. It could be said that there are many things in higher education that lie outside the field of the OfS and there are certainly some things that lie within it—so I do not guarantee that the alternative that I proffer this evening, Office for Higher Education, is absolutely perfect. All I would say is that it is a great deal more perfect than the option that the Government have presented us with: OfS. I have no idea where "OfS" came from. I envisage in my "Yes Minister" mind a meeting with a special adviser there who said, "Yes, Minister, we could call it anything you like, but we did jolly badly in those university towns at the last election. OfS, so we appear to be on the side of students, would be a good title"—and these things tend to stick.

But the name is clearly inappropriate because much of what it is planned that OfS shall do has very little to do with students. Is registering universities a job for the OfS? Is removing the title from certain universities done in the interest of students? Is fee setting done in the interest of students? Actually, if you come to think of it, the strongest opponents of the Bill have been students, who are now trying to engineer a revolt against the teaching excellence framework. So if we must use this sort of title, perhaps it would be better to call it the Office against Students—which is the effect that I expect this Bill to have; I expect it not to be a successful Bill from the point of view of furthering the student interest.

More seriously, we have to be very careful before importing into our legislation titles which serve a propaganda purpose—who can be against OfS, against students or, in America, against patriots? Before long, we find that the whole of political language has ceased to be neutral in legislation and is starting to slip off into a language from the post-truth era where the titles of things no longer represent their reality but rather a sort of Orwellian other world in which things no longer mean what they are supposed to mean. Such propaganda reasons are not good reasons for the title of an institution.

At this time of night I do not want to detain the Committee further; this is a probing amendment to see whether the Government are at all interested in finding a better name. In the meantime, I will offer unconditionally to any Member of the House who can come up with a better title than I have—Office for Higher Education—a bottle of champagne, provided they can at the same time convince the Minister to accept it. I beg to move.

Lord Lucas (Con): My Lords, I am a student activist in these things. If we are going to change the title, let us just call it OFFS. That is a suitable acronym. I am sure the noble Lord, Lord Lipsey, knows it well. His would be "Ofhed", and I think the Minister would be that if he accepted the amendment.

9.30 pm

Baroness Bakewell (Lab): I support my noble friend Lord Lipsey in deploring this title. Words are significant. My noble friend mentioned George Orwell. He knew how slippery language can be. In the fake news and post-truth era, getting words exact matters more than ever. We know that in the light of the Bill students could be called consumers and providers could be entrepreneurs—business men or women. We know that language is loose and being used loosely in politics generally. Hard, soft—when have these words ever been as powerful as they are today? We have to be very thoughtful about this title.

We have spent the day discussing a whole range of activities—knowledge, research, wisdom, range of scholarship, academic life, the global achievements of our universities—and the best we can come up with is the Office for Students. What about the rest of us? What about all the universities and their authority? What about the range of scholarship and achievement of which we are so proud? Finally, on a rather silly note, are the Government really pleased that this will become known as "Ofstud"?

Baroness Garden of Frognal (LD): I, too, support the noble Lord, Lord Lipsey. The Office for Students was always a rather strange title for this all-encompassing and all-powerful body. It was particularly ironic because it took quite some effort to get students in any way involved with it or represented on it. The Office for Higher Education seems an eminently sensible title for it. As the noble Baroness, Lady Bakewell, said, that covers all the aspects that this strange body is going to be responsible for. The Minister should think very seriously about changing the title.

Baroness Wolf of Dulwich (CB): My Lords, I agree that the Office for Students is a very strange name for this body. I take this opportunity to remind anybody in the House who does not already know how very opposed to much of what it is going to do most of our students are, and publicly so. Although the automatic response one gets when this is pointed out is, "Oh, they just don't want their fees put up", that is not the sole thing they are complaining about—not at all. I also take this opportunity to put on record my appreciation of the University of Warwick student union, with which I have no connection whatever, which wrote an extremely well-thought-out critique of the Bill back in June, which was the first thing to alert me to many of the things that I have become very concerned about since. I agree with the noble Lord, Lord Lipsey, that

this is not an appropriate title and it would be very good if we could come up with another—but I do not think I will be collecting his champagne.

Lord Stevenson of Balmacara (Lab): My Lords, of course the serious side to the light-hearted comments is that the name will conceal as much as it will reveal about what is going on here. I understand entirely my noble friend Lord Lipsey's wish to raise this in a relatively light-hearted way and I do not want to be a party pooper but we need a lot more certainty about what exactly this new architecture, which was one of the great calling cards of the Bill when it was first introduced, is actually going to do and deliver.

A number of amendments further down the list will bear on this and we may well need to return to the name once—and only once—we have decided what we are going to have. For instance, we are now told that the Office for Fair Access will have a slightly different role in government amendments due to be discussed on the next day in Committee. That will change the nature of what the OfS does because, if the government amendments are accepted, it will not be allowed to delegate powers that would normally be given to the Office for Fair Access to anybody else, and it will have to ensure that the director of the Office for Fair Access has a particular role to play in relation to access agreements that are created under that regime. In that sense, the power of the OfS as originally conceived was already diluted at the Government's own behest. We need to think that through before we make a final decision in this area.

The question of how registration is to take place is a quasi-regulatory function. We have an elephant parading around the Bill—it is supposed to walk around in a room but perhaps we ought not to extend the metaphor too far—in the role of the CMA, to which I hope the Minister will refer. If we are talking about regulatory functions, we need to understand better and anticipate well where the CMA's remit stops and starts. The Minister was not on the Front Bench when the consumer affairs Act was taken through Parliament last year, but that Act is the reason why the CMA now operates in this area. It is extracting information and beginning to obtain undertakings from higher education providers regarding what they will and will not do in the offers they make through prospectuses, the letters sent out under the guise of UCAS, the obligations placed thereby on the students who attend that institution and the responsibilities of the institution itself. I do not wish to go too deep into it at this stage because there will be other opportunities to do so, but until we understand better the boundaries between the Office for Students and the CMA, it will be hard to know what regulatory functions will remain with the OfS and what name it would therefore be best put under. "Office" is common to many regulators but the letters in acronyms can also be changed.

We are back to where we were on the last group: we are not yet sure what the assessment criteria and regimes will be, but perhaps we know more about the criteria than the regime. It is one thing if a committee is to be established with responsibility for assessing the fitness to be on the register and the quality of the teaching as provided. But if an independent body were established and called the quality assurance office or some such similar name, as it would be under a later amendment, it would be doing a lot of the work currently allocated to the Office for Students. I do not have answers to any of these points. I am sure that the Minister will give us some guidance but it would be helpful, when he is ready and able to do so, if he set out in a letter exactly what he thinks the architecture might look like and what the justification therefore is for the name.

The most poignant point was that made by the noble Baroness, Lady Garden: that an Office for Students without student representation on it seems completely bonkers. I do not understand why the Government continue to move down this path. The amendment brought in on Report in the other place was one of sorts to try to move towards that. But it is a measure of the Government's inability to grasp the issues here in a firm and convincing way that the person who is expected to occupy that place at the Office for Students, as provided for by the amendment, is somebody able to represent students. It is not necessarily a student, which seems a little perverse. I put it no more strongly than that.

Given that the current draft arrangements in the higher education sector for obtaining metrics relating to the grading of teaching quality in institutions has five students on the main committee and two or three students allocated to each of the working groups set up to look at individual institutions, there is obviously a willingness at that level to operate with and be engaged with students. Why is that not mirrored in the Office for Students? Regarding further use, it is really important that we get that nailed down. If it were a genuinely student-focused body—a provision which many governing bodies have—then the Office for Students might well be the right name for it. But until those questions are answered, I do not understand why the Committee would not accept my noble friend Lord Lipsey's sensible suggestion.

Viscount Younger of Leckie (Con): My Lords, before I start, the Committee might be relieved to hear that my contribution will be somewhat shorter than previous contributions were. I start off, though, by thanking the noble Lord, Lord Lipsey, for his contribution to this short debate. I know how personally committed he is to ensuring that our higher education system is delivering for current and future students, and I value his insight.

This Bill sets out a series of higher education reforms which will improve quality and choice for students, encourage competition and allow for consistent and fair oversight of the sector. To keep pace with the significant change we have seen in the system over the past 25 years, where it is now students who fund their studies, we need a higher education regulator that is focused on protecting students' interests, promoting fair access and ensuring value for money for their investment in higher education. I hope that noble Lords will recognise that the creation of the Office for Students is key to these principles. The OfS will, for the first time, have a statutory duty focused on the interests of students when using the range of powers given to it by the Bill. As Professor Quintin McKellar,

[Viscount Younger of Leckie]
vice-chancellor of the University of Hertfordshire, said in his evidence in the other place,

"the Government's idea to have an office for students that would primarily be interested in student wellbeing and the student experience is a good thing".—[*Official Report*, Commons, Higher Education and Research Bill Committee, 6/9/16; col. 22.]

It is our view that changing the name of the organisation to the "Office for Higher Education" rather implies that the market regulator is an organisation that will answer to higher education providers alone rather than one which is focused on the needs of students. That goes against what we are trying to achieve through these reforms. Our intention to put the student interest at the heart of our regulatory approach to higher education goes beyond just putting it in the title of the body. The Government are committed to a strong student voice on the board of the OfS, and that is why we put forward an amendment in the other place to ensure that at least one of the ordinary members must have experience of representing or promoting the interests of students.

The noble Baroness, Lady Wolf, mentioned that she thought that students were opposed to these reforms that we are bringing forward. I would like to put a bit more balance to that, because there is a wide range of student views about the reforms. There is some strong support for elements of the reforms as well as, I admit, some more publicised criticism—for example, supporting improvement in teaching quality and introducing alternative funding products for students. As I have already mentioned, we made that change at Report stage to make sure that there is greater student representation on the OfS.

The noble Lord, Lord Stevenson, raised a point about the role of the CMA. To reassure him, we will set out more detail later in Committee about the relationship between the OfS and the CMA.

As a regulator, the OfS will build some level of relationship with every registered provider, and one of its duties will be to monitor and report on the financial sustainability of certain registered providers. However, this does not change the fact that the new market regulator should have students at its heart, and we therefore believe that the name of the organisation needs to reflect that. For this reason, and with some regret in withdrawing from potentially receiving the bottle of champagne, I respectfully ask the noble Lord, Lord Lipsey, to withdraw the amendment.

Lord Lipsey: My Lords, I thank the Minister for his reply, but I have to say that if we are going to go on like this, it is going to be very hard pounding. I have great respect for the Minister, and I know he has the interests of education at heart. All he had to say was that the Government are prepared to consider alternative titles before we come back to this on Report and if we can find one better than OfS, they will be happy to consider it and we would all have gone home—if we can get a taxi—happy. Instead, he defended this with some arguments that I do not feel the force of.

The Minister said that if it was called the "Office for Higher Education" it would mean that it was acting in the interests of higher education providers only. Does Ofgas operate just in the interests of gas providers? Of course it does not. These regulators do not work in that way. "Office for Higher Education" is a wholly neutral term and means that it will be active in the interests of all those involved in every way in higher education and will not be just a representative of a particular group.

Incidentally, the Minister said the OfS would be representing a particular group and would be representing students because it is about fairer access. The whole point is that, at the time when people are trying to access universities, they are not students at all, or at least they are only school pupils. That is a very good object for a body of this kind, but is not one that can be said to be in the interests of students.

I really would ask the Minister to think again between now and Report. If he is not able to do so, we will take the winner of the champagne and put it to a vote on Report. I hope the House will support me, because if things like this become controversial, in a political sense, across the Floor of the House, I am afraid we are going to find the Bill very hard to digest. However, I beg to leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 1 agreed.

9.45 pm

Schedule 1: The Office for Students

Amendment 4

Moved by ***Lord Stevenson of Balmacara***

4: Schedule 1, page 70, line 12, after "appointed" insert "(subject to paragraph 4(Z1))"

Lord Stevenson of Balmacara: My Lords, rather perversely, Amendment 4 is a drafting amendment consequential on Amendment 18, so I will start with the latter, which is about the important question of the structure of whatever we are going to call the OfS board, as it is currently named.

Amendment 18 brings parliamentary scrutiny into the question of who should chair this board. A very important theme, although perhaps one for another day, is that the Bill is relatively light in terms of its engagement with the parliamentary process. Although the intention is that the Bill should move away from scrutiny under the Privy Council and other similar regimes, it is not necessarily clear that the will is there on the part of Ministers to provide a different scrutiny arrangement, so we will definitely have to return to this issue. The noble Lord, Lord Lisvane, who is in his place, made a very powerful speech at Second Reading in which he pointed out a number of drafting infelicities in relation to statutory instruments, the use of Henry VIII powers and similar matters. I am sure that the recent report from the Delegated Powers Committee will feature in our discussions going forward and that this is another issue we might need to come back to.

However, I am interested in the Minister's response to the particular question raised by Amendment 18, which is why the Government do not wish the appointment of members of such a key organisation as the OfS to be subject to the scrutiny now commonplace

for many public appointments of this type. As discussed, under the Bill as drafted, this body will have incredible power in relation to higher education, effectively opening and closing universities and deciding who should or should not be preferred. It is inconceivable that there should be no scrutiny other than that of the Minister. It is important that we consider including in the Bill the idea that the chair of the OfS should be subject to scrutiny in the process that is now taking place.

Amendment 5 picks up the themes that I elaborated on in the previous group in relation to student representation. It is not convincing for the Minister to simply say that this area has been dealt with by ensuring that at least one of the ordinary members of the OfS board must be capable of representing students. We are all capable of representing students, but none of us present today—unless I am very much mistaken and more deluded that I normally am—can say that they are an active student and can bring that experience to the table. There are many teachers and others around who I am sure would be prepared to stand up and say they could do it, but I do not think they would want to if they were ever exposed to the full fury of the student body. It seems completely incomprehensible to us that the board should not have a student representative—indeed, there should be more than one.

Amendment 6 would ensure that the related criteria for all OfS board members are taken to be of equal importance. The worry here is that there may be vestigial elements from the current regimes, which have been alluded to in earlier discussions today. There is the sense that research takes precedence over teaching competence, that somehow older universities have more authority than newer ones, and that ones with different missions should be discriminated against. Then, there is the question, which I am sure will be raised during this debate—if not, it has been raised in previous ones—of how we make sure that the very necessary representations from our smaller institutions, conservatoires and specialist institutions are made properly.

It is one thing to have a series of representations and an equitable and appropriate way of appointing people, but quite another to be clear that this is done in practice. The amendment is drafted so that the appointment processes—one hopes they will be of an extremely high standard—ensure that broad and equal importance is given to all the elements that make up our university sector and our higher education providers, and that there should be no perception that a hierarchy exists in respect of any of them.

Amendment 7 makes the point, although I am sure this will happen anyway, that there must be current or recent experience among those appointed. I am sure that would be the assumption, but there is no reason at all to suggest that that is always going to be the case. The Schedule seems the appropriate place to put this provision, rather than in the main Bill.

Amendment 8 suggests that the experience of higher education and further education providers should also be taken into account when appointing board members. We have a tendency to speak about higher education as being exclusively in the existing university arrangements but, of course, further education institutions and other institutions such as those we have been talking about in the last few hours all have a contribution to make to higher education, and it is important that board members reflect that.

I agree with the noble Lord, Lord Lucas, that at least some of the members of the OfS should have experience of providing vocational or professional education. I am thinking here of the University of Law or BPP University, for example, but there are also wider groups that we would need to pick up on. I am sure the noble Lord will make that point when he comes to speak.

Amendment 10 contains a theme that will run in later amendments. We will be addressing ourselves in those amendments to the suggestion that the Bill is too narrowly constructed around traditional university syllabuses in particular, and to a model whereby students arrive at university having completed their school studies at 18 and then spend three years at university before graduating and going on to do other things. The reality is that the median age of students in our British universities is 22 or 23, that many students come in with different previous experiences, and that there is value in that. There is a real sense that the opportunity to build a structure that encourages people to take alternative routes to further education—to take time out to work, or to study while they do other things—has been missed. We need to address that opportunity. Amendment 10 would ensure that widening participation and associated issues are appropriately reflected in the membership of the board.

The final amendment in the group is Amendment 12, which suggests that the Secretary of State should have regard to the experience of higher education employees and teaching and research staff when making appointments. Valued contributions are made from that sector to boards of higher education institutions. Certainly, when I worked in higher education, there was very strong representation from the non-teaching staff—technical, clerical and administrative staff— who all felt that they were participating in the process of governing and managing the university. Why is that not also the case for the regulating body?

I look forward to the debate and to the Minister's response. I beg to move.

Lord Lucas: My Lords, I shall speak to Amendments 11 and 13. I am mostly interested in hearing the Minister's views on these matters. It seems to me that it is important for a board such as that of the OfS to have experience of the main sets of people and tasks that it is going to be faced with regulating. Amendment 11 would ensure that its members had an understanding of what happens in vocational or professional education. That would be very important because some of its charges will be very much in that part of the world.

Most of all, the amendment would ensure that the OfS has representative people who understand how people end up at university. The business of advising school pupils, looking after pupils who are looking for careers, the limitations of that, the sort of information you need on how 16 and 17 year-olds are, which is very different from 19 and 20 year-old students at university—that is vital experience for a board to have. A great deal of what the OfS is doing is concerned with giving information to people who might come to university

[LORD LUCAS]
and providing structures in order that they should be well looked-after when they get there, so it needs an understanding of what pupils are like.

Baroness Bakewell: My Lords, I speak from my background at Birkbeck University on behalf of a sector that has not had much of a hearing today—I hope it will have a hearing throughout further debate on the Bill—which is that of part-time university study and of lifelong learning. It is my conviction that this is the shape of the future and will bulk far larger than is acknowledged in the future lives of people struggling to qualify and retrain in a population who will need retraining in new skills throughout their lives. Part-time education to university level, which is carried out at Birkbeck, is enormously popular with those who do it but, as the Minister will know, has recently suffered an enormous fall in recruitment. This followed the introduction of student fees, and we are examining reasons why that should be so and seeking to remedy them. We need to include in the essence of the Bill the fact that part-time university study is a valid, important and growing sector.

It is for that reason that I have tabled Amendment 5A, which adds emphasis to Amendment 5 by stating that one of the members of the board should be dedicated to the interests of part-time further education. This is very important because we find that a much higher proportion of the students who graduate from Birkbeck are from disadvantaged backgrounds than from any other university. This plays absolutely into the Government's intention of increasing access, so they have a very strong motive to facilitate this kind of education, which has not figured very much in all of today's extensive debate. It deserves a much higher profile and it will reap rewards. It will benefit not simply 18 to 24 year-old students; people are graduating from Birkbeck in their 50s, 60s and 70s with full-scale degrees. They are retraining, they come from every kind of background and they really appreciate the training they get. A dedicated member of the board for further education among part-time students is very much to be desired.

Lord Liddle (Lab): My Lords, I refer to my interest as pro-chancellor of Lancaster University. I very much regret that I was not here for the earlier debates. The reason was that I was present at the funeral of Lord Taylor of Blackburn, who was for many years deputy pro-chancellor of the university I presently chair and, more significantly, played a very important role in the foundation of the University of Lancaster, one of the Robbins universities. He saw that the creation of these universities enabled the extension of opportunity. We at Lancaster certainly think that that is the job we are doing, because of the high proportion of pupils from state schools we have, at the same time achieving high standards of academic excellence. I put that on record and apologise that I was not here earlier.

I very much support the thrust of what my noble friend Lord Stevenson is driving at in his amendments. If the Office for Students is to exist, it must be composed of people of the highest calibre. It must reflect the full range of concerns in higher education—and I very much agree with the speech that the noble Baroness, Lady Bakewell, has just made about the importance of part-time education. That has been reflected, and it is one of the things that I would like us to do far more of in my own institution.

10 pm

I have one reservation about one of the amendments that my noble friend has proposed—the suggestion that the chairmanship of this body should depend on a resolution of either House of Parliament. I do not know what the noble Lord, Lord Norton, a distinguished constitutional expert, would make of that suggestion, but I have grave qualms about the institution of advice and consent procedures in the United States model for public appointments. The tendency of such a procedure is to politicise it rather than to get the best person. In Britain, we are working towards a better compromise on things like the Governor of the Bank of England, by making it possible for appointees or prospective appointees to be examined thoroughly by Select Committees. I would certainly support the idea that the prospective chair of this body should have to defend his or her experience and record before a Select Committee. I very much support the thrust of what my noble friend is saying, as I always do, but with that qualification on that point.

Lord Stevenson of Balmacara: Can I just confirm that that is exactly what I meant?

Baroness Garden of Frognal: My Lords, I add my wholehearted support to these amendments. Further education is all too often the Cinderella of the education world, yet further education colleges do an absolutely phenomenal job across a very wide range of students and subjects, so having them represented on this body is absolutely essential. I also support the adult and part-time education students, who form a critical and very important part of the student body. They have different sorts of views and needs from those who are the typical 18 year-olds going to university.

There is also the point that the noble Lord, Lord Lucas, made about vocational and professional education, which often links very closely with higher education institutions but has a different sort of ethos and different cohorts of people. All these amendments to add to the membership of the OfS board are critical, and I hope that the Minister will look favourably on these amendments.

Lord Winston (Lab): My Lords, I strongly support what the noble Baroness, Lady Bakewell, said about part-time students. We will come back to that subject in more detail during these debates. Of all days, today we should think about that really seriously. London has been brought to a standstill by a transport strike, and it is only a matter of time before the drivers of those trains, not merely the people and guards and the other people on the platforms, will no longer be working, because science and technology is advancing rapidly. That is a model for our society, and people will have to retrain.

In my 15 years' involvement with Sheffield Hallam University, one thing that I have learned above all is that people taking part-time courses have transformed

their lives in gaining skills, coming from relatively manual jobs, or jobs with a low level of skill. It is vital that we find every possibility of supporting those students. I urge the Government to consider that during the passage of this Bill. I also briefly defer to the noble Lord, Lord Lucas, and congratulate him on his interest in school students, which has been long-standing and of great importance.

From my experience, I cannot emphasise enough the lack of aspiration that so many school students have because they do not really believe that they can go to university. That is why it is so important that we have the bridge between school and university which this minor amendment would help to promote. There are all sorts of reasons why that is important. We may have the best school teachers in the world, but so many children go home to a desert where there is no aspiration. Their parents ask them: "Why aren't you going out to work; why aren't you earning money; why aren't you supporting the household?". It is extremely important to find ways of encouraging people from those sorts of backgrounds to understand that they should be considering further or higher education. Having people on this new body who can help universities interface with schools and teachers to give better career guidance would be a blessing and it should be incorporated in the Bill.

Baroness Cohen of Pimlico (Lab): My Lords, it is with great relief that I rise this time to support the amendments proposed by own side; I have confidence in all of them. I also emphasise the importance of part-time students. They are a key part of the business of BPP University—and, like other universities, we suffered a great fall in numbers without changing our offering. We have changed our offering in every way we know how but we are still not increasing the numbers and it will take some work to find out why. In passing, I observe that I have great respect for the work of Select Committees, but I am really not sure that submitting the prospective chairman of whatever this body is going to be called to one is depoliticising the appointment. Select Committees are a fairly political way of doing anything and I do not have much confidence in that suggestion.

Baroness Brown of Cambridge (CB): My Lords, I speak in support of the amendments which relate to the representation of people with experience of non-standard and non-typical students, including part-time and mature students. In particular, I support Amendment 10 in the name of the noble Lord, Lord Stevenson. One very good thing about the Bill and about my discussions with the Minister of State has been the very strong commitment to improving widening participation in higher education. We all know what a fantastic driver of social mobility higher education qualifications are, leading to higher employability, higher earning capacity, better citizenship and even things such as better health in future life. For all these reasons, having a non-executive member on the Office for Students board—in addition, of course, to the Director of Fair Access—who has strong experience of improving equality of opportunity, social mobility and widening participation is, as the noble Lord, Lord Winston, said, crucial.

Baroness Wolf of Dulwich: It looks like I am going to be the last speaker, noble Lords will be relieved to know. I support the general tenor of all the amendments in this group, particularly Amendment 7 and the idea that people's experience should be current or recent. That is extraordinarily important, particularly in an area such as higher education which changes very fast. A number of noble Lords have talked about the importance of further education and the importance of—and decline in the number of—part-time students. We are concerned about these extraordinarily important things, yet it seems that none of the current authorities and institutions which deal with higher education has much idea about why this has happened. We did not intend to have the decline in part-time students that we have. Government after Government have talked of the importance of increasing the role of further education colleges in higher education, because they are central to the availability of part-time courses, retraining and lifelong learning. Yet the role of further education has not in fact increased. The numbers have not increased and the proportion has tended to decline.

So these are real challenges. But it also seems to me that one of the reasons we have got ourselves into this situation is that we do not have enough people with current and recent experience involved at the highest levels of policy-making. Therefore, of all these amendments, I most strongly support the proposal that the Office for Students should look for people to join its board who are deeply involved in the sector in the areas which it is looking for, not people who can tick a box because 20 years ago they were on the board of governors of something. I hope very much that the Minister will take that point away and think about it. I cannot see any way in which it undermines the purposes of the Bill and of government policy. That one small thing might make a big difference to the effectiveness of the Office for Students.

Viscount Younger of Leckie: My Lords, I say at the outset that once again I have shortened my comments, bearing in mind the hour. Nevertheless, these amendments need to be properly addressed, so I hope that the Committee will bear with me.

I reassure noble Lords that the Government are committed to a fair and open appointment process for the OfS chair. The final appointment will be made by the Secretary of State, but the process will allow for scrutiny of the appointment by Parliament. We have previously stated our openness to a committee of Parliament scrutinising the nomination of the chair of the OfS before the final appointment is made. I confirm that there will be this opportunity for parliamentary scrutiny in the appointment of the first chair—for whom the selection process is well under way, as noble Lords may know. I note that the noble Lord, Lord Liddle, agrees that the chair of the OfS should not be ratified by a resolution of Parliament but that there should be parliamentary scrutiny. That is correct, despite some comments made this evening that were not particularly in favour of that.

Amendments 4 and 18 would be a departure from the accepted practice set out in the governance code. It is standard practice for the chairs of regulators to be

[Viscount Younger of Leckie]
appointed by the respective Secretary of State. We believe that our plans for scrutiny are sufficient and that it is right that the Secretary of State should retain the power to appoint the chair of the OfS board.

Throughout the development of this legislation, the Government have engaged and consulted widely with students and their representatives and we are committed to ensuring that this approach is reflected in the final OfS structure and arrangements. We have already amended the Bill in the other place to ensure that at least one of the ordinary members of the OfS must have experience of representing or promoting the interests of students.

As regards the comments just made by the noble Baroness, Lady Wolf, and the noble Lord, Lord Stevenson, requiring one member of the OfS board to be currently engaged in representing students, as proposed by Amendment 5, would narrow the choice of potential candidates for this role. It could potentially exclude someone who has excellent recent experience of representing students but who has since gone into the working world or further study, thus gaining valuable experience and skills. Furthermore, the standard length of term for public appointments is four years. As such, insisting that the student representative be a current student risks being incompatible with the standard time lines of most courses of study or sabbatical roles as student representatives. That is why we chose the form of wording that we put forward on Report in the other place.

I turn now to the desirability criteria for the OfS board appointments. The Government believe that it is essential that the OfS board should be representative of the broader range of stakeholders in the higher education system. The current legislation that sets out the appointment process for appointments to the current HEFCE board requires the Secretary of State to have regard to experience of higher education, business or the professions. I reiterate that this has worked well for many decades. None the less, this legislation goes further in ensuring a diverse range of board members by setting out seven desirability criteria. These include experience of providing higher education and experience of creating, reviewing, implementing or managing a regulatory system. The seven criteria have been framed broadly so that they allow for flexibility to include board members with the breadth and depth of experience and skills. The Bill in its current form preserves the crucial flexibility for the Secretary of State to constitute the OfS board in the most appropriate way for the challenges and opportunities of the particular day. I reiterate that we need to form a framework that allows us to look ahead a long period of time.

10.15 pm

Amendment 6 requires the Secretary of State to have equal regard to all the criteria, therefore implying equal representation from all of the list of areas, all the time. However, this would inhibit the ability of the Secretary of State to make appointments that reflected the priorities of the time. It could also unnecessarily expose the OfS to legal risk should it be seen to attach unequal weight to each criterion. It also does not recognise that some people will satisfy more than one of these criteria.

On Amendment 7, it is indeed important for board members to be in touch with current issues in the higher education sector. Current or recent experience is of the greatest value, and the Secretary of State will of course be looking to appoint board members with such experience. However, to require this for all board appointments would be too restrictive. It could prevent the Secretary of State from appointing someone with experience from several of the areas listed. Further education colleges provide a small but not insignificant amount of higher education. We would welcome representatives from the further education sector on the OfS board. However, I disagree that this needs to be specifically differentiated from other education providers.

On Amendment 10, we have placed a duty on the OfS to have a regard to equality of opportunity as it relates to access and participation in higher education across all its functions. The new Director for Fair Access and Participation will be at the heart of the new regulator, sitting on the board and appointed by the Secretary of State, reflecting the high priority that the Government give to widening participation. We would welcome this experience among ordinary members.

The noble Baronesses, Lady Bakewell, Lady Cohen and Lady Garden, raised the important topic of part-time and lifelong learning. On Amendment 5A, therefore, the Government recognise the importance of part-time education and lifelong learning to provide choice for students to pursue the type of provision that is right for them and to widen participation. I therefore thank the noble Baroness, Lady Bakewell, for raising this important issue—which we will return to in Committee, to give her some reassurance of the importance that we attach to this topic.

We expect that board members will have a broad range of experience covering different types of provision at different institutions. But it is essential that the Secretary of State maintains flexibility in appointments to the board.

On vocational education and professional accreditations and Amendment 11, which was spoken to by my noble friend Lord Lucas in particular, the Government recognise the important role of vocational education and professional accreditations. Again, just because it is not specifically set out in the legislation, as proposed by Amendment 11, does not mean that people with this experience would not be represented on the board. I disagree that this needs to be specifically differentiated from other higher education providers. As I said earlier, it will be left to the Secretary of State to decide on the precise balance of the skills, experience and background that make up the board.

On Amendment 12, I believe that representatives of providers will also be representatives of the staff of those providers, and it would be presumptuous to consider otherwise. They may be current academics or administrators, or senior leaders who none the less have the interests of higher education staff firmly in mind. To the extent that higher education staff need separate representation relating to their rights as employees, I would not see that as being the role of the OfS board, but rather the responsibility of the providers themselves.

The OfS will need to draw on expertise in advising students, as envisaged by Amendment 13. However, the Government believe that this experience will be drawn upon at a working level in the organisation, or in the designated data body which is responsible for publishing information. The OfS is not intended to be a student advice service; there are several other organisations which already do this, which the Committee will be aware of, including UCAS, the National Careers Service, schools and colleges.

This legislation goes further than past legislation in setting desirability criteria but also recognises the varied experience people have in their lives. It therefore safeguards the Secretary of State's flexibility to appoint OfS board members based on the entirety of their experience. This flexibility is critical to the success of the new body. I therefore ask the noble Lord to withdraw his amendment.

Lord Stevenson of Balmacara: I thank those who have participated in this brief debate and I particularly thank the Minister, who has dealt with each of the amendments in some detail. I am grateful to him for that. However, there is a pattern emerging, as we saw in the other place. The Government are determined to get this Bill through and they are showing no signs at all that they are sympathetic to any of the issues raised, even those by Members of the Minister's own side. Although I understand that, I think that my noble friend Lord Lipsey was right that it would have been helpful at least to have had some acknowledgement of the points that have been made, given the expertise, knowledge and experience represented in your Lordships' House. It is a little sad that we are not getting a bit more purchase on some of the debates about the issues raised here. However, we will come back to these points and no doubt debate them again.

I thank those who have spoken and I thank the Minister for his response. I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendments 5 to 8 not moved.

House resumed.

House adjourned at 10.21 pm.

Volume 777
No. 87

Monday
9 January 2017

CONTENTS

Monday 9 January 2017