

Vol. 778
No. 91



Monday
16 January 2017

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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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

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The Rt. Hon. Lord Henley §

Lord O'Shaughnessy §

§ *Members of the Government listed under more than one department*

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE SECOND SESSION OF THE FIFTY-SIXTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE EIGHTEENTH DAY OF MAY IN THE
SIXTY-FOURTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES

VOLUME DCCLXXVIII

SIXTH VOLUME OF SESSION 2016-17

House of Lords

Monday 16 January 2017

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

**Death of a Former Member: Earl of
Snowdon**

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death on 13 January of the Earl of Snowdon. On behalf of the House, I extend our condolences to the noble Earl's family and friends.

Royal Assent

2.37 pm

The following Acts were given Royal Assent:

Small Charitable Donations and Childcare Payments Act,

Savings (Government Contributions) Act.

Assisted Dying: Legislation

Question

2.37 pm

Asked by Baroness Meacher

To ask Her Majesty's Government whether they have any plans to legalise assisted dying for terminally ill capacitous adults, with appropriate safeguards.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the short Answer to the Question is no. Like previous Governments, we have always made it clear that such legislation is a matter for Parliament, not the Government. When the other House considered a Bill to legalise assisted dying in September 2015, it rejected it by 330 votes to 118.

Baroness Meacher (CB): My Lords, I thank the Minister for that reply. As he indicated, there has never been a Government-supported Bill on this issue. The Minister will be aware of Noel Conway, a terminally ill mentally capacitous patient who is taking his case to the High Court and, no doubt, ultimately to the Supreme Court. Noel is challenging the current law, which denies him his fundamental human right, when his suffering becomes unbearable, to have help to achieve a dignified death. Does the Minister agree with the 82% of the population and the 86% of disabled people who support Mr Conway and want a change in the law so that when their turn comes to face death, they can live their last months in peace, safe in the knowledge that if their suffering becomes unbearable, they can have professional help to end it? Will the Minister seek the support of his colleagues for an ethical Bill along these lines in the future?

Lord Keen of Elie: My Lords, it remains the Government's view that any change to the law in this area is an issue of individual conscience and a matter for Parliament to decide, rather than one for government policy. I am aware of the case of Noel Conway. As it is now in court, it would not be appropriate for me to comment on the circumstances of that case.

Lord Ribeiro (Con): My Lords, this subject has been debated in this House on many occasions and, as my noble and learned friend said, has been rejected. Should it ever be considered again, it is important that the medical profession be excluded. The majority of doctors do not wish to be associated with taking life. Their responsibility is to save lives. While it is possible that there are those who might volunteer to undertake such a task, it is important that it should not be legislated that the majority of doctors are required to undertake it.

Lord Keen of Elie: I note what the noble Lord has said and understand the reasoning behind his observations. I can reiterate only that this Government do not intend at this time to legislate in respect of this matter.

Lord Watts (Lab): My Lords, the Government may be aware that I have had to watch both my late wife and my father die a lingering death. Can I suggest that the Government need to accept responsibility for this matter? They should not duck the decision to give people the opportunity to make this important decision about how they die.

Lord Keen of Elie: Again, I can understand the noble Lord's interest and concern in respect of this matter but I would observe that Parliament has twice addressed this issue in the recent past and has determined not to relax the provisions of Section 2 of the Suicide Act.

Baroness Campbell of Surbiton (CB): My Lords, is the Minister aware that the campaign to legalise assisted suicide or assisted dying is not supported by one single organisation for people with progressive conditions, including the motor neurone disease organisation and the MS Trust, the very people who would be the main beneficiaries of assisted dying, and that growing numbers of disabled people and their organisations are campaigning against such a Bill because they feel that it is desperately unsafe?

Lord Keen of Elie: I entirely understand the noble Baroness's observations in this context. The whole question of risk associated with such legislation was addressed by the Supreme Court when it opined in 2014 in the case of Nicklinson and Lamb. The President of the Supreme Court and Lord Sumption both observed that the data on risk were plainly way short of establishing that there was no risk in such legislation. Lord Sumption went on to observe that there were further societies engaged in this area which had clear reservations about the development of any legislation on this matter.

Lord Dholakia (LD): My Lords, the Minister will be aware that the CPS updated its policy in cases of assisted suicide in February 2010 and in October 2014. Whereas I well understand the reluctance to change any particular legislation, will the Minister consider in consultation with his colleagues and the CPS what further reforms are necessary in relation to the CPS policy on assisted dying?

Lord Keen of Elie: My Lords, the matter of CPS policy must be left to the CPS to determine independently of Parliament. It is not for government to dictate what that policy, which is regularly reviewed, should be. For example, in the period from 2009 to 2016 the very large majority of cases referred to the CPS were not proceeded with in the context of prosecution.

Lord McColl of Dulwich (Con): My Lords, does the Minister agree that we have to be very chary of these surveys that support the subject in hand? For instance, one survey stated that 96% of the British people wished for a pain-free death. Does that not leave us wondering what the other 4% wanted?

Lord Keen of Elie: My Lords, it may be that the other 4% were not referring to themselves. Nevertheless, it is of course important that any such surveys should be carried out rigorously and by reference to defined terms, otherwise their results can be misleading.

Lord Winston (Lab): My Lords, are the Government concerned that in an overburdened health service with a large number of old people, there is a considerable risk to the attitudes of healthcare staff within the NHS?

Lord Keen of Elie: My Lords, I do not believe that any challenges faced by our health staff in hospitals will alter their view as to issues of life and death. I do not believe that for one moment.

Lord Dobbs (Con): My Lords, the Supreme Court judgment in 2014 that the Minister quoted a moment ago, among other things, implied very strongly that the current law is incompatible with human rights legislation and hinted that Parliament should resolve this issue, otherwise the courts themselves would. If there is an incompatibility between the blanket ban on assisted dying and human rights legislation, should it not be resolved in Parliament rather than by judges?

Lord Keen of Elie: My Lords, in the case of Nicklinson, the Supreme Court determined by a majority of seven to two that there should be no declaration of incompatibility with the convention on human rights. It did of course observe that this was a matter that should be looked at by Parliament, and since that judgment, it has been looked at by Parliament on two distinct and separate occasions. Parliament has expressed its views on this matter.

New Art Gallery *Question*

2.46 pm

Asked by The Earl of Clancarty

To ask Her Majesty's Government whether they will take steps to ensure the future of the New Art Gallery, Walsall.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Government support arts and culture in Walsall through investment by Arts Council England, which is currently working closely with Walsall Council and local cultural organisations on the New Art Gallery's future, helping culture to continue to flourish in Walsall. Arts Council England met the council in December and awaits the gallery's application to the national portfolio. Arts Council England has agreed in principle up to £12,000 match funding to explore potential new fundraising and philanthropy opportunities and governance and management models.

The Earl of Clancarty (CB): My Lords, when are the Government going to allow councils enough money to do their job properly? The threat of closure of our regional museums is the direct result of continuing cuts to local government funding. Would the Minister agree that if the New Art Gallery Walsall, a museum of international stature, were to close, it would be a terrible waste of a significant public investment, not least for a region which in these times needs as much support as possible?

Lord Ashton of Hyde: Of course I agree that it would be a terrible waste of the considerable amount of public money that Arts Council England has put into the New Art Gallery. That is why it is working very hard to prevent exactly that occurring. We want to find new methods of joint partnership arrangements, not only with Arts Council England but with other local organisations, to enable art galleries such as the New Art Gallery to continue.

Lord Tomlinson (Lab): My Lords, given that the New Art Gallery Walsall was absolutely fundamental to the regeneration of Walsall town centre, that it houses a world-renowned collection and that it was a brilliant example of collaboration between the local authority, the art gallery and the Government—not forgetting the European Union, which put substantial money into it—would it not be an act of cultural vandalism if it were not allowed and encouraged to survive?

Lord Ashton of Hyde: I completely agree that it is a very good thing that local arts organisations are absolutely key to the regeneration and ongoing prosperity of an area. Just to put the amount of money we are talking about in Walsall into perspective, the proposed reduction is £163,000 a year in the next year, but Arts Council England is putting in nearly five times as much as that—£880,000.

Baroness Burt of Solihull (LD): My Lords, I add my plea to those of the noble Earl and the other speaker and the thousands of people in the Walsall area in the West Midlands who, like me, have been inspired and delighted by this literally state-of-the-art gallery, which is only 15 years old. I suggest that this is not necessarily the moment to cast blame on the local council, which in turn is blaming the government cuts, or central government, who are squeezing council budgets. However, the people of Walsall have very little in the way of cultural facilities to inspire them. I ask the Minister to please use his creativity to help us to find a solution.

Lord Ashton of Hyde: DMCS is working with Arts Council England to try to address these problems and get some kind of partnership with other organisations. However, there are other examples of local councils that are suffering from cuts, as all local councils have. For example, in Stoke-on-Trent, which is a place that several noble Lords may be visiting soon, the Potteries Museum and Art Gallery was awarded £300,000 to support local arts and cultural organisations, led by Stoke-on-Trent City Council, to team up with partners including Visit Stoke and the Potteries Museum and Art Gallery. That is an example of where joint working together can make a difference.

Lord Harrison (Lab): Given that the birthplace of Jerome K Jerome was Walsall, perhaps the Government could do a bit better than “three men in a boat” in actually supporting these important sculptural, as well as painting, collections.

Lord Ashton of Hyde: I have already said that the Government are putting in a considerable amount of money. In the last five years, I think we have spent £12 million in the area of Walsall.

Lord Cormack (Con): My Lords, while endorsing everything that has been said about the Walsall gallery, which I know, I ask my noble friend to reflect that local authorities are under great pressure all over the country. Can something be done fairly expeditiously to try to ensure that other galleries currently under threat do not go under? If we deprive people of the spiritual sustenance that galleries and museums bring, we are impoverishing them.

Lord Ashton of Hyde: I completely agree with my noble friend. That is why the DCMS culture White Paper was so keen on highlighting the importance to local communities of the arts and heritage sector. However, it is right that when difficult decisions are made, they should be made by local people, not centrally by Ministers.

Lord Stevenson of Balmacara (Lab): Could the Minister confirm that if there is a problem sufficient to force the closure of this wonderful gallery, the Arts Council will not be obliged to withdraw its match funding of at least £900,000 a year or—this is really important—to claw back some of the initial capital grant towards the building and the £500,000 refurbishment that it had recently?

Lord Ashton of Hyde: The Arts Council funding is a partnership. In what I sincerely hope is the unlikely event of it closing, obviously there would be a problem in giving that money to an art gallery that was not open. However, I do not want to think about that. There is a very good incentive for local partners to keep this very good art gallery going. It has some amazing and world-class art in it, and it should be encouraged.

Animal Welfare: Penalties

Question

2.53 pm

Asked by **Baroness Parminter**

To ask Her Majesty's Government whether they have any plans to increase the penalties for animal welfare offences.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, while there are no current proposals to increase the maximum penalties for animal welfare offences, the Government want to see courts use the range of penalties available. We will continue to keep the maximum penalties for animal welfare offences under review.

Baroness Parminter (LD): I thank the Minister for that reply. The maximum sentence available for extreme and premeditated cruelty is six months. We lag behind the rest of mainland Europe and Northern Ireland, whose maximum sentence is five years. Given that the EFRA Select Committee has now recommended a rise to five years, is it not time that the sentence matched the crime?

Lord Gardiner of Kimble: My Lords, obviously I have considerable sympathy with the noble Baroness. Some of the examples of animal cruelty cases are, frankly, beyond belief, and that is why I am very pleased that the independent Sentencing Council aims to ensure that the most serious cases of animal cruelty could receive longer sentences within the maximum six months' imprisonment. The council is currently considering the consultation responses, and will draft the definitive guideline with publication due later this year.

Lord Trees (CB): My Lords, while it is important that we increase sanctions for animal welfare offences, sanctions are but nothing without enforcement. At the minute, there is no statutory requirement for local authorities or the police to enforce animal welfare legislation. Have the Government any plans to introduce such a statutory requirement?

Lord Gardiner of Kimble: My Lords, there are no current plans, but imprisonment is not the only penalty, and I think that is important. The increase to an unlimited fine, community service orders and orders disqualifying people from ownership of dogs and animals for life are among the range of penalties, which I think are also very important if we are to address this matter.

Lord Lexden (Con): Do the Government intend to issue updated guidance under the Animal Welfare Act to bear down more decisively on the appalling practice of puppy farming?

Lord Gardiner of Kimble: My Lords, on what my noble friend has said about puppy farming and indeed, other matters to do with animals, it is very important that the Animal Welfare Act is applied. It is one of the most advanced pieces of legislation in the world. It was reviewed in 2010-11 and, obviously, I and my honourable friend Sam Gyimah in the other place would consider and review anything that we felt was not addressing the situation.

Baroness Jones of Whitchurch (Lab): My Lords, last week I joined a cross-party group of Peers and MPs who wrote to the Secretary of State calling for a total ban on ivory sales, to prevent the needless and cruel slaughter of African elephants. The recent Great Elephant Census showed a decline in their numbers of 30% over seven years. While the Government have taken some steps to ban newer ivory imports, it is clear that only a total ban can prevent that cruel trade from continuing. Will the Minister agree to take back our plea for a total ban on ivory imports to prevent elephants becoming an endangered species, which would be a great regret?

Lord Gardiner of Kimble: My Lords, whether it is elephants, rhinos or any animals becoming endangered, it is our generation's responsibility to ensure that they continue to have their place in the natural world. Of course, this country has been one of the leaders on the ivory matter and, in fact, we have said that there should be a ban on ivory sales for up to 70 years—before 1947, they are deemed to be antiques. It is very important that that is part of our arrangements.

Lord Clark of Windermere (Lab): My Lords, the noble Lord has raised the issue of endangered species. Is he concerned about the paucity of the level of sentencing in cases where people are caught persecuting and killing endangered species of birds? Have the Government considered switching the responsibility from possibly the gamekeeper to the landowner?

Lord Gardiner of Kimble: My Lords, obviously all these matters are already subject to the law. No, there has been no consideration about moving liability to other than where it is now. We think that we have a robust law in place. Obviously, as I have said, if any issues needed to be reviewed, we would do so.

Lord Addington (LD): My Lords, has any relevant body actually said that it is against the increase in the penalties and, if so, on what grounds?

Lord Gardiner of Kimble: My Lords, it would be fair to say that most animal welfare organisations would like an increase. However, when I reflect on this, in Northern Ireland, which has been mentioned, of the 66 convictions between 2012 and 2016, only one offender received a prison sentence of more than six months, which was suspended. I have already mentioned the independent sentencing guidelines. With an average custodial sentence of 3.3 months, we are looking to see whether there are ways in which magistrates can have enhanced guidelines.

Lord West of Spithead (Lab): My Lords, is it not true that when one looks into the past of many of those who have been found guilty of either torturing or killing human beings, they have done exactly the same to animals, and there is a linkage?

Lord Gardiner of Kimble: Cruelty, whether it is to our fellow human beings or to animals is equally reprehensible. There have been such connections, and that is why I think some of the remedies other than imprisonment have been very important, including, in the community orders, things such as programmes to change behaviour, exclusion, curfew, drug treatment and mental health treatment. There are a number of ways in which we can help.

The Countess of Mar (CB): My Lords, further to the question of my noble friend Lord Trees, I was recently involved in a case of animal cruelty and was told that, while trading standards have the power to prosecute, they do not have the funds. I understand that this happens particularly with farm animals and that farmers are just advised rather than prosecuted.

Lord Gardiner of Kimble: My Lords, the Animal Welfare Act 2006 is very clear. Anyone who has any concerns about animal cruelty cases should, of course, report them to the local authority or the police.

Baroness McIntosh of Pickering (Con): My Lords, badger baiting was the most despicable crime, but does my noble friend agree that, where a list is drafted

to put species such as bats or newts on to a protected basis, this should be reviewed at least every seven years? When was such a review last undertaken by the department?

Lord Gardiner of Kimble: My Lords, I will have to look into my noble friend's precise question. Obviously, it is good practice that all laws should be kept under review.

Brexit: Single Market and Workers' Rights Question

3.01 pm

Tabled by **Lord Dykes**

To ask Her Majesty's Government what response they have given to the request made by the TUC General Secretary on 7 December that the United Kingdom secure full European Union Single Market membership to protect workers' rights.

Viscount Waverley (CB): My Lords, on behalf of the noble Lord, Lord Dykes, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, we do not need to be part of the EU single market to have strong protection for workers' rights. The Government will not roll back EU rights in the workplace. All workers' rights enjoyed under EU law will be preserved by the great repeal Bill and will be brought across into UK law.

Viscount Waverley: My Lords, on behalf of myself and the noble Lord, Lord Dykes, I thank the Minister for his reply, which follows on from the article by the Prime Minister in the 8 January edition of the *Sunday Telegraph*. The Minister has touched on this, but will he go one step further and reassure the House and the TUC that all the relevant directives will be contained in the great repeal Bill?

Lord Prior of Brampton: My Lords, the Prime Minister has said that, under this Government, workers' rights will not be eroded and will be not just protected but enhanced. The Government's commitment is absolutely clear. As we regain sovereignty over these issues it will be up to subsequent Parliaments to make these decisions themselves.

Lord Forsyth of Drumlean (Con): My Lords, it is a sad day when the TUC no longer has faith in the Labour Party, the Liberal Party and this British Parliament to defend the rights of British workers. Is it not the case that British workers enjoy rights far beyond EU requirements, for example in respect of maternity pay?

Lord Prior of Brampton: Yes, there are many examples where people who work in the UK have stronger rights than those guaranteed in the EU. Maternity rights are one case and rights to statutory leave are another example.

Lord Monks (Lab): My Lords, can I probe a bit harder about how robust these assurances about the great reform Bill are? At the weekend, the Chancellor said that if the EU takes a hard approach to the negotiations, the British Government are going to have to go downmarket and undercut our EU neighbours on corporate tax. Will the same thing not happen on labour standards? Is there not a big risk that the Government will be forced by the logic of Brexit into undercutting and beggar-thy-neighbour policies?

Lord Prior of Brampton: My Lords, it would be a huge misjudgment and mistake for any British Government to think that eroding the rights of UK workers and making them less engaged and productive would contribute in any way to us being more competitive. In the same way that we want to have low tax rates, we want to have a fully engaged and well-trained workforce.

Lord Foster of Bath (LD): My Lords, as the Minister confirmed, the Prime Minister has agreed that all workers' rights enshrined in EU law will be transferred into UK law—but then “where practical” was added. Which workers' rights cannot be practically transferred into UK law?

Lord Prior of Brampton: Off the cuff, I cannot think of any rights that would fall into the area of “not practical”. The Prime Minister went further: she is committed, as is our whole industrial strategy, to bringing decent, well-paid, skilled jobs to Britain, including to many parts of the country where they have been sadly depleted over many years.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree that it is the single market which imposes Brussels' overregulation on the 90% of our economy that does not sell into it? Do the Government know how many jobs that has cost us over the years?

Lord Prior of Brampton: I cannot answer that question specifically. Clearly, being part of the single market has increased the number of jobs in this country. The Prime Minister is making a speech tomorrow about global Britain, and we are absolutely clear, being part of the global economy, that we believe fully in free trade and that our country must become more competitive.

Lord Hamilton of Epsom (Con): My Lords, should trade union leaders not be very careful about calling for the United Kingdom to remain in the single market when that brings with it free movement of labour, and so many of their members voted leave because they were alarmed by unlimited immigration?

Lord Prior of Brampton: My noble friend raises an interesting point, which I think many trade union leaders recognise. Unquestionably, there are parts of the country where high levels of immigration have undermined the wage rates of local people. I think we would all agree that one of the benefits of having control over our immigration policy is that we can have a policy which is more directly suited to our requirements.

Lord Stevenson of Balmacara (Lab): My Lords, why is it that I find it very difficult to believe every word that I have just heard from the Minister? It sounds great, and I am sure that parsnips are waiting to be buttered in order to benefit from that, but it is really not a very convincing argument from the party that brought forward the Trade Union Bill in the last Session. Is this not really about what we will be negotiating for? In its brilliant paper the TUC has no problem in setting out what the UK negotiating position should be—why can the Government not do so?

Lord Prior of Brampton: My Lords, I think the Prime Minister, in a speech tomorrow, will be setting out the strategic objectives of our negotiations and what we are trying to get out of the negotiations that will take place over the next two years. It would be foolish of me to speculate in any more detail today about what those objectives are.

Lord Stoneham of Droxford (LD): Given the reality of the global economy, surely the only effective way of protecting employees' rights is through international agreements? To avoid international agreements is merely to undermine the sovereignty of this country.

Lord Prior of Brampton: My Lords, there are many other aspects apart from international agreements. When one looks at the performance of the UK economy, what absolutely stands out above all else is that in many industries our productivity levels are too low. Increasing productivity in this country, partly through better training and skills but also through more investment in the research base of this country, is the best way to increase our trade overseas.

Lord Dobbs (Con): My Lords, does my noble friend accept that I get very confused at times, being a simple-minded fellow, about all these rights that people keep talking about? Is it not the case, for instance, that in the United States Volkswagen has pleaded guilty to criminal misconduct about emissions, has paid a fine of nearly £4 billion and has offered consumers more than £12 billion in compensation? Yet in the EU, with all our rights for consumers and everybody else, so far the consumer has been offered absolutely nothing. Can he clear up my confusion and tell me why?

Lord Prior of Brampton: I fear that clearing up my noble friend's confusion might take me longer than I have this afternoon. There is no doubt that consumers have very strong rights in the US and that having a very strong, competitive market is probably the best way to ensure that companies such as Volkswagen behave properly.

Pension Schemes Bill [HL]

Third Reading

3.08 pm

Clause 11: Scheme funder requirements

Amendment

Moved by Lord Henley

Clause 11, page 7, line 16, at end insert—

“() The regulations may include provision—

- (a) setting out requirements relating to the audit of accounts;
- (b) applying some or all of the provisions of Parts 15 and 16 of the Companies Act 2006 (accounts and report; audit), with or without modifications.”

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, this is a technical amendment and simply clarifies the scope of the regulation-making power in Clause 11 to ensure it meets the policy intention. Clause 11(4) provides that the Secretary of State may make regulations setting out requirements relating to a scheme funder's accounts. The Government have always intended that the power would enable regulations to be made requiring scheme funders to produce full audited annual accounts, if they are not otherwise required to do so—for instance, in accordance with the Companies Act 2006. This is set out in the delegated powers memorandum, which has been published. However, it was brought to our attention that specific provision about audit in existing legislation might cast doubt on the breadth of the power, so this amendment is intended to put that position beyond any doubt.

The Secretary of State will be able to require in regulations, where appropriate, that scheme funders' accounts must be audited. This is an important clarification because the scheme funder's accounts, along with the scheme accounts and the business plan, will provide key financial information on which the Pensions Regulator will base its assessment of the master trust's financial sustainability. The scheme funder's accounts will enable the regulator to monitor the scheme funder's financial position and assess the strength of any financial commitment to the master trust set out in the business plan. Requiring the accounts to be audited ensures that the scheme funder's financial position is independently verified by a qualified auditor.

The amendment makes it clear that the regulation-making power may be used to apply some or all of the provisions in Parts 15 and 16 of the Companies Act 2006, which relate to the preparation and auditing of accounts and other related matters in respect of different types of scheme funders. Having this flexibility will enable the Secretary of State to take account of the range of master trust structures and financial arrangements with their scheme funders.

Before I conclude, I offer my thanks to the noble Lord, Lord McKenzie, and other noble Lords who have taken part in the debate for the generally positive approach they have taken during the passage of the Bill. I appreciate that my noble friend Lord Freud has already offered his thanks to all who have been involved in the Bill. However, as he moves on to pastures new, I echo those thanks and offer my thanks to him and to my noble friend Lord Young of Cookham for the help they have given me and for ensuring that I was appropriately briefed for this final and, I hope, rather short stage. We all trust that another place will be able to give it equally effective scrutiny, as it always manages to do.

To conclude, the amendment is intended to ensure that the scope of the regulation-making power in Clause 11(4) is wide enough to enable the policy to operate as intended. On that basis, I beg to move.

Lord Naseby (Con): My Lords, I welcome the amendment from Her Majesty's Government, as I very much welcome the Bill. However, it still raises the outstanding problem in Clause 10, on scheme funding. The point is that a master trust can, if it so chooses, be treated as a separate legal entity and, as the Bill stands, can still transfer the risk to another entity. That remains one of the problem areas, because solvency for any of these master trusts is absolutely vital to current and future pensioners. I place on the record that although what we have heard this afternoon is an improvement, it does not solve that problem.

While I am on my feet, there is still concern from insurance companies that run master trusts that, under the Bill, they may be required to keep separate solvency requirements for the master trust element of their business when the majority must already comply with Solvency II financial regulations, which are extremely stringent and ought to be enough to cover any of the required security for their master trust business.

Baroness Altmann (Con): My Lords, I echo some of my noble friend's concerns. I welcome the Minister to his position and wish him much success.

Obviously, I welcome the Bill, which is much needed. It is vital that we protect members' pensions and ensure that accumulated savings are safe in the event that the master trust scheme fails. Therefore, I broadly welcome the measures in the Bill. However, having engaged with Ministers to try to tidy up some important points to ensure that the Bill works as intended and needed without serious side-effects, I would like to place on record some issues that still require attention.

3.15 pm

There are three substantive points now that the amendment passed last time on tail-risk insurance is included and will go to the other place. First, the provisions that could see master trust members stripped of their pension rights during a pause order need to be reconsidered. It cannot be right that just because the regulator has some concerns about the scheme they are in, the law should override members' legal and contractual entitlements to pension accrual and impose an effective pay cut on them. During the pause order, members' and employers' pension contributions, together with the tax relief, should still be collected and accrued rather than lost forever, as the Bill would permit. Pause orders could last for a long time, even if that is not the intention.

Secondly, it is strange, as my noble friend has just indicated, that the Government are not making special provisions for master trusts already backed by an insurance company that meets PRA capital adequacy and solvency requirements. These are tougher than those that will be imposed by the regulator on master trusts. Such insurance company master trusts can run at lower costs and are generally more secure than they would be if backed by a stand-alone business entity instead of a multi-pronged larger business. As things stand, the Bill's requirement for a separate company to back each master trust will impose higher costs on both providers and members, while in many cases also reducing the security of insurance-backed master trusts.

Thirdly, the requirements in Clause 25(4)—which I know the Government are consulting on—relating to bulk transfers, need, perhaps, to be relaxed. For some time the pensions industry and pensions lawyers have been calling for a more appropriate transfer regime for DC schemes. However, the current wording could make the DC to DC bulk transfer process much worse than the current DB-based rules because it is so prescriptive.

Finally, there are two issues that have not been included in the Bill at all, which is rather a missed opportunity. I will just mention them here and hope that they may be followed up in the other place. One is the plight of plumbers who are facing personal bankruptcy due to the draconian Section 75 debt requirements of non-associated multi-employer schemes, which force remaining employers to buy annuities for workers they have never employed, while other employers have walked away or left.

The second is the issue of net pay schemes, which impose an extra 25% charge on the pension contributions of their lowest-paid members. While we are drawing up requirements for master trusts and assessing their adequacy, surely we need to ensure that master trusts treat their lower-paid workers equitably and find ways to give the tax relief to these staff if they have a net pay structure. The Treasury could also help here by allowing schemes to claim tax relief for these low-paid workers; the current situation, whereby the lowest earners can be denied the 25% government bonus they would have in another scheme without being warned, must be addressed.

On the whole I welcome the Bill and I thank the Ministers for their hard work in putting it to the House.

Lord Kirkwood of Kirkhope (LD): My Lords, it is a pleasure to follow my friend of many years' standing, the noble Baroness, Lady Altmann. She is an expert on these things and is right that opportunities have been missed and there are still some bits of unfinished business. However, the House has acquitted itself well in the consideration so far. I welcome the noble Lord, Lord Henley, to his post. Those of us with long memories remember that he has been in this role before, so he is not without experience in these matters and our expectations of him are extremely high. I wish him well in his new responsibilities. I am sure he will continue his predecessor's attempts at making sure that Members of this House are fully briefed on some of the technical provisions that we still have to deal with.

The Government were right to bring forward amendments to change a lot of the first-time affirmative resolutions and procedures for the statutory instruments that flow from some of these provisions. In passing, I note that this amendment to Clause 11 would introduce a negative procedure. I hope that is sensible, because the more affirmative instruments we get, the better our chance of understanding what is being brought before us. Despite that, I agree with the amendment as it stands.

I hope—this is merely a request for a repeat of an undertaking that was given earlier—that the Government will bring forward an updated impact assessment when, later this year and in 2018, we consider the secondary

[LORD KIRKWOOD OF KIRKHOPE]
legislation that flows from this primary legislation. The impact assessment and the continuation of the consideration of the fine print of the provisions are still required to make sure that the Bill achieves its purposes in a way that is fair to all. In the process, I hope that, as the noble Baroness, Lady Altmann, said, the other place can pick up some of the opportunities that have been missed during the Bill's consideration in this House. However, I wish the Bill well and I hope we continue to have the constructive and positive relationship with the noble Lord, Lord Henley, that we had with his predecessor.

Lord McKenzie of Luton (Lab): My Lords, I begin by welcoming the noble Lord, Lord Henley, to his role, even at this 12th hour on the Bill.

We certainly do not oppose the amendment. As explained, it is intended to put beyond doubt the ability to introduce regulations relating to audit, particularly in relation to scheme funders, which under the Companies Act are not required to provide audited accounts. Perhaps for the record the Minister can set out the nature of scheme funders which might fall into this category. Presumably they could be partnerships, entities incorporated overseas or smaller entities, although I am not sure how they might feature in these arrangements. Can he also tell us whether it is planned to use these powers differentially in respect of scheme funders that fund benefits other than money purchase benefits? As an adjunct to that, we very much share the concerns expressed by the noble Lord, Lord Naseby, about how Clause 11, as it will now be, will work.

As the Bill passes to the other place, it is time to offer our thanks to the Minister, the noble Lord, Lord Young of Cookham, for the courteous and inclusive manner in which he has handled the Bill. We look forward to the same from the noble Lord, Lord Henley, on subsequent Bills. We have already given our thanks to the noble Lord, Lord Freud, for the role that he played. This is a narrow Bill but one with significant implications, which is why we want to see it make speedy progress. It has not been the easiest Bill to scrutinise, given the combination of the technical nature of its subject matter and the raft of regulation-making powers that it contains, but we have seen a Government in listening mode in some respects—although of course not all, and the noble Baroness, Lady Altmann, identified some of those.

I should take this opportunity to thank my noble friends who have participated in our deliberations—in particular, my noble friend Lady Drake for the expertise and precision that she has brought to our work. We trust that the important amendment concerning the scheme funder of last resort which she pressed on the Government will endure.

I also express our thanks to the Liberal Democrats, led by the noble Baroness, Lady Bakewell, the government Back Benches for their constructive approach, and indeed the Cross Benches. We have seen a Bill team who are thoroughly on top of their brief and have patiently spent time explaining to us aspects of the Bill which might otherwise have fallen

on stony ground. Taking this matter forward now falls to the tender mercies of our colleagues in the other place.

Lord Henley: My Lords, I thank noble Lords for their very kind words and in particular, the noble Lord, Lord Kirkwood, for his high expectations of me in replacing my noble friend Lord Freud. If I do only half as well as my noble friend, I think I will be doing pretty well—I hope the House accepts that I will try my best. I can also confirm to the noble Lord that impact assessments will be updated for the new regulations. The timing for the formal consultation on the draft regulations will obviously depend on a number of factors, but we would expect that the initial consultation will take place some time in the autumn of this year.

I am very grateful to the noble Lord, Lord McKenzie, for not opposing the amendment. He had a number of questions, particularly in relation to scheme funders and I would prefer to write to him about those. He also asked whether the Government were going to table an amendment on scheme funders of a master trust that offers both money purchase and non-purchase benefits. I can confirm that they intend to table such an amendment and that can be a matter for another place.

My noble friends Lord Naseby and Lady Altmann raised concerns that go wider than this simple amendment, which merely relates to audit. Those matters can be considered and no doubt, will be noted by my noble friends when they take this Bill through another place. As I said in my introductory remarks, I expect another place, as always, to look at this Bill with its usual due diligence and I am sure that it will take note of the comments made by both my noble friends. If it can assist them, I shall try to write to them before that, but everything they have said will be noted by my honourable and right honourable friends. With that, I echo the remarks of the noble Lord, Lord McKenzie, in thanking all those who have been involved in this Bill.

Amendment agreed.

A privilege amendment was made.

Bill passed and sent to the Commons.

Higher Education and Research Bill Committee (3rd Day)

3.28 pm

Relevant document: 10th Report from the Delegated Powers Committee

Clause 2: General duties

Amendment 60

Moved by **Lord Storey**

60: Clause 2, page 2, line 8, at end insert—

“() In giving guidance under this section, the Secretary of State must have due regard to any advice given to the Secretary of State by the OfS.”

Lord Storey (LD): My Lords, on behalf of the noble Baroness, Lady Wolf, who is not well, I shall move this amendment and speak to this group. We wish her a speedy recovery. The Bill proposes to reverse the current legal position that prevents Ministers giving guidance and directions about particular courses of study. We have been told that the power is needed to resolve an existing legal lack of clarity about the Secretary of State's power to communicate his—in this case—priorities. While the Government's amendment means that the Secretary of State cannot now guide or direct the Office for Students to prevent the closure of existing courses or the creation of new ones, it will, nevertheless, still allow the Secretary of State to decide, in part, what subjects should be funded.

Although most funding for teaching will come from fees backed by student loans, direct funding from the Office for Students is essential to meet the additional costs of subjects that are expensive to teach; for example, chemistry and engineering, et cetera. The Bill would give the Secretary of State a new power to tell the Office for Students not to fund a particular subject if that subject cost more to teach than the maximum fee that the university was allowed to charge. This goes significantly beyond the current power to give general directions about ministerial priorities, which the Funding Council translates into allocations to universities.

With these proposed amendments, Ministers would still be able to give the Office for Students guidance and direction about their priorities for the funding available but the final decisions on funding for high-cost subjects would be taken by the Office for Students, as they are now by the Funding Council. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I support the amendments in this group to which I have added my name and those that have come from the Cross Benches—Amendments 69 and 510—on which I think we will be hearing shortly. These amendments come out of the report from the Delegated Powers Committee, which claims that the wide range of functions that are now being conferred on the Office for Students will give it the ability to bring change to the whole of the higher education sector. We consider that the guidance issued by the Secretary of State under Clause 2 will act as a significant control over how the Office for Students exercises its functions. However, we cannot guarantee that Secretaries of State will always be wise and non-interventionist, and I think that these amendments will provide much-needed safeguards in the Bill.

Lord Norton of Louth (Con): My Lords, Amendments 65 and 510 in this group were tabled by the noble Lord, Lord Lisvane, who is unable to be with us today. I wish to make a few comments in support of those amendments.

The concept of quasi-legislation—the generation of rules and guidance by public authorities—is not new. However, the use of such quasi-legislation appears to be growing: it is convenient to government,

it provides some degree of flexibility and it may also put it beyond legislative scrutiny and approval unless provision is made for such scrutiny and approval.

This Bill is of extreme importance. It creates a body, the Office for Students, that is much more powerful than HEFCE. The functions that it draws together are quite substantial and extensive. They enable the OfS, essentially, to shape the nature of higher education. That in itself raises issues which we will be discussing further. However, here, under Clause 2(2), we have the power to give guidance but without any transparency and with no parliamentary involvement. That matters, especially in the context of this Bill. Through the power to give guidance, the Minister may, effectively, usurp the power of the OfS. I am sure my noble friend the Minister will say that guidance will be rare and benign, but there is nothing to stop a future Secretary of State with less than benign intent using the power on a scale that is significant, both quantitatively and qualitatively.

As the noble Baroness has just said, this provision has been commented on by the Delegated Powers Committee. It stressed that there is no parliamentary scrutiny of the guidance and no requirement for it to be published. In response to the Government's defence of the provision, the committee goes on to say:

"We are wholly unconvinced by the Department's reasons".

That includes, as I have already stressed, the fact that the remit of the OfS goes far broader than HEFCE, and the guidance that the Minister can give to HEFCE has no statutory basis.

The committee also makes the point, of course, that the requirement for the OfS to "have regard to" guidance rather limits it. The Office for Students could, if it had cogent reasons, discard the guidance. However, there would have to be compelling reasons for that, and, as the Delegated Powers Committee points out, under Clause 71(1), the Secretary of State has the power to give the OfS "general directions" about the performance of its functions.

There is a powerful case for ensuring there is parliamentary scrutiny and engagement in respect of the power to give guidance—that is the purpose of the amendments tabled by the noble Lord, Lord Lisvane. Other provisions in the Bill are clearly Henry VIII provisions. The measure is extensive in terms of the concept of quasi-legislation. I am sure we will be coming back to this on several occasions during the passage of the Bill. However, I look forward to my noble friend's response acknowledging the significance of the powers that are being confirmed and I look forward to hearing what the Government plan to do about it.

Lord Judge (CB): My Lords, I support what has just been said by the noble Lord, Lord Norton, and draw attention to my own interests in the register. We have a perfectly clear piece of legislation in Clause 2(1), in which Parliament tells the OfS what it must do and what it must have regard to. We then have the creation in Clause 2(2) to Clause 2(6) of guidance which has absolutely no parliamentary scrutiny, whether before or after the Secretary of State chooses

[LORD JUDGE]

to issue that guidance. It looks like legislation, because it is contained in Clause 2, but it is not legislation and it should be.

There is a remarkably strange feature if we turn 44 pages onwards to Clause 71, where we have the power granted to the Secretary of State to give directions. Of course, that is going to be a necessary ingredient of the Bill. The strange thing about it is that in the directions, Clause 71(2) is in identical terms to the guidance authorisation in Clause 2(3); Clause 71(3) replicates Clause 2(4); and Clause 71(4) replicates Clause 2(5). In other words, there are identical provisions in these two clauses: one creates the power in the Secretary of State to give guidance, the other gives the Secretary of State, after Parliament has agreed, the power to issue directions.

As far as I can see, there is no indication about the criteria which should be applied as to whether a particular directive by the Secretary of State should be treated as guidance or legislation. The fact of the matter is that there is now going to be power to give guidance with no statutory scrutiny and power or authority to give directions which will be subject to statutory scrutiny. There is no logical reason why we should have such an absurd situation. The amendment proposes simply that the guidance should be brought before the House at some stage in the process so that the House can have a look at it. We should have a chance to consider guidance issued by the department in this influential new arrangement.

Baroness O'Neill of Bengarve (CB): I support the amendment. I think there are wider reasons for feeling that not everything can be well done by guidance. Among other things, guidance sits there in the cupboard, so to speak, and there is no reason for the Executive or Parliament to review it until somebody is tripped up in an unfortunate way.

Guidance seeks a sharper definition between what may and may not be done—between compliance and infraction—than is probably feasible. There is much to be said for a somewhat more formal procedure that will make it clear what has parliamentary backing, because it is a statutory instrument, and what does not. Excessive reliance on guidance would weaken the structure of the Bill and create a degree of persisting uncertainty. People are frequently being tripped up by guidance of which they have never heard which lives in an obscure place. That is unnecessary.

Lord Willetts (Con): My Lords, perhaps I may briefly comment on these amendments by looking at them from the perspective of how the old system has functioned. We have been told about the powers of the OfS, and your Lordships are scrutinising those very carefully. I think that perhaps the powers of the old HEFCE have been understated. In reality, HEFCE was not only the funder but was using its funding power to be the regulator—a highly discretionary regulator that operated with very little transparency and few constraints.

HEFCE was the extremely successful buffer body between government and universities, and the Government communicated with HEFCE notably through the grant

letter—and the grant letter, I suspect, is the origins of the guidance provision in front of us today. The grant letter is the way in which the Government have historically set out their policy, week by week, year by year, for universities, and so, for example, it has been historically possible for the Minister for Universities to go to the Chancellor and say, “High-cost subjects are not being sufficiently funded. We do not think that the extra costs of doing them are properly reflected in the higher cost bands. Will it be possible to have extra funding attached to that?”—and then in the grant letter to suggest to HEFCE, “In the light of the funding we have available, it would be excellent if HEFCE were able to identify and set aside more funding for high-cost subjects”. Indeed, I used to write such grant letters with my excellent former colleague Sir Vince Cable.

What is happening—this goes back to discussions we had last week—is that as we are now moving from that old discretionary high-trust system to a new rule-bound system with a regulatory function, quite understandably your Lordships, at each stage of the process, are trying to pin down what kind of decisions will be taken and how they will be taken. I think that a power to give guidance distinct from a power to give instructions, and a reasonable amount of flexibility for Ministers to use it so that they can communicate the same kind of messages that they used to in the old HEFCE letter, is in the interests of the sector as a whole.

Lord Watson of Invergowrie (Lab): My Lords, the group contains several common-sense amendments that would strengthen the Bill and one of the amendments within this group seeks to ensure that the Secretary of State should have regard to any advice given to her or him by the Office for Students. The Government are placing a huge amount of faith and power in the Office for Students and it makes sense that the Secretary of State should not only give guidance to that body but should have regard to what the OfS says to her or him. Why would it not be sensible to do so?

It is not enough for the Minister to say, as he did several times in Committee, that he does not want to see too much detail on the face of the Bill. In effect, he is saying, “Trust me. There is no need for it. Everything will be fine”. With the greatest respect, even were we to accept that from such a find upstanding Member of your Lordships’ House as the noble Viscount the Minister, he cannot of course bind his successors, who, I suspect, would not be willing to be bound by him and his colleague Mr Johnson. Who knows what might or might not follow in the months and years after this Bill passes into statute? For that reason, it is helpful to have this sort of detail in the Bill. At the end of the day, it is only a question of having regard to what the OfS says, but it will have built up considerable experience and wisdom over time and the Secretary of State should surely benefit from that.

There are also amendments from the noble Baronesses, Lady Garden and Lady Wolf, and the noble Lord, Lord Storey, on the need to ensure that the Secretary of State does not take any action that would prohibit the Office for Students from funding a particular course of study. The noble Lord, Lord Storey, eloquently

explained the reasons behind that and there was some discussion on this last week as well. I trust that the noble Viscount has taken note of the arguments advanced in support of those amendments.

The most important amendments in this group are Amendments 69 and 510, which seek to make the Secretary of State's power to give guidance to the OfS exercisable by statutory instrument. Last month, the Delegated Powers and Regulatory Reform Committee of your Lordships' House reported on its consideration of the Bill. When commenting on Clause 2(2) which requires that the OfS,

"In performing its functions ... have regard to guidance given to it by the Secretary of State",

the committee said:

"There is no Parliamentary scrutiny of the guidance and there is no requirement for it to be published. The absence of any Parliamentary scrutiny is explained in the Department's memorandum",

but that,

"We are wholly unconvinced by the Department's reasons".

However, it did not stop there. In summation of its consideration of that part of the Bill, the committee concluded:

"The wide range of functions which are being conferred on the OfS will give it the ability to bring change to the whole of the higher education sector. We consider that the guidance issued by the Secretary of State under clause 2 will act as a significant control over how the OfS exercises its functions. Therefore, far from having no Parliamentary scrutiny, we recommend that guidance issued under clause 2 should be subject to Parliamentary scrutiny and that the affirmative procedure should apply".

That does not leave much room for doubt, and I am not aware that the Government have yet responded to the committee's report, but I hope that they will be able to take such trenchant criticism on board—or will this be yet another example of the Government saying in effect that, "We know best. We have a monopoly on wisdom and we intend to plough on regardless"? I certainly hope not. The Delegated Powers Committee is of course cross-party and in this case was actually chaired by a Conservative. If its role is to be treated with respect, its considered view should surely be weighed heavily by the noble Viscount and his colleagues.

Last week the Minister undertook to reflect on the amendments debated and it is to be hoped that, as regards Amendments 69 and 510, the issue really is rather a black-and-white one. I hope that he will be able to give a considered response to it when he rises to speak in a few moments.

3.45 pm

Viscount Younger of Leckie (Con): My Lords, we have had another good but much shorter debate on this important Bill. Once again it goes to the principle of autonomy, which is the cornerstone of our higher education system. I would like to say at the outset that I am sorry to hear that the noble Baroness, Lady Wolf, is indisposed. I am sure that all noble Lords will wish her a speedy recovery.

Before I speak about this group of amendments, let me be very clear. I heard the strength of feeling expressed in Committee last week about the need to protect institutional autonomy. I would like to inform noble Lords that, along with the Minister in the other

place, I am actively considering what further safeguards may be needed to protect institutional autonomy and academic freedom as the Secretary of State and the OfS carry out their duties under the Bill. No doubt we will return to this issue on Report, so I will keep the rest of my remarks relatively brief.

We certainly want an open dialogue between the Government and the OfS, and the systematic involvement of the OfS in the policy-making process, just as there has been with HEFCE over the past 25 years—something to which my noble friend Lord Willetts alluded. As currently drafted, the Bill does not constrain the OfS from giving open and honest advice and analysis to the Government on matters within its regulatory remit. Let me also reassure noble Lords that the Bill prohibits the Secretary of State from framing guidance, setting terms and conditions of grant or giving directions to the OfS in terms of course content and how courses are supervised or assessed. The powers we have discussed today relate directly to the spending of public money and the accountability of the OfS. The Government have a legitimate role in setting priorities in these areas. That is why we are taking the time to think carefully about how we are going to ensure an appropriate level of oversight while at the same time properly protecting the vital concepts of institutional autonomy and academic freedom.

The noble Lord, Lord Storey, raised the issue of guidance and stated that there was a reversal of the 1992 Act. No reference is made to guidance in that Act, and we are strengthening the protections on ministerial guidance by making reference to institutional autonomy and academic freedom. An express power to issue guidance means that the Government do not automatically need to have recourse to setting the terms and conditions of grant or directions, which are less light-touch, so this is surely a sensible intermediate step.

I will now address the issue of parliamentary oversight, about which we have heard some speeches this afternoon. We have thought carefully about the use of these powers. The general focus of the contributions of my noble friend Lord Norton and the noble and learned Lord, Lord Judge, was that the guidance must be subject to parliamentary scrutiny. But the duty in Clause 2 is to "have regard to" guidance. As my noble friend Lord Norton said, where the OfS has cogent reasons, it can act outside that guidance—so the provision does not impose any obligation other than that the OfS should consider it. Directions under Clause 72 are different: they must be followed. That is why there is parliamentary scrutiny when those are made.

It is absolutely right that the Secretary of State should be ultimately responsible for the guidance that he or she gives the OfS, especially when it relates to directing public money towards government policy priorities. We envisage that the Government will issue regular guidance to the OfS in much the same way as they do to HEFCE. Imposing parliamentary oversight and approval on the giving of the Secretary of State's guidance to the OfS would create a far less flexible process and would risk inhibiting the ability of the Secretary of State rapidly to issue ad hoc guidance in response to changing events. However, I reassure my

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noble friend Lord Norton that our approach to guidance will be transparent in a similar way to the guidance given to HEFCE—for example, with a published annual grant letter.

I hope that I have given a flavour of the careful balance that we continue actively to work to achieve here. I have noted the points raised and will actively take them into account ahead of Report. In the meantime, I ask the noble Lord to withdraw the amendment.

Lord Storey: My Lords, I think that it was a former Prime Minister who used the phrase, when losing the vote on bombing in Syria, “I get it”. I think that the Minister now gets it. I was pleased to hear him say that autonomy goes to the heart of our higher education, that he heard last week the strength of feeling on this issue and that the Government will actively consider that. At this stage, I beg leave to withdraw the amendment.

Amendment 60 withdrawn.

Amendments 61 and 62 not moved.

Amendment 63

Moved by Baroness Brown of Cambridge

63: Clause 2, page 2, line 25, at end insert—

“() the standards applied to a particular course of study.”

Baroness Brown of Cambridge (CB): My Lords, I shall speak also to Amendments 129, 130, 131, 137, 167, 168, 169, 170, 180, 184, 206, 210, 214 and 215, to which the noble Baroness, Lady Wolf, and I have put our names. The amendments all relate to the important but distinct areas of quality and standards in higher education provision. We all want high-quality higher education provision delivered innovatively by a diverse range of autonomous providers, and a wide choice of subjects with different learning and teaching delivery approaches suited to students’ different learning styles and assessed in different ways appropriate to the subject and the pedagogical approach. Students should have real choice to select a degree programme that suits them—a programme that suits the time they have available, offers the intensity and style of learning that will enable them to progress, with physical and/or virtual delivery, and allows for future options well beyond those that I have listed.

The wording in the Bill could significantly hinder—unintentionally, I believe, in light of my discussions with the Minister and the Bill team and from reading the technical note on market entry quality assurance—the delivery of such a vision. The problem is that the Bill elides quality and standards. Almost every time a mention of quality appears, it is as “quality and standards”. For example, Clause 13 states that the registration conditions will include,

“a condition relating to the quality of, or the standards applied to, the higher education provided”.

Clause 23 states:

“The OfS may assess ... the quality of, and the standards applied to, higher education”.

In Clause 25, the OfS may arrange to give ratings to,

“the quality of, and the standards applied”.

I promise the Committee that I will not go through any more, but I think I have made the point. I understand that this is a dry and technical area but it is, I repeat, critical. Quality and standards sound very much like the same thing but over the past 20 years they have come to have quite specific and distinct meanings in the higher education quality system, which the technical note indicates that the Bill is not trying to change.

We have had some very engaging quotes in the debates so far. The noble Baroness, Lady Wolf, quoted from a Papal bull. The noble Lord, Lord Sutherland, quoted Wittgenstein. I am afraid I offer your Lordships three very important quotes from the *UK Quality Code for Higher Education*. The first is the definition of “threshold academic standards” as,

“the minimum acceptable level of achievement that a student has to demonstrate to be eligible for the award of academic credit or a qualification. For equivalent qualifications, the threshold level of achievement is agreed across the UK”.

This agreement is sector owned. The threshold standard is collectively agreed between higher education providers, facilitated by the QAA. It is then defined in something called the subject benchmark statement, which sets out expectations and defines what can be expected of a graduate in terms of abilities, skills, understanding and competence.

My second quote is the more general definition of standards:

“Academic standards are the standards that individual degree-awarding bodies set and maintain for the award of their academic credit or qualifications. These may exceed the threshold academic standards. They include the standards of performance that a student needs to demonstrate to achieve a particular classification of a qualification”.

Thirdly and finally, I will give your Lordships the definition of quality:

“Academic quality refers to how and how well the higher education provider supports students to enable them to achieve their award”.

In other words, quality is about the systems and processes the provider has in place to support students and ensure that appropriate standards are delivered—and, indeed, can be achieved—by the students.

Ensuring that providers meet threshold academic standards and deliver academic quality is entirely and appropriately the concern of the Office for Students and its quality assessment of higher education providers. Academic standards themselves, on the other hand, including agreeing threshold standards, are and should remain the responsibility of the degree-awarding bodies, as is the case today. Having the OfS control academic standards would be a major infringement of the autonomy of academic institutions and would inhibit innovation and diversity in the provision of higher education qualifications, to the detriment of students.

Only the higher education provider is in a position to use academic judgment on things such as how the student has performed against the requirements of the course in the context of the emphasis or specialism of a particular curriculum, or indeed the stage of competence and understanding in an element of the course that a

student should have reached at any particular point in their studies. Different providers will teach the same subject in different ways with different emphasis and specialism. This provides choice for students and benefits employers; for example, it is good to be able to recruit economists who have specialised in different areas and have developed different approaches to their subject.

The HE sector is very concerned that the Bill allows the Government or the OfS to be involved in determining curricula and standards on individual higher education courses. From my discussions, I really do not think that this is the intention but it can be inferred from the current wording. Amendment 63 and many of the other amendments in this group are intended to remove this inference, giving the OfS oversight of academic quality and ensuring that all providers meet threshold standards, but not giving the OfS an all-embracing responsibility for standards. Indeed, a small addition to the Bill—that is, including the definitions of quality and standards from the QAA quality code—would ensure clarity and provide assurance to the sector.

I hope the Minister will feel able to agree to continue the discussion on the wording of the Bill in these areas to ensure that we get both a rigorous approach to quality and the benefits of an autonomous system of providers responsible for their academic standards. I beg to move.

4 pm

Baroness Garden of Frognal: My Lords, in deferring to the noble Baronesses on the Cross Benches, Lady Brown and Lady Wolf, I now have pleasure in supporting the amendments in this group to which I have added my name. They express concerns raised by Universities UK and GuildHE, two bodies with immense expertise in this sector and fully committed to its standards and reputation.

As the noble Baroness, Lady Brown, has said, central to our concerns about the erosion of university autonomy is the need for the Government and the Bill to be clearer in their approach to standards. UUK and others have noted that the Bill unhelpfully elides quality and standards—we have had reference to this already in debate in this Chamber—but they are two separate concepts in higher education policy. While there is a legitimate role for the new Office for Students in assessing quality, standards are the preserve of independent academic institutions and should be free from political interference. The proposed changes to the Bill would therefore: separate quality and standards to enable different treatment in subsequent clauses; clarify the definition of standards to focus on threshold standards and a condition of registration focused on academic governance of standards; recognise that academic standards are sector-owned and ensure a sector-owned process for agreeing threshold standards; and remove or limit the reference to standards in relation to the teaching access framework, as it is inappropriate to attempt to rank standards.

Quality and standards are separate, distinct concepts in higher education. Amendments 63 and 129 to 131 would remove references to standards to make what was one potential condition of the OfS into two separate conditions for quality and standards. Amendment 131 would make robust academic governance a condition

of registration with the OfS, which protects the principle that self-critical autonomous academic institutions are responsible for the maintenance of academic standards.

Amendments 167, 169 and 170 would ensure consistency of definition when it comes to quality and standards and, again, that governance of academic standards sits with the institution. Amendments 168, 180 and 184 seek to clarify that the proposed assessments of teaching quality established by these clauses is based on the quality of teaching in an institution and not on standards, while Amendments 214 and 215 would ensure the separation of quality and standards once again.

At various points the Bill brackets quality and standards together, as the noble Baroness, Lady Brown, has pointed out, when they are in fact related but distinct elements of quality assurance and assessment. Academic quality covers how an institution supports students to enable them to progress and achieve their award; academic standards are the student outcome standards that individual degree-awarding bodies set and maintain for the award of their own academic credit or qualifications. As drafted, the Bill risks the OfS being able in future to define and determine the standards applied, rather than ensuring that the standards set by autonomous universities are met.

During Committee in the Commons, the Minister gave some reassurance, saying:

“Let me be absolutely clear ... this is not about undermining the prerogative of providers in determining standards. This is about ensuring that all providers in the system are meeting the threshold standards set out in the ‘Frameworks for Higher Education Qualifications’, a document endorsed and agreed by the sector”.—*[Official Report, Commons, Higher Education and Research Bill Committee, 15/9/16; col. 308.]*

This was helpful but the lack of clarity in the Bill should be addressed. It is essential that student outcome standards remain the responsibility of autonomous institutional academic communities and continue to reflect the pedagogical diversity of higher education. I hope the Minister will respond favourably to these amendments.

Lord Willetts: My Lords, briefly, I congratulate the noble Baroness, Lady Brown, on her lucid explanation of the thinking behind her amendments. She makes an absolutely correct point: quality and standards are distinct. As they were always put together in some of the original drafting, the understanding of their different functions in the system was being lost. She is right to remind the House of that. I do not know about the exact way in which her proposals have been drafted but the spirit in which she is trying to make that distinction much clearer must be right. We already have, through the QAA, a direct role in the regulation and inspection of quality, and that is right.

However, to just comment on what the noble Baroness, Lady Garden, said, there also is and has been a legitimate role in standards. Of course universities and higher education institutions have to be responsible for the specific decisions about standards, but threshold standards have been part of the QAA's remit. At the moment, for example, in response to I think widespread concern about the effectiveness of the external examiner system—a concern raised by the Minister for Universities

[LORD WILLETTTS]

and Science, who it is good to see with us again today—HEFCE is investigating how that system operates. It is absolutely not, and should not be, intruding on the autonomy of individual institutions, but it is undoubtedly, in a broad sense, investigating and considering standards.

Provided that we have the capacity for that type of engagement in standards to occur—as we heard from what the Minister said in the other House, the threshold standards is a legitimate function as well—I hope it will be possible to find a way forward which embraces the spirit of what the noble Baroness, Lady Brown, is doing but at the same time recognises that any regulator has some legitimate role in standards, not just in quality.

Baroness Warwick of Undercliffe (Lab): My Lords, I support the noble Baroness, Lady Brown, in urging the Government to think again about the way in which they reflect their intentions for academic standards in the Bill. This picks up the point that the noble Lord, Lord Willetts, made, which I will come back to. In his recent letter of 11 January, the noble Viscount, Lord Younger, helpfully clarifies several points, but again seems to muddle up “quality” and “standards”—and is not clear to which “standards” he is referring.

There are many other issues in the Bill that have attracted more attention. This is, however, possibly the single most significant issue. Those with long memories know that this is a subtle but significant red line in the relationship between universities and government. The distinction between quality and standards is often misunderstood or missed entirely, but it is one of the defining features of a system in which universities have the freedom to determine the content of the courses they offer, to differ from each other, to innovate and to offer variety to students. The current system requires universities to meet commonly agreed threshold standards, as the noble Lord, Lord Willetts, said, but avoids the straitjacket that is an inevitable consequence of defining standards across the board.

It is worth setting out why this matters. The disagreement with the Government reflected in this large number of amendments is not just a rather precious academic conceit; it is a fundamental underpinning of academic autonomy. Academic standards are the levels of attainment associated with specific awards and the grades required within those awards: in other words, how well Judy Doe has done against the requirements of her psychology course at, let us say, Reading, and whether she merits an Upper Second. It has to be that specific because different universities teach different curricula that reflect the specialisms of their particular institution.

These judgments are made by groups of academics who are subject experts and who are best placed to judge a student against academic criteria. The decisions against those standards are and have always been the prerogative of universities themselves, acting autonomously, freely and independently of any government or quasi-government interference. As the noble Baroness, Lady Garden, said in last Monday’s debate, it is unfortunate that she was given such a disingenuous, rather flip answer to her question about

degree classification by some academics involved in these judgments when they said that they trusted their gut feeling. In fact, their judgments are made within a clear framework of sector-owned national principles and are backed up by the external examiner system, although it has its weaknesses—as indeed the noble Baroness subsequently discovered.

That setting of academic standards I have just described is separate from the threshold standard or the minimum requirements that every degree course must meet in order to reassure students that they are studying at degree level. These requirements include the robustness of the processes that underpin them, and the design and delivery of courses. This process is driven by the Quality Assurance Agency through the sector-wide quality code. Here the Government have a role, in partnership with the sector’s designated body, in ensuring that a degree is worthy of the name.

It would be helpful if the Minister could put beyond doubt that when the Bill talks about “standards” it is referring to threshold standards and not to academic standards as they are normally defined and as I have described. In the other place the Minister did just that, very clearly—as the noble Baroness, Lady Garden, indicated. Given that the Minister is in what is now his very familiar place, the Bar of our House, I do not want to quote him again. Since this clarity has not yet been reflected in the wording of the Bill, I hope that the Minister here will undertake to bring back amendments to achieve this. Amendments 136 and 167 offer ways of doing this, as do others.

UK higher education has an international reputation for excellence, due in no small part to the attention given to the management of both standards and quality. Governing bodies of institutions take both very seriously. They are, of course, interlinked: a high-quality learning environment is necessary for students to attain the levels of knowledge, understanding and skills required to obtain their awards, as the Leadership Foundation for Higher Education points out in its advice to governors on these matters.

“Quality” is a broad term, applied to the overall academic provision for learning, including teaching and assessment, student learning opportunities, the nature of academic programmes, the design of the curriculum and student engagement. It is worth remembering that each institution has its own agreed criteria for assessing the quality of learning and teaching. By international standards, as the former chief executive of the quality assurance body has said, mechanisms of internal control are really quite elaborate.

As yet the Government have provided little in the way of concrete reassurance that they understand the significance of the issues I have described. At this late stage in the passage of the Bill, we really need to see some evidence that the Government understand that it is precisely because universities have the freedom to determine the standards that they require of students in relation to the enormous range of programmes on offer that we have one of the strongest university systems in the world. The argument for greater comparability is superficially attractive but masks the inevitable consequence: a more limited range of provision, which is less open to change as academic subjects evolve. I cannot believe that the Government are

deliberately doing that, given the high expectations they have of our universities to support innovation, to support local, regional and national economic priorities, and indeed to support social cohesion.

The higher education system is changing at an unprecedented rate, and the quality assurance system needs to change with it. That is surely what the Bill should seek to do. The challenge is to keep the best features of the current quality and standards systems but also adapt to the new conditions. There are some key principles that will keep reappearing in our debates: non-interference by government in what is taught, a high threshold for degree-awarding powers and university title, encouraging innovation to flourish, the provision of excellent public information and, in the case of this part of the Bill, autonomy over academic standards. This is one that the Government, through the Minister in the other place, have already explicitly accepted. It is one that the Minister in this House ought to be able to ensure is included in the Bill—and I urge him most strongly to do so.

Lord Smith of Finsbury (Non-Aff): My Lords, I remind the House of my interests, which I have already declared. I support the amendments in front of us, and I thank in particular the noble Baronesses, Lady Brown and Lady Warwick, for so clearly setting out the tissue of issues around quality and standards. Unhelpfully, the Bill conflates the two at many points.

We are talking here about three different points. First, there are threshold standards, which are legitimately a matter for the Government on behalf of the British public in ensuring that there is a basic threshold, a *sine qua non*, in order to qualify as a university. Secondly, there are academic standards, which are surely a matter primarily for academics to determine, with a robust system in place to ensure that the process is testing, challenging and accurate. Thirdly, there is quality, and there must be a role for the Office for Students. Indeed, the entire Bill is largely focused on ensuring a proper assessment of quality. There must be a role for government in that process and we will doubtless be discussing this further on quite a number of occasions. Making clear the distinction between the three different things is very important, and the Bill sadly does not do so at the moment.

4.15 pm

Lord Lucas (Con): A couple of my amendments have washed up in this group. Amendment 192 asks whether the OfS will be able to collaborate with other organisations, for instance, the *Times Higher Educational Supplement*, which is also involved in rating universities in this way. It seems foolish not to be able to use the work that these organisations have done or, indeed, to share intelligence with them to enable them to do their job better.

The second amendment picks up a point made by my noble friend Lord Willetts. I want the OfS to be able to prompt discussion on the system of degree classification in the UK. The class of degree that people come out with from university matters a lot to them. The line between a 2.1 and 2.2 can have a very big effect on people's careers. It is not at all clear to me that the system really operates in students' interests so

that someone with a 2.2 should be marked down to the extent they are in terms of employment. We have to have a nationwide conversation on this. Since the universities have not prompted it, the OfS should be able to prompt it. It would be a valuable thing to do. It should not be able to impose an outcome but we ought to have a serious conversation. There are obvious disadvantages in the system we have; I am not saying that I know of a better one but we ought to review it.

Lord Stevenson of Balmacara (Lab): My Lords, this has been a good and useful debate about, as everyone has said, important issues which at the moment are not as well established as they could be in the Bill, so I hope there will be an opportunity to return on Report to get them better organised. I do not think that any one of the amendments in this group, with respect to those who have tabled them, takes the trick. This also has to be interfaced back to what we will decide to do on institutional autonomy, which to some extent is the other side of the same coin.

As the noble Lord, Lord Smith, said, the two contributions from the noble Baronesses, Lady Brown and Lady Warwick, gave us a real insight into the difficulties that will arise if we do not get this right. I do not want to be too critical of the noble Lord, Lord Lucas, who is doing his best to raise a series of interesting questions, but Amendment 192 refers to making arrangements for the rating of the quality and standards of higher education. That is exactly the problem although I agree that the amendment is more subtle in some ways. If we do not approach this with real intelligence about how we use the two terms we will run into difficulty as we go further down the track. That being said, I understand where the noble Lord is coming from. We will probably have to come back to some of the issues that he raises at a future date.

I shall speak briefly to our Amendments 131 and 136. Amendment 131 is an attempt to try to ensure that in a particular part of the Bill, in assessing the quality of higher education providers as a whole—I am not talking about the individual quality; I am falling into my own trap here—there has to be a robust system to get people to a point at which they can be registered as higher education providers. Those systems must include a consideration that the provider has in place appropriate standards that they may apply. I apologise for the typo in the last line of the amendment which should read “providers”.

Amendment 136 tries to give a slightly more detailed interpretation of what a threshold standard is and relates it to,

“a student undertaking a higher education course provided by it, is sufficient to merit the award of a degree or other higher qualification”.

I agree with all noble Lords who have said that the breakdown here is between the sector, which is responsible for the threshold standards, and the necessary quality assessment, which should be done by an external body—it is currently done by the QAA. I also accept, as the noble Lord, Lord Willetts, and others have said, that the QAA has a very important role, which we will be revisiting in relation to establishing the conditions

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under which a body gets on to the register, therefore becoming a higher education provider, and is eligible for access to student support.

Listening to this debate, I was struck by two things. First was the sense that we are all grouping around a particular area which needs to be unpicked. As I said, no one of these amendments does it exactly, but we know what we are looking for. Secondly, the Government need to signal—if they can—their willingness to look at this again on Report. I welcome what the noble Viscount said in his opening remarks: there will be a statement or a further chance to come in and discuss how we are going to make sure that, as it leaves this place, the Bill has appropriate wording for institutional autonomy, which is at the centre of all we are discussing.

Viscount Younger of Leckie: My Lords, this has been another helpful debate. I stress that I have listened carefully to the arguments made today on this issue. I reassure the House that, based on the strength of feeling expressed here, the Minister for Universities and Science and I will actively consider what more we can do to address the concerns raised about the Bill in relation to standards. I agree with the noble Baroness, Lady Warwick, that this matter is an integral part of the Bill and I understand its significance. We may want to return to this on Report. I hope that reassures the noble Lord, Lord Stevenson, too.

Lord Stevenson of Balmacara: The Minister has now used a third variation. I think he is trying to say that this is an issue which will come back on Report. We can do it or he can do it, but if we agree that it is something we will be discussing we do not need to hedge around it. It is clearly an issue that we will want to return to in future. If the Minister can confirm that, it will calm us all down considerably.

Viscount Younger of Leckie: It is amusing playing around with words. We may, indeed, want to return to this on Report: I would not want to go any further than that. However, I hope that the warmth of the words gives an indication of the direction we wish to go in. It is right that I keep my comments on this group of amendments relatively brief. In addition, I am happy to write to noble Lords on this matter to provide further clarification. I hope that noble Lords will have received quite a long letter from me today, based on the last day in Committee. I hope that all the points raised were helpful.

My noble friend Lord Lucas made some helpful comments on Amendment 192. I reassure him that the OfS can already collaborate with others as part of this assessment. HEFCE, which currently administers the TEF, has collaborated with the QAA and others without specific legislative provision allowing them to do so. HEFCE currently undertakes an important role in assessing standards as part of its quality duty. As my noble friend Lord Willetts said, standards are currently part of the QAA's quality code. However, I acknowledge that the current lack of an explicit mention for standards has created uncertainty. That is why standards are mentioned on the face of the Bill. I hope we can all agree that it is essential that the Office

for Students can ensure that providers are genuinely offering qualifications of a suitable standard to be considered higher education, even if we need to discuss precisely how we have achieved that within the current drafting.

The noble Baronesses, Lady Brown and Lady Garden, spoke about separate quality and standards. I understand the points raised on the difference between the two. However, decoupling quality and standards is not the approach taken by the sector in the UK quality code. Any assessment of quality and standards may need to consider both in order to protect the value of a qualification. However, the OfS can apply a condition on quality or standards: it does not have to apply both. I hope this provides some helpful clarification on that front.

On degree classification and grade inflation, I agree that the sector needs to do more here. We are committed to supporting them in this: HEFCE's work with the Higher Education Academy to implement approaches to training external examiners, and the teaching excellence framework, which will recognise providers that are genuinely stretching students and delivering good outcomes for their students, are examples of important actions in this area.

We do not want to undermine the prerogative of providers in determining standards. As the noble Baroness, Lady Garden, said, this is about ensuring that all providers in the system are meeting the threshold standards that are set out in a document endorsed and agreed by the sector, as she mentioned—*Frameworks for Higher Education Qualifications*. I reassure the Committee that there is no intention to rate standards in the TEF. However, part of excellence in teaching is ensuring that students are stretched to achieve their full potential. One of the TEF criteria is, therefore, the extent to which course design, development, standards and assessment are effective in stretching students to develop independence, knowledge, understanding and skills that reflect their full potential. For this reason, we believe that the inclusion of standards is crucial to ensuring that the TEF can make a true, holistic assessment of teaching excellence.

I repeat that the standards that are regulated against should be, first and foremost, standards that are set by the sector, rather than prescribed narrowly within legislation. As I have said, I will be reflecting carefully and expect that we will return to this issue on Report. I therefore ask that Amendment 63 be withdrawn.

Baroness Brown of Cambridge: I have listened with interest to the Minister and I am very pleased that he has offered to write to us. I think he also offered further discussion in this area. We are actually in strong agreement about much of what the Bill is trying to achieve in this area, but there remains some concern about the wording used to describe it. On the basis that there is further engagement to come in this area—indeed, the Minister has indicated, I think, that it is likely to come back on Report—I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendments 64 to 67 not moved.

*Amendment 68**Moved by Lord Lucas***68:** Clause 2, page 2, line 31, at end insert—

“() All bodies on which the OfS places responsibility for the execution of its duties shall be open to and governed by all classes of registered higher education providers, and all individual registered higher education providers shall have a role in choosing who on each such body’s board is chosen to be representative of them.”

Lord Lucas: My Lords, Amendment 68 seeks to make sure that bodies on which the OfS places responsibility under the Bill are truly representative of all providers, which has not historically been the case for higher education bodies. I beg to move.

Baroness Goldie (Con): My Lords, I expected full-blooded and voluble contributions from all sides of the Committee. I realise that noble Lords are accustomed to the courteous, urbane and patient demeanour of my noble friend Viscount Younger, and I appreciate that my appearance at the Dispatch Box may cause a slight frisson. Let me reassure noble Lords that, while I may not be able to match my noble friend’s skills, I shall do my very best to emulate his virtues.

By way of preface, although not a current, registerable interest, I served for many years on the court of my alma mater, the University of Strathclyde, of which institution I am an honorary fellow. I also spoke regularly in the Scottish Parliament during the passage of the Higher Education Governance (Scotland) Act 2016. I have to say that, in my opinion, that was an unwarranted, intrusive and unnecessary piece of legislation, which I voted against. By comparison with that inedible fodder, this Bill is to me haute cuisine. I realise that some noble Lords may have a different dietary definition, but I think that, in contrast to the position in Scotland, this Bill is trying to offer, frankly, 24-carat gold standard protection for university autonomy.

I turn to the amendment in the name of my noble friend Lord Lucas. I am very sympathetic to the issues raised via this amendment. The OfS will be introducing a new regulatory system that will govern all types of provider, from our longest established universities to those new providers joining the register for the first time. It is essential that the OfS’s systems are fit for purpose and also understand the needs of all types of providers. In operating a single register for all HE providers, the OfS will have a duty to ensure that its regulatory systems, and those involved in running them, fully take account of the diversity of the sector and the full range of different HE providers. This will be a responsibility of the OfS board, which will include representatives of a diverse range of HE provision.

4.30 pm

We recognise the need to ensure that any bodies which might be appointed to carry out functions on behalf of the OfS are truly representative of the whole sector. That is why we have made it a mandatory condition of designation for the designated quality and data bodies that they be able to represent a broad range of registered HE providers. This is fundamental, because there can only be meaningful, representative

regulation if all parts of the sector are involved. This amendment is therefore not required to embed the principle of sector representation into the working of the OfS via its partner organisations, and I respectfully ask my noble friend Lord Lucas to withdraw his amendment.

Lord Lucas: My Lords, I am grateful for the comfort which my noble friend has given me and I beg leave to withdraw the amendment.

*Amendment 68 withdrawn.**Amendment 69 not moved.**Amendment 70**Moved by Lord Storey***70:** Clause 2, page 2, line 31, at end insert—

“() The OfS may provide the Secretary of State with such information or advice relating to its functions and the provision of higher education in England as it thinks fit.”

Lord Storey: The Bill creates separate regulatory and funding bodies for teaching and research and in so doing risks undermining the positive interaction of teaching, research and innovation activity in our universities. The Government have gone some way to address this problem by giving the OfS a new duty to monitor the financial sustainability of the sector and by publishing a note on joint working between the Office for Students and UKRI. However, the Bill could do more to deliver what the higher education White Paper promised: that the OfS would take a holistic view of the sector and institutions. The Office for Students should have the same power to provide advice to Ministers without the specific instruction to do so that is being proposed for UKRI. I beg to move.

Lord Willetts: My Lords, briefly, the thought behind the amendment makes a lot of sense. Currently we have had for decades close exchange between Ministers and HEFCE; it goes both ways, and the point I tried to make earlier is that we should not regard all that as equivalent of passing a statutory instrument through Parliament. It is important that Ministers can communicate their concerns to HEFCE and its successor bodies, but it is equally important that the communication goes the other way. I hope that we may hear from Ministers that they believe it will still be possible for these communications to happen, and anything that assures us that that flow of ideas and information in both directions will continue in the new dispensation will, I think, be welcomed by noble Lords on all sides of the Committee.

Lord Stevenson of Balmacara: My Lords, I agree with the noble Lord, Lord Willetts, on the amendment. It is a good one, and although it may not be high profile it is certainly worthy of further consideration. If there is a defect in the current drafting, the Minister may wish to look at it before we get to Report. He can give one of his equivocal answers if he wishes, but of course the more clarity, the better.

[LORD STEVENSON OF BALMACARA]

I was not going to speak in particular about the amendment, although I was interested in the substantive clause to which it is applied. The current wording says:

“Guidance given by the Secretary of State to the OfS which relates to English higher education providers must apply to such providers generally”—

so far I am with the drafting—

“or to a description of such providers”.

At that point I got completely lost. When the Minister responds, perhaps she could give me a better—perhaps Scottish—interpretation of this. Clearly, the Scots are much sharper on these matters than English drafters. As I understand it—and I normally understand draft legislation relatively well—guidance must apply to the providers, which are defined as “English higher education providers”, generally. That is quite fine. I accept that. However, I do not get the next bit:

“or to a description of such providers”.

To whom or to what does that description apply?

Baroness Goldie: My Lords, I fully understand the motivation behind this amendment, which seeks to give the OfS an independent voice in the future policy-making process. The OfS, as the principal regulator of the HE sector, will have some level of relationship with every registered provider and will gather a comprehensive set of information about the sector. Indeed, as the operator of the register, the OfS will engage closely with new market entrants, and because of its duty to monitor the financial health of the sector under Clause 62, it will have a clear and detailed understanding of how the market is operating and developing. I think that was a point of particular concern to the noble Lord, Lord Storey. Because of its duties to operate in the interests of students under Clause 2, it will also have a clear understanding of demand-side issues.

No sensible Government would want to make major policy decisions on the registered HE sector without engaging with the OfS, and we confidently anticipate that the OfS will be involved, where appropriate, in the policy-making process, just as HEFCE has been. There is nothing in the Bill which prohibits the OfS from giving advice to government on matters within its regulatory remit and there is no reason to suggest that it would be constrained in giving such advice or not be able to provide open and honest analysis. My noble friend Lord Willetts was concerned about whether the OfS will be able to give advice to the Secretary of State and I hope that observation reassures him. Further, there is also a specific duty in Clause 72 for the OfS to provide information and advice to the Secretary of State when it is requested.

I do not think that it is necessary to give an additional explicit statutory power in the Bill for the OfS to be able to give unsolicited advice to the Secretary of State. Nor do I think it would be wise, as I believe there could be unintended consequences of doing that. It also could lead the OfS to spread its limited resources too thinly across its core role of delivering a fair and effective regulatory system and additional role of developing policy advice. In addition, the sector is well represented by a large range of representative bodies, mission groups and other organisations, which

engage in debate and dialogue with the Government about policy decisions. It is the Government’s aim that the OfS remains independent of the sector if it is to regulate providers fairly. The OfS will also in part be funded by registration fees paid by registered providers, so it will be held to account by them, and must operate as efficiently as possible.

I am confident that the provisions in this Bill will make the OfS an indispensable source of expert analysis and advice on which the Government will want to draw in the formulation of future policy. In these circumstances, I ask the noble Lord to withdraw his amendment.

Baroness Warwick of Undercliffe: Can I ask the noble Baroness to reflect on the point made by the noble Lord, Lord Willetts, about the role of the current body, HEFCE, as a buffer body? She said that the new Office for Students will fulfil much the same function as HEFCE. When the Minister reflects on this debate, will she consider the way in which the requirements on HEFCE express that role as a buffer body and see whether it is also reflected in the way in which we are asked to confirm the role of the OfS?

Baroness Goldie: I thank the noble Baroness for raising an interesting point. I am sure it is one on which I and my colleagues will want to reflect.

Lord Storey: I am very grateful to the Minister for her full and frank reply. I will reflect carefully on what she has said. If there is nothing in the Bill prohibiting the OfS from giving advice and being involved then we need to explore that a bit further. I will withdraw the amendment currently.

Amendment 70 withdrawn.

Amendment 71 not moved.

Clause 2 agreed.

Amendment 72

Moved by Baroness Garden of Frognal

72: After Clause 2, insert the following new Clause—

“Meaning of higher education

For the purposes of this Act, the provision of higher education by English higher education providers comprises higher education provision by—

- (a) universities,
- (b) colleges of further education, and
- (c) other higher education providers, both registered and unregistered.”

Baroness Garden of Frognal: My Lords, in the absence of the noble Baroness, Lady Wolf, I beg to move this amendment, to which I have added my name. It attempts to ensure that a proper meaning of higher education is in the Bill—the public deserve to know what the Bill means by it. In the absence of a clear definition, it is important to specify the organisations that can provide it. Universities and colleges of further education are important providers of higher education and must not be overlooked in the Bill, but there are other providers, which may be registered or unregistered.

There are different criteria for registered and unregistered providers, and both have a part to play. We also need to make it clear that not all providers are universities. So, not necessarily on the face of the Bill but somewhere in the guidance, there should be clarification, as provided for in the amendment.

Baroness Watkins of Tavistock (CB): My Lords, I draw attention to my interests, as declared in the register.

I support the amendment, to which I have added my name. As the noble Baroness, Lady Garden, has already pointed out, the majority of higher education will be undertaken in traditional higher education institutions, including further education colleges. Those institutions are accountable for innovative, appropriate curriculum design, as outlined earlier by my noble friend Lady Brown. It is appropriate that curriculum design includes enabling students to have degrees awarded when a proportion of their programme is either with employers or on placements. In health, for example, students need to learn in hospitals and communities, and some very innovative new approaches in higher education are associated with degree-level apprenticeships. At the University of Exeter there is an ambitious approach to the new degree-level apprenticeship schemes, which involve working with employers and their staff. The first of these programmes commenced in September 2016—a BSc honours in digital and technology solutions. It involves working with four employers, including IBM.

A degree-level apprenticeship offers a new route to achieving a university degree in collaboration with employers. Apprentices are full-time, paid employees of the business partner, but a proportion of the student's time is spent participating in a programme, using blended learning, residential teaching blocks and assessed projects and placements.

Therefore, it is imperative that we are clear in the Bill about the definition of higher education and that we recognise that, whether it is in health or industry, part of students' higher education experience is increasingly in a workplace. Amendment 72 would encompass, and make provision for, this approach through the definition that it provides, thus strengthening the Bill at this point.

Baroness O'Neill of Bengarve: My Lords, when the Minister replies, can she clarify a key term of the Bill—namely, the English higher education provider? I think we all understand—and this clause makes it very explicit—that we expect a diversity of institutions to provide higher education in England. What is unclear to me is whether English higher education providers have to be incorporated under English law. May they, for example, be incorporated under the law of the Cayman Islands? If they are for-profit organisations, may they pay their taxes—if any—there? It would be clarifying to know whether English higher education providers are to be incorporated under English law.

4.45 pm

Lord Stevenson of Balmacara: My Lords, this is a topic that came up on the first day in Committee when I was asked a question, which I was unable to answer,

by the noble Baroness, Lady O'Neill, as to what the definition in that amendment would have meant in terms of incorporation, location, geographical reach, et cetera. These are issues that I think are within, although not explicit in, this amendment.

I think the genesis of this amendment, which was well explained by the noble Baroness, Lady Garden, is the worry that nowhere in the text of the current Bill is there an inclusive notion about how our education is expressed. There would be some value in having one, not because of any particular concerns about status or legal position but more to ensure that in seeking competition over quality, for instance, or more innovation, we are not by accident or lack of design excluding those who might be effective in terms of that operation. It is perfectly possible, as the previous speaker clearly said, that much of the innovative work that may come out of the degree-level apprenticeships will be done outside the universities and current colleges of higher education. It may even be done outside colleges of further education or in the workplace and other areas.

We have later amendments that will attempt to introduce an alien concept into much of UK higher education—and possibly more particularly, into English higher education—by getting away from the hegemony of the three-year undergraduate degree. It is always resisted by policymakers that the concept of a university course that they have in mind is one that is entered into by people who have just reached their 18th birthday, have left school and will study perfectly for three years and then go off to have wonderful careers elsewhere while using the skills they have acquired, whereas the truth, of course, is that higher education in its widest definition is extraordinarily broad and diverse, and rightly so. Indeed, one of the problems that we all hoped would be solved by this legislation was to try to bring in some ways in which we could see a more discursive route—if that is not too much of a word—through higher education for those who wish to stop halfway through, take a job, reflect on what they have learned, go back in and perhaps do something else. All the things we see in other higher education systems—such as multiplicity of access and different routes through experience as well as academic learning, both of which are valued and built in to the solution—are not the cornerstones of what we currently see in our higher education system. There will be difficulties in applying them, problems in assessing them and extraordinary circumlocutions, I suspect, in trying to incorporate them into the present arrangements, but come they will. Even if new technology was not going to be a major player in terms of what we are doing for the future, the changes that would be necessary to accommodate young people who are starting their journey in higher education would mean that we would have to think about this again. This is a long way away from the exact wording that we are considering in Amendment 72, but that proposed new clause would at least give us an inclusive version of the current scene in our education and I can commend it for that.

The question raised by the noble Baroness, Lady O'Neill, is important, and we would still like to hear from the Minister. If he is not prepared today to give us a response on this narrow point of where “English higher education providers” takes us in terms of provision

[LORD STEVENSON OF BALMACARA]

of higher education, can he write to us as soon as possible? I think it will influence how we take forward this particular matter.

Viscount Younger of Leckie: My Lords, I can understand the motivation behind this amendment. At the outset, I would like to address a point raised by the noble Baroness, Lady Watkins, when discussing definitions. As she will know, we want to encourage innovative approaches, and the question of degree apprenticeships very much comes into that. We wholeheartedly support the need for innovative provision and I want to assure her that the Government are fully committed to degree apprenticeships—this is captured by the OfS's duty on promoting choice. In the absence of the noble Baroness, Lady Wolf, I would be happy to further discuss this amendment outside the Chamber with her or any other speaker in today's debate. For now, I shall keep my comments relatively brief.

I fear that this amendment inadvertently goes too far in that it seeks to extend the regulatory coverage of the OfS to all higher education providers as defined by the proposed new clause, including those not on the register. The OfS must focus its resources and regulatory activity where public money is at stake. Extending its duties in this manner—for example, in promoting quality, choice, opportunity, competition, value for money and equality of opportunity—increases the OfS's regulatory purview and risks decreasing its ability to focus attention where it is needed most; that is, on monitoring those institutions which pass the regulatory entry requirements to the OfS register.

We discussed definitions at some length last Monday. The Bill uses “higher education providers” as a blanket term to mean any provider of a higher education course as defined by the Education Reform Act 1988, including further education colleges providing higher education. This is already defined in the Bill in Clause 77. I very much noted the question raised by the noble Baroness, Lady O'Neill, and which was alluded to by the noble Lord, Lord Stevenson, on clarification of what “English higher education provider” means. Although I have, I hope, reassured noble Lords that it is defined in Clause 77, I do feel another letter coming on to clarify to the House exactly what we mean by that. I hope that that is of some help. Therefore, we believe that introducing a new definition is unnecessary and could have unintended consequences.

I understand the spirit in which this amendment has been tabled. However, the OfS's regulatory role is defined by those providers that it registers. I respectfully ask the noble Baroness to withdraw her amendment.

Baroness Garden of Frognal: I thank the Minister for his reply and note that Clause 77 includes the meaning of “higher education providers”, but not in quite the same clear way that we have set out here. We look forward to hearing a fuller explanation in answer to the question posed by the noble Baroness, Lady O'Neill. This amendment was on a point of clarification. It was not the intention that it sit on the face of the Bill but rather that we have a simple explanation of “higher education” which would include full and part-time

students and all the other different points we will come to later in the Bill. Meanwhile, I beg leave to withdraw the amendment.

Amendment 72 withdrawn.

Clause 3: The register

Amendment 73 not moved.

Amendment 74

Moved by Lord Stevenson of Balmacara

74: Clause 3, page 3, line 9, leave out “may” and insert “must, after a period of consultation,”

Lord Stevenson of Balmacara: My Lords, this is a relatively brief group of amendments that are primarily concerned with drafting issues, although I would like to make a substantive point about consultation with respect to Amendment 428.

In moving Amendment 74, I want to draw the attention of your Lordships to the subsection referenced, which is at page 3, line 9. Noble Lords may not have a copy of the Bill with them, but it is a very short subsection and I will read it out so as to not to trouble noble Lords with having to fiddle with their papers. It reads:

“The Secretary of State may by regulations make provision about the information which must be contained in an institution's entry in the register”.

The question on whether or not these regulations will be negative or affirmative needs to be resolved, and I would be grateful for confirmation from the Minister when he comes to respond as to which variety we are talking about here. However, assuming that there will be regulations in a secondary legislation format, the question that then arises is: why is it a discretionary power?

All too often in your Lordships House we question whether the wording of the statute should be “may” or “must”. This subsection contains both “may” and “must”—it allows the Secretary of State to require information which “must” be contained in an institution's entry in the register. Noble Lords will understand why that is the case; registers would be worth nothing if they did not contain, or had a discretionary amount of, information, so the register would not be complete, and in that sense it is a “must”. However, I am concerned about the wording that the Secretary of State “may” by regulations make provision. Does that mean that the Secretary of State has an opportunity not to make regulations about those provisions? I would be grateful for confirmation on the record from the Minister.

Amendment 77, which seeks to amend Clause 5(5), is again a drafting issue. Noble Lords may feel that I am obsessed by that, but every now and then it seems important to focus on the wording. This subsection says:

“Before determining or revising the conditions, the OfS must, if it appears to it appropriate to do so, consult bodies representing the interests of English higher education providers which appear to the OfS to be concerned”.

That is a double concession to the possibility that the OfS has discretion in these matters. Surely, it is always appropriate for the OfS, given its responsibilities, to

consult bodies representing the interests of English higher education providers. The Minister may well say that it is inconceivable that it would not do so, but in that case why give it the discretion not to? There is a case for revising that drafting. It has a “must”, which I like—“the OfS must”—but I do not think the legislation can qualify a “must” by saying “if it appears to it appropriate to do so”. It is almost certainly always appropriate to consult before a body as important as the OfS determines or revises its conditions.

Amendment 428 proposes that, under Clause 69, the OfS must consult bodies representing the interests of English higher education providers, including staff and students, as well as those who appear to the OfS to be concerned. There is a discretion there, which I am not challenging to the same extent, but the question whether the providers will be sufficient to represent the staff and students’ interests which may be affected seems to me to be important. I would be grateful for the Minister’s response. I beg to move.

Viscount Younger of Leckie: My Lords, I assure the Committee that there is a clear obligation on the OfS to consult when it first determines the initial and ongoing registration conditions and on significant subsequent changes. This will be taken forward through the consultation on the regulatory framework under which the OfS will operate. Clause 69 is clear that, before the OfS can publish its regulatory framework, it must first undertake a wide-ranging consultation.

Subject to the passage of the Bill, the consultation on the new regulatory framework will take place in autumn 2017, so the OfS can begin accepting and assessing applications from new and existing providers in 2018, in time for the 2019-20 academic year. I hope the noble Lord, Lord Stevenson, has taken note of this timetable. We mentioned it earlier in Committee—I think on the first day. We are deliberately taking our time over the introduction of the new regulatory framework and regime. We are not rushing into this. The OfS must have time to consult fully and take on board the views of a very wide range of stakeholders. The new regulatory approach to higher education will be very carefully introduced.

Clause 69 places a very clear duty on the OfS to take into account representations from every part of the sector. It makes provision for the OfS to consult any persons that it considers appropriate and is drafted in such a way that it gives the OfS discretion to consult higher education staff.

On the question of students, which the noble Lord, Lord Stevenson, raised, we will look to the OfS strongly to encourage providers to engage and consult with students and other stakeholders as a matter of good practice. However, we do not believe that it is right to be prescriptive further than that.

The OfS register will cover all providers regulated by the OfS and will share some similarities with HEFCE’s register of providers. However, whereas HEFCE’s register is primarily a regulatory tool, the OfS register is aimed squarely at students. I reassure the Committee that, although the Bill states that the Secretary of State “may” make regulations, this is standard legislative drafting. It is not meant to imply that the Secretary of State will not do so; I can assure noble Lords that she

will. I can also assure noble Lords that the Government firmly expect the OfS to consult on how it will run the register. With that explanation, I ask the noble Lord to withdraw his amendment.

Lord Stevenson of Balmacara: I thank the Minister for his response. I notice that he did not confirm whether the regulations would be affirmative or negative. Perhaps he could write to me on that point—it is not a significant thing. I think his wording is sufficient to reassure me on the main point. I am never going to win this “may”/“must” battle, but I am not going to stop. I beg leave to withdraw the amendment.

Amendment 74 withdrawn.

Clause 3 agreed.

Clause 4 agreed.

5 pm

Clause 5: The initial and general ongoing registration conditions

Amendment 75

Moved by Lord Stevenson of Balmacara

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

“(1A) Subject to subsection (1C), initial registration conditions of all providers under subsection (1)(a) must include a requirement that every provider—

- (a) provides all eligible students with the opportunity to opt in to be added to the electoral register through the process of enrolling with that provider, and
- (b) enters into a data sharing agreement with the local electoral registration officer to add eligible students to the electoral register.

(1B) For the purposes of subsection (1A)—

- (a) a “data sharing agreement” is an agreement between the higher education provider and their local authority whereby the provider shares the—
 - (i) name,
 - (ii) address,
 - (iii) nationality,
 - (iv) date of birth, and
 - (v) national insurance data of all eligible students enrolling or enrolled (or both) with the provider who opt in under subsection (1A)(a);
- (b) “eligible” means those persons who are—
 - (i) entitled to vote in accordance with section 1 of the Representation of the People Act 1983, and
 - (ii) a resident in the same local authority as the higher education provider.

(1C) Subsection (1A) does not apply to the Open University and other distance learning institutions.”

Lord Stevenson of Balmacara: My Lords, in the absence of the noble Baroness, Lady Royall, and with her consent, I shall introduce her amendment. I am grateful to the noble Baroness, Lady Garden of Frognal, and the noble Lords, Lord Judd and Lord Lexden, all of whom are in their places, for their support.

This amendment was moved in Committee in another place by my honourable friend Paul Blomfield. It raises an issue he has been concerned about and has

[LORD STEVENSON OF BALMACARA]

experience of, in that he sits for a constituency in Sheffield which is alleged to have the highest number of students who are registered to vote. The underlying issue is the move to individual electoral registration under which all of us are required to sign up individually to vote. This has had a huge impact not only on family households, where many people have dropped off the register, but on the practice which had been going on for many years in universities. The standard way in which that operated was that universities which had halls of residence, or at least organised accommodation for students, registered them en bloc. That, unfortunately, has been outlawed and there is a real danger that students will not be on an electoral register—not necessarily the one where the university is, but any one.

That has two implications. It is important that people should be registered to vote. If you do not have a chance to vote, you are not a part of the overall democratic process. That is a bad thing, particularly for students and young people, who should be brought in at the earliest opportunity—perhaps even younger than today—in order to ensure that they get into the habit of voting and participate as a result. It is a particular issue for universities, which will not have the voice of those who are participating at university in the wider democratic process. There are two sides to this.

If students are not registered in the university or higher education institution they are at, those constituencies will not only be disadvantaged in terms of the representation of people who live and operate in those places but will shrink, which will affect the size of constituencies and therefore have an impact on the way in which they are drawn up. Many issues arise from the initial proposal.

The background to the particularity of this amendment is that attempts were made to see whether universities could help and assist in this. It was found early on that universities already collect most of the data needed to register students. All that is needed is a national insurance number. This is not routinely collected by universities because students are not employed there.

Obviously there are ways in which one could pose questions to students at points in the process of being at university without being intrusive. The example I have here is from the University of Sheffield—but there are other institutions—which worked with the city's electoral registration officer and introduced questions for students at the time they were registering or reregistering for their courses. The first question was, "Do you wish to register to vote?". If they said no, no further action was taken; and if they said yes, they would like to register to vote, they had to provide their national insurance number. The results were amazing: 64% of students opted to register to vote within Sheffield, although there were difficulties in getting some students to find their national insurance number—a problem not confined to students; I can never remember where mine is. I have now memorised it because I got so cross about being unable to complete forms online at the time I wanted to do them. I now have it and can give it to you now, if you want it, without breaching any personal information, of course.

The Cabinet Office then made a change and issued new guidance, which meant that it did not have to have a national insurance number. This was a sensible and unexpected move in support of the process by the Cabinet Office, and I am delighted it happened. We have an opportunity to help in that process. It has a more general particularity than just this Bill, but it is an opportunity that we should take to do it.

The amendment would create an opportunity within which universities could help participation using their function, not as a public sector body but as a public body with wider interests in the public well-being, in order to achieve the good outcome of having more people registered to vote. I beg to move.

Baroness Garden of Frognal: My Lords, I have added my name to this amendment for the good reasons set out by the noble Lord, Lord Stevenson, to ensure that all eligible students are provided with an opportunity to opt in to the electoral register at the location in which they are studying. Since I have been in the Chamber I have been handed a helpful briefing from the Cabinet Office on this very amendment, which points out that as part of the Government's Every Voice Matters campaign, the Minister for the Constitution is holding a series of round tables, including with the higher and further education sector, to assess what barriers there may be to electoral registration and what the Government could do to address them, so this issue is under active discussion.

As the noble Lord has said, under the old system of block registration, universities could go quite some way in assisting their students to become enrolled, but under individual electoral registration that has ceased to exist and the focus is on individuals to register. The benefit is that this system is more resilient to fraud, has a reduced risk of a student being registered at two locations, and—which I think is rather more important—has a reduced risk of a student being able to vote at several locations. But as we know, when someone is moving house, registering to vote is a low priority and many people realise that they did not get around to registering only when it comes to election time and it is already too late. Analysis by the Electoral Commission shows that areas with a high concentration of certain demographics, including students, private renters and especially young adults, where people move on a regular basis are particularly in danger of having low registration numbers. It is therefore important that special care is taken to prevent at-risk groups failing to register and have their say at an election.

We are well aware that universities already encourage students to register and vote, as the noble Lord, Lord Stevenson, spelled out. Sheffield has been successful in increasing the number of students registered and many other institutions are already taking steps to encourage young people to ensure that they are on the register. Surely it is vital that the student voice should be heard in the democratic process, and that young people should get into the habit earlier rather than later of making their voices heard in elections. For all those reasons, I hope that favourable attention will be given to this amendment to try to make sure that as many students as possible are both registered to vote and then use their vote.

Lord Judd (Lab): My Lords, this is a very important amendment. I want to make two points. First, we have already spent a great deal of time talking about the purposes of higher education and the desire to see fully educated, rather than just trained, people going into society and playing their part. Elections are occasions that provide real opportunities, so if we are serious about our earlier discussions on the Bill, logically we ought to ensure that everything possible is being done to enable students to participate.

My second point is simply that it is most important for society as a whole to ensure that we have the fullest possible participation in elections. There should be no unnatural hindrances whatever. Although we should of course have safeguards—I am the first to agree with that—we want to make sure that as many people as possible have the opportunity to participate as they should. Students have a particularly important contribution to make in the democratic process. Therefore this amendment makes absolute sense, in terms of both achieving our objectives as a democratic society with full participation and making sense of what we talked about at great length earlier in our deliberations: we want students to become fully participating and informed citizens.

Lord Lexden (Con): My Lords, the case for the amendment has been explained clearly and persuasively by the noble Lord, Lord Stevenson, and its other supporters; I, too, support it.

The amendment reflects a strong cross-party conviction, in both this House and the other place, that the underregistration of young people for electoral purposes is a most serious and pressing problem that needs to be tackled resolutely in a number of ways. The amendment embodies one of them.

Its objective was recommended strongly in last year's report entitled *Getting the 'Missing Millions' on to the Electoral Register*, prepared by Bite The Ballot and others for the All-Party Parliamentary Group on Democratic Participation. That authoritative study makes it clear that university registration procedures could easily be adapted to incorporate provision enabling students to opt in for electoral registration, as the noble Lord, Lord Stevenson, explained.

The Government should associate themselves firmly with the cross-party proposals to increase electoral registration of our young people. They need to demonstrate a clear commitment to working in a bipartisan spirit so that our democracy can be strengthened by bringing those missing from the register on to it. By supporting this amendment, the Government would make a significant contribution to the bipartisan progress that we need so badly.

Baroness Smith of Newnham (LD): My Lords, I declare my interest as a member of the University of Cambridge. Before I entered your Lordships' House, I had responsibility on Cambridge City Council for democratic services when the individual electoral registration pilots were going through. Before individual electoral registration, the university, or at least the colleges, had an extremely efficient relationship with the city council to register all undergraduate and graduate students. The shift to individual electoral registration has many benefits, but we lost that link.

Colleges could no longer simply offer the data to the city council. The amendment would bring back something that worked effectively in the past but do so in line with current legislation. It would enable the Government to ensure that we really could register young people. At the time of the EU Referendum Bill, the Government repeatedly said that everything that linked back to the franchise needed to be dealt with in a representation of the people Act. I ask the Minister to consider whether on this occasion an amendment could be made that ensured that as many young people as possible could be on the electoral register.

Lord Storey: I was drawn to an Answer from the Minister to a Question on the effectiveness of the Sheffield pilot project on electoral registration. I think all of us in this Chamber—certainly those Members who have put their names to this important amendment, whom I thank—believe that it is important in our democracy that as many people as possible take part in elections. The best place to start that lifelong commitment to voting is at a young age. Sadly, we see many young people, perhaps as a result of all sorts of factors, not registering to vote and not getting into the habit of voting. Some of us had hoped that the immensely successful Belfast model, where electoral registration officers go into schools, give citizenship lessons and ask people to register to vote there and then, might be adopted in the rest of the UK, but that has not been the case. Government should surely seize every opportunity to ensure that more young people take part in elections and are registered to vote.

As has been said, we saw with the introduction of individual electoral registration a huge slump in the number of people who are registered. The Minister said in his Answer:

“The Government part-funded the University of Sheffield pilot, integrating electoral registration with the process of student enrolment, and has encouraged other providers of Higher and Further Education to implement a similar system”.

The Bill is a wonderful way, in the words of the noble Lord, Lord Young, to encourage other higher and further education providers to implement a similar system. He went on:

“An indicative assessment shows this project had successful outcomes. For example, in the 2015/2016 academic year, the university had 76% of eligible students registered to vote compared with figures as low as 13% for similar sized universities. The Government will further evaluate the University of Sheffield pilot to understand—in detail—the impact of the pilot and its critical success factors. We understand a number of institutions have already introduced a similar approach, or are actively considering doing so”.

To be fair to the Minister, he said that there were differences between different higher education providers and the scheme might not be appropriate for all. I do not want to censor what he said. But his Answer contains a way forward. I would have thought that young people going away from home, being in a different environment, saying on day one, “Now is the time to register to vote”, is the way forward. I hope we might include it in the Bill.

5.15 pm

Lord Campbell-Savours (Lab): I shall be very brief indeed. The comments of the noble Baroness from the Liberal Democrat Benches hit the nail on the head.

[LORD CAMPBELL-SAVOURS]

We have introduced a scheme that worked in Cambridge prior to its introduction. With the introduction of individual registration, we have complicated the scheme. We need to go back to why it was introduced: there was electoral fraud in a very small number of local authorities in the United Kingdom. To be frank, they were areas of the country with high ethnic-minority populations, where for cultural reasons it was felt acceptable within some of those populations to conduct elections in a way which proved fraudulent under the law of this country.

It was a Labour Government who introduced this scheme and we spent tens of millions of pounds—it must be much more than that now—implementing it out of political correctness to deal with a problem that should have been dealt with in individual communities where a particular problem arose. Now, of course, it is too late and we are left to pick up the damage that was done. This amendment, in its simple way, seeks to remedy at least some of the damage. But the only way of dealing with the damage that has been done through individual registration is to abolish the scheme and do what the Electoral Commission seems to recommend in its most recent report, which refers to taking action in specific areas, particularly those areas of the United Kingdom where there is a problem with electoral fraud.

Lord Smith of Finsbury: My Lords, I will reflect very briefly on what actually happened in Cambridge on 23 June last year. That fell at just the end of term. A lot of students were graduating and a lot of them were still in Cambridge. As the head of a college, I had spent rather a lot of time over the preceding two or three months encouraging students to register and explaining to them how they could register individually. For many of them, the decision made on 23 June was about their future. They were very strongly engaged with the issues. But quite a number of them ended up unable to cast a vote on 23 June because they had not got round to registering.

Yes, of course, it was their fault in not registering. They should have done so. None the less, we as a society ought to make it as easy as possible to ensure that every young person is registered and has the ability to vote. The amendment would solve the problem. I support it.

Baroness Brown of Cambridge: My Lords, I support the intent of this amendment. When I was vice-chancellor at Aston University, we were not able to implement a system which allowed our students to opt in, but it was very simple to provide on the online registration page a reminder to students that they should register to vote and a link to the site where they could do so. Even if it were not possible to go all the way, as this amendment envisages, it would not create difficulty to require higher education providers to encourage students to do so, and to give students the ability to find the link from the university's online registration site or through their virtual learning environment.

Baroness Goldie: My Lords, I thank your Lordships for your contributions. This has been interesting and, by way of general introduction, I listened with interest

to the broader electoral point raised by the noble Lord, Lord Campbell-Savours. However, as this amendment deals specifically with students and young people, perhaps he will understand if I deal specifically with that aspect.

The Government fully share the aim of increasing the number of younger people registered to vote, as part of creating a democracy that works for everyone. This is an important subject but, although we support the overall aim of this amendment, we do not believe that placing a prescriptive, statutory duty on all HE providers is the best or most appropriate way to deliver that aim. Let me explain.

The Government have already shown their commitment to ensuring that students are registered to vote by supporting, and contributing financially, to the pilot project integrating electoral registration with student enrolment at the University of Sheffield. I commend those behind this successful pilot, which produced encouraging outcomes, as the noble Lord, Lord Stevenson, indicated. I am pleased to note that many providers are already implementing this system voluntarily, such as the University of Bath—the university of the noble Baroness, Lady Royall—Sheffield Hallam University, Cardiff University, the University of Birmingham, Coventry University, Lancaster University, Manchester Metropolitan University and Newcastle University. Other providers are looking at this of their own volition and we anticipate that more will choose to do so this year. To encourage take-up of this system, or at least of one of the other models which institutions deem most appropriate, we have committed to write out to other HE and FE providers later this year.

With many universities already embracing this system, we expect and are confident that many more will do so voluntarily, which we believe is the right approach. Let me reassure the noble Lord, Lord Storey, that we are looking at the University of Sheffield scheme to fully evaluate it and ensure that it is fit for purpose before we share the outcomes and encourage wider application. We will continue to work closely with sector partners, the Electoral Commission and the Association of Electoral Administrators to evaluate and share the outcomes from this and other schemes, and to consider other solutions for areas such as London where this system is impractical to deliver.

There will obviously be an administrative burden associated with such a system as used by the University of Sheffield. Larger providers may have the resources to accommodate the introduction of an integrated voter registration system, and to absorb the costs of such an arrangement, but I hope the Committee will agree that it is not appropriate to include such a mandatory condition in the Bill. The conditions of registration in the Bill are primarily to provide proportionate safeguards for students and the taxpayer, and to take forward social mobility policies. The imposition of other mandatory conditions risks undermining this proportionate approach to regulation, which is a key element of the system. This is a deregulatory Bill from a deregulatory Government.

Moreover, it is not a case of “one size fits all”. Providers should be able to choose from this or other options, such as the one used by De Montfort University,

which offers students the opportunity to register automatically when logging into their student intranet. In places such as London, with its 33 boroughs, there are major issues to contend with, such as students with a term-time address in a different registration area from their university, which makes this system impractical to deliver for electoral administrators.

It must be for HE providers, working in partnership with their students and electoral registration officers—the acknowledged experts in registration—to determine how best to increase student registration. Yet this does not mean that we cannot do more to encourage registration. The Government are also looking at modernising and streamlining the annual registration canvass. Impacts on students from the current process will be picked up as part of the modernising electoral registration programme. We are also considering other options to increase student registration, including as part of the Government's democratic engagement strategy. We expect to set out more about this later on this year.

The noble Baroness, Lady Garden, referred to the Cabinet briefing note, a copy of which I have in my hand. I confirm to your Lordships that we will circulate a copy to all Peers and will place a copy in the House Library. The noble Lord, Lord Stevenson, raised the issue of including local electoral registers in university areas. According to YouthSight, 60% of students actively choose to be registered at their home address. That is their choice, but it means that underregistration is not perhaps such a material issue—students simply elect to register elsewhere.

Although the Government fully support the aim of increasing student voter registration, we do not believe that this amendment is the most effective or appropriate way of meeting that objective. In these circumstances, I suggest that the amendment be withdrawn.

Lord Judd: The noble Baroness made the point that a growing number of universities are, of their own volition and initiative, taking action in this area. That is something to be admired and is absolutely right, but democracy is immediate and in the meantime there will be elections. Are we really accepting a situation in which there will be two opportunities available—one where universities have chosen to enhance the quality of democracy and another where they have not? There is some urgency on this matter, and I do not think that the Minister, on reflection, will really believe her own argument.

Baroness Goldie: With all respect to the noble Lord, Lord Judd, I do not think anyone is suggesting that there is a desert of electoral registration by students. Everyone is agreed on the importance of ensuring that as many as students as possible register to vote and that they are encouraged to do that. The distinction we have to draw in securing that objective is whether putting something into this Bill and making a mandatory provision is proportionate and the best way of achieving that aim. As I have just explained to your Lordships, the Government feel that that is neither appropriate nor the best way to achieve that objective. That is why we invite the noble Lord, Lord Stevenson, to withdraw the amendment.

Lord Stevenson of Balmacara: My Lords, I am afraid I was a bit disappointed in the noble Baroness's response to the amendment. Given the widespread support for this measure and the wider context which many noble Lords gave for that, as well as the willingness to try and spread the word and get people interested in the electoral process and all the other matters that she referred to in terms of other programmes that are going ahead, this would seem to fit in very well. In fact I felt it was rather a tawdry list. To talk about this being a deregulatory Bill is just a complete nonsense: it is a re-regulatory Bill, and indeed it gives new powers to bodies that previously have hidden in darkness. The idea that espousing this as a deregulatory Bill means that she has an excuse not to bring forward a proposal in this area is a little rich.

At the end of the day, the Minister's figures were instructive: 60% may well register at home, but that leaves 40% who do not, and 40% of 600,000 students is a lot of people who are not going to be able to vote. We heard from the noble Lord, Lord Smith, what happened on the ground in Cambridge on 23 June. This is not satisfactory and I am sure it is something we will want to return to on Report—I can give that assurance unequivocally. I beg leave to withdraw the amendment.

Amendment 75 withdrawn.

5.30 pm

Amendment 76

Moved by Lord Storey

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

“(1A) Subject to subsection (1B), initial registration conditions of all providers under subsection (1)(a) must include a requirement that every provider—

(a) provides all eligible students and staff with a mental health support service, and

(b) notifies all students and staff of this service.

(1B) Subsection (1A) does not apply to the Open University and other distance learning institutions.”

Lord Storey: My Lords, your Lordships' House has an excellent record on the issue of mental health. In fact it was this House that persuaded the Government, by insisting on it, on parity of NHS treatment of physical and mental illness.

On many issues we are persuaded by our own personal experiences. I remember taking my daughter the couple of hours' drive to university, five years ago now. A couple of years later she said to me, “You don't realise the abject horror that was. You put me in the car with all my possessions and dropped me off at this strange place where I knew no one and had to sink or swim”. In her halls she befriended and became close to a girl who was in her first year and whose sister, a year older, was at another university. Very tragically, those girls' father then died at a relatively young age. Both sisters were completely traumatised. You would be; you are a young girl away from home for the first time, and your father dies. One university was absolutely stunning in the support that it gave that girl. Her sister at the other university did not even get to see her personal tutor; no support was given at all. That is the

[LORD STOREY]

difference. That is why this amendment says, importantly, that the university “must”—not “may”—provide services for mental health.

It is often said that when it comes to mental health, ignoring the problem—if it is even recognised in the first place—is not the solution. However, neither is dealing with it alone. Nationally, only 13% of the NHS budget is currently committed to mental health services, despite the fact that mental health illness accounts for 28% of the total burden to the NHS. The problem in many universities across the UK is the same: the underfunding of support services does not accurately reflect today’s reality. Many thousands of children and young people when at university are isolated, unhappy and—because of the pressures of the new regime, if you like—perhaps have eating disorders and self-harm. Tragically, of course, some can take their own lives.

There is still huge stigma around mental health, which means that young people are not getting the support they need. The amendment is important not only for those who might develop mental health problems during their time at university but for those who have experienced mental health problems in the past. Young people who need help and support from mental health services can find themselves with no help or support when they most need it. To get any service from adult mental health services, the threshold in terms of severity of illness is higher than for children and adolescent mental health services, CAMHS, so many young people are locked out from receiving the service. For some, their illness has to reach a crisis point before they receive the service that they need, with the effect that their entry to the service is more traumatic and costly to the young person, their family and the service than if their needs had been met earlier. Differences between service locations and the style of the two services alienate many young people, who end up slipping off the radar of services. Ensuring that mental health support services are available to students when they need them is really important.

I have one final observation. There is a clear link between poor mental health and student retention. The emphasis on student retention is higher in those institutions that provide proper mental health support than in those that do not. I hope we will realise that, just as we have done in the education service as a whole and in the NHS, providing a service in universities is hugely important. Sometimes we say, “Oh, there’s no money available”, but of course there is money available. I sometimes have a little wry smile on my face when I get to Euston station and see all the billboards advertising different universities. The cost of that runs into hundreds of thousands of pounds. Surely we can find the money for every university to provide mental health support for its young students—not “may”, but “must”.

Baroness Garden of Frognal: My Lords, I support my noble friend’s amendment. In coalition, our Health Minister, Norman Lamb, campaigned staunchly for parity of esteem and funding for mental health in order to bring it up to the same standards as physical health. We are still a long way from achieving that parity.

My noble friend has spoken particularly about students. In the amendment we included care for university staff, many of whom work under intense pressure. The introduction of new assessment measures in the Bill may well increase those pressures on staff, many of whom may be on insecure contracts, with high ambitions, high expectations and long hours. We know that many universities already have a great duty of care to their staff as well as their students, but this measure would see all universities, as places of study and work, fulfil their duty of care to both their staff and their students.

Lord Judd: My Lords, I commend the amendment. It is enlightened and imaginative. University should be a thrilling and fulfilling experience. Of course it should be testing—there is no question about that—but it should be an experience in which a person develops their potential and begins to flourish intellectually and as a being. There is no doubt now, with our increasing awareness of the nature of mental illness, that there are disturbing numbers of students for whom that is just not the reality, and university becomes a hell. As a civilised society, we should not tolerate a situation like that when very often quite a small amount of highly professional help can enable students to come out of this nightmare and join the rich learning experience. The amendment is just the sort of thing this House should take part in.

Lord Elystan-Morgan (CB): I wholeheartedly support the amendment. I wish to make a limited point. Why should it refer to “must” rather than “shall”? Both words seem to come to the same conclusion, but I would have thought that by and large the word “shall” has more of a legislative pedigree than the alternative. In saying so, I declare an interest as a former president of a Welsh university for 10 years and as the chairman of its council. I am sure that if one produced a friendly document entitled “Words and phrases judicially defined”, one would probably find “shall” and “must” in many Acts of Parliament, but I would have thought in this case that “shall” was probably far more appropriate than “must”.

Lord Smith of Finsbury: My Lords, I will forgo the opportunity to discourse the difference between “shall” and “must”; I would simply observe that both tend to be better than “may”. However, I commend the amendment. The mental well-being of students in our universities is hugely important, and is becoming even more so because of the increasing stresses on students in our universities. That is partly due to the increasingly competitive post-university market in getting careers and jobs; the determination to do well in order to perform well after university is now a very great pressure on our students.

However, I have to say that that impact is exacerbated by the increasing development of social media. Anything that is said or observed about a fellow student now becomes magnified a hundred times through the use of social media. The stress that can follow from that on individual students can be intense. It is incumbent on universities—“shall” or “must”—to provide not just detailed day-to-day pastoral care through a tutorial

system for students but, if necessary, to have expert, trained counsellors available if things start to go seriously wrong. To those who would say, “This will cost money”, yes it will cost some money but it would cost far more if we did not do it and then things went seriously wrong for a number of our students. I urge the Government to give every sympathetic consideration they can to the points that have been made in this debate and to the amendment.

Baroness Brown of Cambridge: My Lords, I want to further emphasise the importance of mental health support to the areas of access and progression. We appropriately attract more students who do not come from a family background where higher education is the norm, who do not have the support from home to ensure that they understand the experiences they are having and the ups and downs of their university careers. As we stress in the Bill, we want to see those students progress and succeed in their degrees. For this to be successful it is critical that universities provide mental health support to their students.

Lord Stevenson of Balmacara: My Lords, this is a rather important measure which I hope will be reflected in the Minister’s response. On parity of esteem, one would want the same approach to mental and physical health given by professionals and those who care for others to spread into the university sector. I suspect that one of the arguments used by the Minister will be that this is something which all citizens—we should not make a special case for students—should be able to access wherever they are and therefore wherever they study. However, the point has been well made that there is something significant about the process of being at university that raises the question of whether there has to be additional provision. It may well be, as the noble Baroness, Lady Brown, said, that access and progression measures are ones where this might find the most obvious hook. That issue will probably be dealt with by the Minister when he responds.

My question is slightly different. This issue of mental health support services being a requirement of the OfS to place on providers which offer students and staff positions within their institution is of a quasi-regulatory nature. Will this be something that will inevitably come to the OfS because if not, I imagine it will come to the CMA at some point? The CMA as currently configured will be the regulator under which most OfS activities will be supported, and will be there to take action presumably if the OfS does not do that. Therefore, it might well be that there is a regulatory bite on this issue which we are perhaps not seeing yet.

I mention that because later amendments—Amendment 110 onwards, in the name of the noble and learned Lord, Lord Wallace of Tankerness—refer to protected characteristics. How the equality legislation plays within the university sector and whether the bodies that are currently supervising and regulating it are aware of the implications will be an issue that we will pick up in some substance. It could be a game changer in terms of how universities are currently configured and how they will operate in the future as these regulations become more of the part and parcel of things. The narrow point made by the noble Lord, Lord Storey, and supported by others who spoke in

the debate, is still a very important one and should be dealt with on its merits. I look forward to hearing the Minister’s response.

5.45 pm

Viscount Younger of Leckie: My Lords, I am grateful to the noble Baroness, Lady Garden of Frognal, and the noble Lord, Lord Storey, for raising the important issue of mental health support for students. I know that there has been some discussion in the Corridors not far away on this very subject. The noble Baroness and the noble Lord will know how seriously I take this subject.

We have heard today from noble Lords how deeply mental health issues can affect students, staff and families. I particularly listened to the very sobering anecdotal evidence from the noble Lord, Lord Storey, and I am sure that many of us could relate our own experiences that illustrate similar issues.

Mental health is a priority for this Government. Noble Lords will be aware that just last week the Prime Minister announced a package of measures to transform mental health support in our schools, workplaces and communities. The reforms will have a focus on improving mental health support at every stage of a person’s life. This will include a major thematic review of children and adolescent mental health services across the country, led by the Care Quality Commission, which will identify what is working and what is not. A new Green Paper on children and young people’s mental health will set out plans to transform services in schools, and importantly universities, and indeed for families.

As we have discussed at length, higher education institutions are autonomous bodies, independent from the government. Each institution is best placed to identify the needs of their particular student and staff body and to develop appropriate support services. There are many examples of universities providing excellent support for their students and, of course, their staff, which the noble Baroness, Lady Garden, raised, both for mental health and in the context of wider pastoral care. But as we know, there are also too many examples of universities that could certainly do more. The higher education sector itself is working to improve mental health support. Universities UK recently launched a programme called Wellbeing in Higher Education. It will focus on the need for a whole university or institution approach to mental health and well-being.

UUK is working closely with Public Health England, expert voices from student services and charities such as Student Minds. Let me be clear: the Government expect higher education providers to provide appropriate support services for all their students and staff, including those with mental health issues. This is a deeply important issue. The upcoming Green Paper provides the excellent opportunity to look at this issue in greater detail. We believe that we should not pre-empt the issues or any recommendations that may come out of this particular Green Paper.

The noble Lord, Lord Storey, raised the link between mental health and retention. We agree that retention is extremely important for universities and that is why

[VISCOUNT YOUNGER OF LECKIE]

we will take retention metrics into account as part of the TEF. The Director for Fair Access and Participation will be looking beyond just the point of access to the whole student life cycle, which is something that I have spoken about in previous debates in Committee.

Once again, I am grateful to noble Lords for their contributions, but ask that the amendment be withdrawn.

Lord Storey: My Lords, I thank the Minister for his thoughtful reply. I am delighted that mental health is a priority for the Government. The Minister said that the Government expect universities to make provision, so as well as “shall” or “must” or “maybe” we now have “expect” on the list. I just want an amendment that makes it happen. At this stage—we will no doubt come back to it—I will withdraw the amendment.

Amendment 76 withdrawn.

Amendments 77 and 78 not moved.

Amendments 79 to 81 had been withdrawn from the Marshalled List.

Clause 5 agreed.

Clauses 6 and 7 agreed.

Clause 8: Mandatory ongoing registration conditions for all providers

Amendment 82

Moved by Baroness Brown of Cambridge

82: Clause 8, page 5, line 30, after second “which” insert “materially”

Baroness Brown of Cambridge: My Lords, I will move Amendment 82 and speak briefly to Amendments 84 and 88, in my name and that of the noble Baroness, Lady Wolf. These amendments are aimed at avoiding unnecessary bureaucracy, both for the Office for Students and for providers, by helping to ensure that the mandatory requirements of the OfS, set out in Clause 8, are both reasonable and proportionate. In the Bill, governing bodies must notify the OfS of any change that affects the accuracy of information in the register. We suggest that governing bodies might notify the OfS of any change that materially affects the accuracy of such information. We are sure that the OfS does not want to know about full stops and commas.

Similarly, governing bodies must provide the OfS with such information as it or one of its designated bodies “may require”, and we suggest inserting “reasonably” so it becomes information that the OfS or its designated bodies “may reasonably require”. I hope the Minister will feel able to support this reduction in potential bureaucratic load. I beg to move.

Lord Stevenson of Balmacara: My Lords, these are sensible and appropriate amendments for the Minister to consider. They are there because of a feeling that the balance between what is reasonable and what is bureaucratically required may have got slightly out of proportion in the drafting. There is not much in them, but a few additional little words would make a huge

difference to how institutions have to operate in the regimes within which they work. When the noble Baroness responded to an earlier amendment, she said that it was important for the OfS to be seen as independent of the institutions to which it relates. Because it is a regulator it would be inappropriate for the OfS to be engaged in too much detailed negotiation and discussion, so it would not be appropriate for it to get involved itself in assessing what type of material is done. It would therefore be quite appropriate for the drafting to reflect a sense that there is a stop in the broader flow of information to only those things which are material, important or relevant. I strongly support the amendment.

Viscount Younger of Leckie: My Lords, the mandatory registration conditions placed on all providers are important and it is right that they are being debated. While I understand the reason for these amendments, existing provisions in the Bill provide sufficient protection for providers from unnecessary or unreasonable requests for information; the amendments are therefore unnecessary, but I will give some fuller explanations.

A key element of the Bill is that the OfS must act in a proportionate manner when formulating and exercising its regulatory powers. In accordance with Clause 2, the OfS must have regard to the principles of best regulatory practice including the principle that regulatory activities must be accountable and proportionate. As such, I can provide noble Lords with an assurance that any information the OfS requires for inclusion in the register will be restricted to that which is necessary for it to perform its functions or to enable students and others to make informed choices. We anticipate that a provider’s entry in the register will be factual and will include, for example, the provider’s registered name, the addresses of the governing body and the registered locations at which courses are delivered. We also anticipate that it will include the category of registration of a provider, whether that provider is subject to a fee limit and details of any quality reviews that have been undertaken. The Secretary of State will make regulations setting out the information to be contained in an institution’s entry in the register. I hope this reassures the House that the OfS will not seek excessive or unnecessary amounts of data from providers and, therefore, the requirement to notify the OfS of changes will not be frequent or onerous. Even then, the failure by a provider to notify the OfS of a change of detail would not necessarily, in itself, lead to sanctions. It would need to adopt a proportionate response taking into account the subject matter and the nature of the omission.

I turn to data that the OfS may request to perform its functions. Once again, proportionality is key here, as described in Clause 7. This stipulates that the conditions of registration, both initial and ongoing, must be proportionate to the degree of regulatory risk the provider presents. So the OfS must ensure that its requests for information are reasonable and proportionate. In respect of information that the OfS may require to enable publication of English higher education information, Clause 59 states that the OfS, or the designated body, must have regard to the desirability of reducing the burden on providers of collecting information and to the availability of data from other

sources. The OfS must also consult higher education providers and persons who represent, or promote the interests of, students and employers. This is to ensure that the data being requested are of demonstrable benefit and have the support of the sector and students. This should ensure that providers will only be subject to requests for information which are judged by the sector as adding value.

That was a little bit of a lengthy explanation but I hope that the noble Baroness and the noble Lord, Lord Stevenson, can agree that there are a number of important controls in place and that the noble Baroness will withdraw the amendment.

Baroness Brown of Cambridge: I thank the noble Viscount for his detailed reply and for his assurances about controls on the proportionate behaviour of the OfS. While disappointed, I am happy to withdraw the amendment.

Amendment 82 withdrawn.

Amendment 83

Moved by Baroness Goldie

83: Clause 8, page 5, line 34, after “OfS” insert “, or a person nominated by the OfS,”

Baroness Goldie: My Lords, I turn to the amendments tabled by my noble friend Lord Younger regarding the designated data body. The Bill preserves the existing co-regulatory approach where the regulator has overarching responsibility for information services and the information is gathered and published by an independent body which has the confidence of the sector. We know from the thoughtful and considered amendments proposed that many noble Lords share our concern that the designated data body is provided with the clear statutory footing needed to ensure that the information needs of students, prospective students, employers, providers and government are adequately supported. We look forward to returning to these issues later in the debate. Today I am simply putting forward some technical clarifications intended to enable the designated data body to continue to perform vital functions currently undertaken by the Higher Education Statistics Agency.

Amendments 83, 86 and 87 clarify that the legislation enables the OfS to nominate the designated data body to perform the data collection, specifically required by the OfS, in order for it to perform its functions. Amendments 367, 369, 370, 372, 373 and 381 provide further specific powers of delegation, enabling the OfS to require the designated body to make appropriate arrangements for the publication of the data and to consult on data publication. As noble Lords will recognise, the effect of these amendments is to support the already stated intention that the OfS can delegate these duties to enable it to work in a coregulatory partnership with a sector body.

I turn to the new clause proposed by Amendment 365. We have worked in consultation with the Higher Education Statistics Agency—HESA—to ensure that essential elements of the data body role will be fully enabled through the Bill. In particular, Amendment 365 seeks to broaden the role of a data body to include the

essential function not just of publishing information but, where required, gathering and holding information not intended for publication where such data are required by the OfS, UKRI or the Secretary of State and making that information available to them. This amendment gives the designated data body more scope and flexibility to gather and compile information required by government, the OfS and UKRI. I also provide assurance in response to concerns raised about the extent to which the designated data body could use data collected for statutory purposes to carry out a wider information-sharing role with the sector and other interested parties, continuing the type of services currently offered by HESA. This is not a matter for legislation, since it does not relate directly to the OfS’s statutory functions. However, I assure noble Lords that there is nothing in the legislation that would prevent the designated data body from using data collected in its capacity as a designated body or from engaging in any other activities beyond its designated functions. This wider co-operation with the sector and other interested partners is part of what contributes towards the benefits of coregulation. I beg to move.

6 pm

Lord Stevenson of Balmacara: My Lords, I think we are all slightly struck dumb by the flow of information that has come out about this. I must say I had not fully appreciated, until the Minister started speaking, exactly where she was going on this. I am still slightly confused and I shall ask three questions at the end for her to come back to if she can. As I understand it, representation has been made sufficient for the Ministers to decide that a body will be created, separate from the OfS and not dissimilar to HESA, which will carry out the functions that the noble Baroness talked about and hold data in addition, as long as that is within the purview of the OfS. There is obviously a little detail missing, because I could not find in the Bill, in the short time I had to look at it, exactly where are the powers, the bodies, the functions or the establishment of HESA—or, rather, the quasi-HESA, if it is to be that body. If I have not found it by the time we get to the end of this short debate I would be grateful if the Minister could say exactly where I will find it, so that we can check it when we compare it with *Hansard*.

The reason for being slightly tentative about this is not that I object to the principle—I think the principle is absolutely right. Indeed, there is a bit of a trend developing whereby the functions that were previously within HEFCE, broadly, and within a set of bodies which were set up specifically for the purpose but without statutory backing, have been merged into a single body under the Office for Students. However, we are now realising, as we begin to unpick this, that separate institutions will probably be established. Certainly, I have a later amendment which proposes that the body responsible for quality assessment—the standard of the institution as it approaches and is made into a higher education provider in England and therefore eligible to be appointed to the register—will be independent of the Office for Students. That is because I take the point made earlier by the noble Baroness, that the regulator should not be too close to the other

[LORD STEVENSON OF BALMACARA]

institutions. That is a point we made about the last amendment, but we should also make sure that the regulator is not also a validator or a cheerleader for the sector. It would not be possible for a body appointed as a regulator also to be responsible for carrying out the work which it is regulating. I think we need to think again about the Office for Students. I thought this debate would come a little later in the considerations of the Committee, but we now have an opportunity to pick up at least one area of that.

If I am right that that is where we are coming from, where does this take us on the journey? It is clearly vital to the long-term guidance and the policy directions we need to take in higher education to have a clearer understanding of what the statistical background and basis of that will be. It is conventional in other areas to have separate bodies responsible for information gathering and dissemination, therefore it would be slightly odd if higher education did not follow down this track. To that extent I am absolutely on all fours with Ministers on this; we are not on a good position on that. What I lack is information about how this body is to be established and how certain it will be about its future. HESA is a creature of HEFCE, as I understand it, and therefore does not have its independent funding or constitution. If this is to create that, then we need a little more information before we can tie it off. In terms of where we are coming from, of the 24 amendments that are down in the name of the noble Viscount the Minister, I think that this is a good start and I hope that it will be endorsed as we move forward.

Lord Mackay of Clashfern (Con): I want to be sure that I understand. The designated body will be able to perform some of the duties which the Office for Students has, under the Bill, if that option is taken up, but the designated body will also have responsibilities which the Office for Students does not have under the Bill at the present time. Am I right in that? If so, are the extra responsibilities that the new designated body has in relation particularly to the fixing and consideration of standards?

Lord Stevenson of Balmacara: I am sorry to come back so quickly but I am prompted by the noble and learned Lord to make a point. The reference he makes to the responsibilities of the OfS is not, of course, in Part 1 of the Bill as we have considered it—I think he has picked up that point. There is a schedule which contains further information, but a quick reading, which is what I was trying to do while the noble Baroness was speaking, does not seem to pick up exactly the point he has made, so I endorse it and look forward to hearing the response.

Baroness Goldie: My Lords, I thank the noble Lord, Lord Stevenson, and my noble and learned friend Lord Mackay. To answer the specific point raised by the noble Lord, Lord Stevenson, about where all this appears in the Bill, my understanding is that Clause 59 and Schedule 6 cover the duty to publish English higher education information, as originally drafted. We are clarifying and expanding the rules and data, by the amendments to which I have just spoken, to build on what is provided for in this core clause and in

Schedule 6. My noble and learned friend Lord Mackay of Clashfern raised a fairly technical issue and I hesitate to give a full response at the Dispatch Box in case I get it completely wrong. With his approval, I shall write to him on that issue.

Amendment 83 agreed.

Amendments 84 and 85 not moved.

Amendments 86 and 87

Moved by Viscount Younger of Leckie

86: Clause 8, page 5, line 38, leave out from “its” to end and insert “duties under sections (Duty to compile and make available higher education information)(1) and 59(1) (compiling, making available and publishing”

87: Clause 8, page 5, line 39, after “the” insert “designated”

Amendments 86 and 87 agreed.

Amendment 88 not moved.

Amendment 89

Moved by Lord Lucas

89: Clause 8, page 5, line 39, at end insert—

“() a condition that requires the governing body of the provider to collaborate with other registered higher education providers and with the OfS in the evaluation of elements of, or proposals for elements of, access and participation plans, and the publication of such evaluations.”

Lord Lucas: My Lords, I shall also speak to the other amendments in this group. All have to do with collaboration and my wish that the OfS, in the structure of the Bill, should be able to generate collaboration between universities. The first area, in Amendment 89, is in access plans. Universities spend a lot on encouraging access, but they do not do so in an evidenced or collaborative way. For instance, it was in the papers yesterday, I think, that Oxford is still spending £12 million a year on bursaries, which has been shown to be the least efficient way possible of encouraging access. I have seen several examples of projects which do not have any form of evaluation at the end.

People commonly comment that we do not seem to be generating best practice, learning from it or spreading it. That is a great waste of money, which we are extracting, mostly, from individual students as part of their fees. Now that we are taking control of this process through the OfS, we ought to have much greater stewardship of the money that is being extracted from students, and make sure that it is being spent effectively. To my mind, the OfS should be responsible for making sure that that happens and it does not happen, in my experience, at the moment.

The second area, in Amendment 91, is the GREAT campaign. This was one of the innovations of the 2010 Government and has been, to my mind, a great success in many areas, but it has been half-hearted in knowledge and education. The principal reason for that has been that universities and schools have not collaborated to nearly the extent that they should have. The strong go out and market on their own name; the others are reduced to using agents that the

British Council no longer controls properly. Particularly after Brexit, we need a much stronger and more co-ordinated effort to establish the value of British education. I would like to see universities wholeheartedly collaborating with this—and with a degree of compulsion, if my amendment is encouraged—to say that, yes, they all have a role to get students for themselves but they also have a role to promote British education as a whole as they do it, and to collaborate with what we are doing to promote British education.

Amendment 92 requires that the OfS be allowed to communicate with current and former students of providers. If we are to build something worth while out of all the work we are doing in the universities, as a basis for trading worldwide and for our relationships, a modern way of doing that would be through an electronic network. To build such a network, we must have contact with, or a means to communicate with, the people we wish to be members of that network. Yes, of course overseas students who have been to a particular university may well be cultivated by that university, to some extent to extract money from them but also to communicate with them. However, it ought not to be a separate system of 100-plus individual providers—or, if we take all the higher education providers, rather more. We ought to support all our graduates in China as a network of our Chinese graduates, giving them access to similar networks elsewhere in the world and to the network in the UK.

The difficulty with trying to run such a thing over LinkedIn is that you do not know who people are and you do not know who to trust. A network we ran on the basis of who had been to our universities would be much stronger and would have a strong community of values in that everybody in it would have been through the same long experience of receiving a university education in this country. It would form a great basis for international trade over the years, providing strength to us but also to them. Much more than just the education in this country, they would have a lifelong connection with each other and with this country, which would serve them well. To do that, we have to be able to require higher education providers to allow the Government, through the OfS, to communicate with their students; obviously not to extract their details willy-nilly against the Data Protection Act but to require the higher education providers to communicate with their students and say, “The Government would love to involve you in this new network they are building. If you want to join, sign here”. That is an important thing to do. We need somewhere in the Bill the ability to give the OfS the permission to require higher education providers to communicate with their students on behalf of the Government or the OfS.

On Amendment 93, we do not have the information we should on destinations after university. We make attempts to do it; we have a six-month survey, which is sort of complete, and we make various attempts to sample what is happening later in life. We need to do better than that, and for that we need universities’ collaboration. To understand where each university course leads is an important part of informing students what is going on.

Lastly, Amendment 445 picks up the Student Loans Company as a source of ways of communicating with domestic students. That is to some extent an adjunct to the earlier amendments but it is also a proposal made by the Higher Education Policy Institute as a way of improving our student loan recovery from people who have gone to work overseas. They instance the experience of New Zealand as a country that has instituted a similar system and has found that its recovery from graduates who are now overseas has been much better since they have had this kind of access.

I hope the Government will take all these amendments positively, because they lead to positive results. I beg to move.

6.15 pm

Baroness Brown of Cambridge: My Lords, it would be difficult to ask universities to tell the Government about their overseas students, as this is, as it were, part of a university’s commercial business. However, I understand entirely and sympathise hugely with the reason for wanting to do that. An alternative way to achieve the same end might be to provide additional funding to the British Council, which works closely with all UK universities and is a great asset to us, co-ordinating our engagement with our overseas graduates and bringing them together for all sorts of overseas alumni events. In a post-Brexit environment, the British Council is a treasure that we need to make sure is adequately funded to support us in this important area.

Lord Willetts: My Lords, briefly, I support this amendment but ask my noble friend Lord Lucas whether the obstacle is not somewhere else. The universities do not necessarily have as much data about their graduates as we think they do. Sadly, the Foreign Office and the British Council do not have enough. They try to host parties for Chevening scholars in embassies around the world and have a limited database of who the people are who were on the scholarships in the past. There is, sadly, surprisingly little information. The organisation that has the data is the Student Loans Company, and the legislation around it is heavily constrained because it is treated essentially as an arm of HMRC, with all the confidentiality that goes with that. If I were a university that wanted to communicate with my alumni, instead of putting an obligation on me, I would say, “Please, can there be some way in which we can communicate with our alumni via the Student Loans Company database?”, as that is where the contact addresses are. I hope there might be some way in which, in the spirit of these excellent amendments, that could be facilitated. That is the infrastructure we do not have. The American universities have built it up over generations. There was the great observation: “If only Osama bin Laden had been to Harvard Business School, because the Americans would have found him within 24 hours”. They are very good at tracking down their graduates, we are not so good at it, and access to the Student Loans Company data would make that a lot easier.

Viscount Younger of Leckie: My Lords, this group of amendments relates to collaboration across the higher education sector. I thank my noble friend

[VISCOUNT YOUNGER OF LECKIE]

Lord Lucas for highlighting these issues and for allowing this short and interesting debate. I value his knowledge in this area and, should he wish, I would be happy to meet him to discuss these matters further. I reassure him that the Bill does not preclude collaboration on any of these important issues, which I suspect he knows. The Government support collaboration where it is in the best interests of students and where it is not anti-competitive. Furthermore, the OfS has specific duties to promote quality, choice and equality of opportunity. If it considers that promoting collaboration is necessary to achieve these aims, it has the capability to do so.

I will take each of my noble friend's amendments in turn. He draws attention to the importance of collaboration to evaluate access and participation proposals. I reassure the House that the Government absolutely agree with the importance of widening participation, which will be a key part of the remit of the Office for Students. The new Director for Fair Access and Participation will be at the heart of the new regulator and will sit on the board. This reflects the high priority that this Government are giving to widening participation. The OfS will be able to use the information it gathers from access and participation plans and through working with higher education institutions and sector bodies to evaluate what works in widening participation, building on the good work already done by OFFA.

My noble friend also raised the need for collaboration between providers to attract international students to the UK. He mentioned the well-received GREAT campaign, which does an excellent job. The Government acknowledge that, as well as competing for individual students, the higher education sector has a shared interest in promoting the excellent education provided by our universities to prospective international students. Various sector bodies and mission groups already do an excellent job in promoting UK universities on the global stage and there are many instances of successful collaboration between providers. Furthermore, as the noble Baroness, Lady Brown, rightly pointed out, the British Council also plays an importance role in this respect.

The third issue raised by these amendments is the importance of greater collaboration to enable more effective communication with current and former students. Many universities already run effective alumni programmes. There are also a number of existing routes to communicate with current and former students, such as through the Student Loans Company—as my noble friend Lord Willetts said—and we expect the OfS to work in partnership to deliver effective communications.

The fourth issue is collaborating to keep track of former students' locations and employment statuses. The Government appreciate the importance of monitoring the long-term outcomes for students finishing higher education. It is very much an important part of our reforms. The OfS will work with the designated data body and others to ensure appropriate data gathering. As your Lordships will know, there is already a graduate destination survey and we are developing the longitudinal education outcomes data.

I turn now to Amendment 445. As my noble friend Lord Lucas will be aware, the Student Loans Company administers student loan accounts in the UK. I am happy to reassure my noble friend that the SLC already shares information with other government departments where this is of assistance in recovering student loan debt. The Government also published the joint repayment strategy in February last year, which provides more detail of the work under way in this area. We do not believe that this amendment is necessary, given that other frameworks are in place for the SLC to share information where this is of assistance in recovering student loan debt. I thank my noble friend for allowing me to give, I hope, some reassurance to him on all his amendments and I ask him to withdraw this amendment.

Lord Lucas: My Lords, I am grateful to my noble friend for his answer and I will certainly take him up on his offer of a meeting between Committee and Report. To reply briefly to the noble Baroness, Lady Brown of Cambridge, I say that Cambridge is part of the United Kingdom as well as being a university with commercial interests and there are some things that one does because they are of interest to us all rather than just the interest of oneself. Responding to the need to boost the economy abroad, boost trade and improve our international relationships, we can all act as individual actors and say we will reserve to ourselves all our knowledge and skills or we can share them. This is a time when a certain degree of sharing is necessary and Cambridge and others should recognise that though they are grand and important and have great reputations they consequently have a great ability to contribute to the nation through sharing.

As far as my noble friend Lord Willetts's remarks are concerned, we have just given the National Citizen Service the right to require HMRC to communicate with its customers on behalf of the National Citizen Service, so the precedent for allowing the Inland Revenue to send out messages has been established. We really ought to open up the Student Loans Company in the same way because we must surely be able to make great use of that kind of communication with the alumni of British universities. It is just communication. It is just sending out information. I will look further into the proposition that we do not need any help in improving our loan recovery rate from overseas students and I will incorporate that in my conversations with the Minister when we get there, but for now I beg leave to withdraw the amendment.

Amendment 89 withdrawn.

Amendment 90 had been withdrawn from the Marshalled List.

Amendments 91 to 93 not moved.

Clause 8, as amended, agreed.

Clause 9: Mandatory transparency condition for certain providers

Amendment 94

Moved by Lord Lucas

94: Clause 9, page 6, line 3, leave out “of a prescribed description”

Lord Lucas: My Lords, I am afraid the Committee will get tired of hearing from me on this. This is all about information and Amendment 101, which would give the OfS the power to specify after consultation additional matters in which it thinks should require information, is perhaps the key amendment. It would give the OfS and the Government plenty of time for consultation and consideration before going down any of the routes I advocate in other amendments.

Amendment 94 picks up “of a prescribed description”. My experience in this area is that if you have differential requirements for information, anyone required to provide less information has an immediate commercial advantage and the people being asked for more information raise their hands and say, “We’re being asked to put ourselves at a commercial disadvantage”. This creates great problems. Everybody should be asked for the same information and then there is a level playing field.

Amendments 95 to 98 pick up the first of several areas in which the current practice of UCAS and universities greatly advantages well-off schools. There are a number of bits of knowledge that are not publicly released and not easily available but which schools with sufficient funds to research and preserve knowledge efficiently from one year to the next can use to advantage their students. One area is the month in which it is best to apply to a particular university course. It is supposed to be all the same but it is not. There are particular courses where applying early can raise an advantage; that should be known by everybody, not just by a few.

Amendment 99 is one of a number that ask for information from providers to allow the rest of us to understand what they are doing and to enter into an informed conversation with them about whether we might like things to be different. My particular interest in this area is with sexual harassment. I want to know what universities are doing to improve the situation they find themselves with—making sure that freshers’ week is civilised and that the relationship between the genders in university is properly respectful and understood to be so; and that all those who come to university with bad attitudes learned from schools that are not well organised and well set-up in terms of relationships between the genders have an opportunity to learn a proper way of going about things. The evidence on this is mostly from the United States, where it appears that about 40% of male students arrive at university with exceptionally disrespectful ideas of how to treat female students. I do not know the figures here but I imagine that they are not wildly different.

The recent work very courageously done by Imperial College on sexual harassment and gender relationships reveals that there is a lot of work to be done. There is scope for great improvement here. This amendment would apply also to such matters as anti-Semitism and homophobia and other aspects of the relationship between the members of the university community. The purpose of this amendment is to make sure that we get to a position where higher education providers regularly release information that is of use to prospective students but also to others concerned that we should see improving practice over time. Amendment 100 reflects that in the case of mental health.

Amendment 102 reflects it in the case of freedom of speech and academic freedom—not to give the OfS or anybody else the power to intervene but to make sure that we know what is going on so that we can be part of a conversation with academia about what should be done.

6.30 pm

Amendment 103 opens the very thorny issue of the continued practice of some universities of taking money away from humanities students and giving it to science students. A student charged £9,000 a year for a history degree, for instance, may find that £3,000 of that is spent on physics students. I know why this practice grew up. It grew up in the old funding days when students did not pay for, or paid markedly less than, the cost of their course. However, I do not think that the current position in which a student is put into debt not for value that they are receiving but for value that some other student is receiving, without being told about it, should be allowed to continue. It will take a gentle hand to manage the transition but this practice should not continue.

Amendment 104 picks up the question of the interaction between students and staff, and the seniority of the staff on each course. The pattern of teaching provision in a course matters a lot. It is a question not just of teaching hours but of who teaches you and when in the course you are taught by particular kinds of people. Some universities are now experimenting with having their best teachers—the most experienced and highly qualified—teach in the first year. They get people really revved up with an understanding of the subject, and those students are then the PhD students who take it on from there. However, there are universities that do it the other way round. The amendment would be part of telling a prospective student what the deal is and what they will get in exchange. We ought to improve on what we do at the moment and the OfS ought to have the power to drive that improvement.

Amendment 105 goes back to Amendment 99. This is another area where the behaviour of schools can advantage students if they really understand the rules—the ways in which predictions work, the ways in which the outcomes of offer predictions work, and how to make the best approach to a course that you want to end up on. Amendments 106 and 107 also reflect that.

Looking at the data from the Higher Education Statistics Agency, it is really noticeable how some groups of schools put their students on courses that, for those students, are easy to get on to. They noticeably shoot below the target that they could have aimed for. On average, given their qualifications, they can get on to courses that are much more difficult to get on to, but they do not—they shoot low. Why is that happening? It happens because the output from UCAS is what the university says the course admission requirements are, which can be substantially different from what the course requirements actually are. They admit at a much lower level than they say they do, let alone what they might choose to admit in clearing, and they let people with offers undershoot by a couple of grades. However, that is not known—there is nothing out there that says that that is the case, but of course the good independent schools and others that put time

[LORD LUCAS]

into this know these things. They know that, although a university may say that a course requires three As, a student will actually get in with two Bs and an A and so should have a go at it. It is entirely unacceptable that disadvantaged people in disadvantaged schools should be further disadvantaged by a deliberate lack of information from those in the admissions system who provide information to students. I want to see the OfS have the power to drive that up.

Amendment 108 takes a further look at the financial arrangements for students. Amendment 109 is another way of looking at the provision for students in terms of hours. Amendment 114 turns to the other end of this clause and looks at other important aspects of all this information, such as types of qualifications. What type of qualification does it really take to get on to a course? You look at what a university requires and it does not list BTEC, but you talk to the university and it accepts BTEC. How do you know that? You know it only if the school has time for someone to do the necessary work.

Amendment 116 is about giving the OfS the power to ensure that, whatever information an applicant to a university course should have, they have it as part of the process of applying to the university. The information should be sensibly available in UCAS. It should not belong in a little secret garden to which only some people have the key but should be routinely available to all students.

Amendment 116A says that UCAS does not know everything. There are some good sources of information out there—a lot of information is calculated by Unifrog, Which?, SACU and other such sources. They complement what is provided by UCAS and that information ought to be made available to help students make good decisions. If we are to allow there to be a monopoly provider of university admission services—which is effectively what UCAS is—we should make sure that it provides all the information that is available.

Lastly, noble Lords will be glad to hear, Amendment 434A picks up on Clause 73, which concerns the power to require application-to-acceptance information for the purposes of research. If we are to understand the pattern of applications by the segments of society that we wish to help, such as white working-class boys or girls who might take an interest in STEM subjects, particularly engineering and physics-based subjects, we do not just want to know what they ended up applying for; we want to know how they behaved on the university application website. We want to know the track of their interest. Did they ever look? If they did, where did they look? What was the last point they looked at? What put them off? We do not want to know for the purposes of making that information public but as a matter of research so that we can really understand people's behaviour and start to experiment, asking ourselves, "If we worded that page differently, would more of them continue beyond that point?". That would enable us to get a real understanding of behaviour on a large scale.

The only people who have that information are those in UCAS and, so far as I can discover, currently they do not release it. The Bill specifies what the Government wish UCAS to make available for research

and, to my mind, that should absolutely include every detail of the way that students use the site so that researchers can really get their teeth into how to do better for the segments of society that we do not think we are doing well enough for at present. I beg to move.

Lord Stevenson of Balmacara: My Lords, I apologise for the delay in getting to my feet, but I was just wondering whether others with more direct experience of current university arrangements wanted to comment.

I have listened very carefully to the noble Lord, Lord Lucas, and his very interesting disposition about the information needs. I could see where he was coming from on his request for research materials. That was a good point, which may well be of value in later years. If we can find out a bit more about the processes that are going on, I do not think anybody would object to that.

Obviously, there are boundaries around personal information, personal choices and other matters, but his general point was that we do not know enough about the choice matrix that students go into. Particularly as we move to a more market-based economy, that must be the right decision. I could see where he was coming from on that, and I broadly support that, although I have some reservations about some of the detail he was looking for.

I have raised this point before in Committee—and will come back to it, whether in Committee or on Report—about where the boundary is between the Office for Students and the CMA. The Competition and Markets Authority has been doing some work on universities, as I am sure the Minister is well aware. Indeed, several of the universities—including one of which she is an alumna, I think—were required to give undertakings to the CMA about the sort of information that should be available, under the Consumer Rights Act 2015, to provide the appropriate level of assurance about the information that is required in decision-making. As one of the staff of the CMA said, the choice to go to university is an expensive "one-off decision" for many people—£50,000 seems to be the direct cost that will be involved in going to university, and that can either be paid directly or borrowed. Clearly, that is a significant amount of money, and the consumer rights issues involved in the decision to apply and then receive an offer of a place at university need to be clear in general terms. We must also work out—and I do not see it well expressed in the Bill—where the OfS has responsibilities and where the CMA has responsibilities. Is it, for example, in the Minister's mind that the OfS will take over from the CMA the extensive series of undertakings that are now being sought from a number of universities up and down the country? I raise that point because I think it is at the other end of the area that the noble Lord, Lord Lucas, was beginning to mine. I will come back to that in a moment.

I am afraid that the rest of what the noble Lord said left me a bit troubled, and I hope that the Minister will respond in the negative to them. I do not think that it is appropriate to begin to look at matters such as relationships between staff and students, even if that information were available. I am quite surprised that he thinks that way, and I think that there are a number of other things in this area which would not have

really worked. However, on the other hand, there are some which might fit into either of my two categories relating to the decision points within the process of accepting a place at university, in which the CMA will have responsibility, and the issue of research.

The CMA material is really interesting. The undertakings that it has sought broadly lie in the area of information around the costs of courses and the type of engagement with staff that will be available. I have heard, although I have not been able to find it in my research in preparation for this debate, that when requirements for courses are advertised, for example in prospectuses, the student applying to that course should be able to establish, at the time of the application, which staff members are teaching the course, how many contact hours they will have and what sort of contact will be involved. Such matters have not been routinely dealt with by universities very well, although I am sure that in the round they do them well, but I do not think that many universities—certainly not the one that I worked at—would have been able to tell you, nine months before the start of term, which teachers would be teaching which courses. There would be a standard and it would be an appropriate standard, but it would not be a named person. However, the CMA seems to want institutions to name the individual who will be teaching the course. It may be right, and I am not saying that this is right or wrong; I am just saying that it is an interesting move. In a sense, that is beginning to go down the route that the noble Lord, Lord Lucas, has gone down. To that extent, we are at the beginning of a journey. The CMA says that it is making progress and that the change in responses from institutions between 2015 and 2016 has been quite significant, so clearly it is having an impact right now.

To go back to my earlier point, where exactly will that rest after this Bill becomes law? I would be interested to have any advice that the Minister can give on this matter. But, wherever we are, we are clearly in a different world, in terms of consumer rights and responsibilities, than we were five, or even 10, years ago. We are definitely in a situation where there are existing contractual rights and responsibilities and, as the CMA says, at the end of the day much of what it is currently doing will have to be tested in the courts, because only the courts can determine whether what is being offered is within the law or needs to be challenged.

These are responses to the amendments which have been put forward by the noble Lord, Lord Lucas. I hope that the Government will not give a blanket response, because there are bits in there which should be picked up and taken on board. However, there is also this underlying question of what the CMA is doing here, where its responsibilities will begin and end and who will take over the burden of the extra responsibilities. I look forward to hearing the Minister's response.

6.45 pm

Baroness Goldie: My Lords, I thank my noble friend Lord Lucas for bringing forward these amendments, which seek to expand the scope of the transparency

duty. His engagement is greatly appreciated and I wish to reassure him that we will never tire of hearing from him, as was his apprehension. These amendments have raised a number of important issues. I would like to thank the noble Lord, Lord Stevenson, for a very reflective and helpful contribution to the debate.

As set out in our White Paper, the purpose of the transparency duty is to shine a spotlight on institutions that should be going further to widen access and participation. Our intention is for the duty to apply to all providers whose students can claim student support. This is in keeping with our proportionate approach to regulation. Given the number of amendments, rather than discuss each of these at length, I would like to offer a meeting with my noble friend Lord Lucas to discuss these in person. I would, however, like to touch upon some of the key points raised here.

My noble friend raised an important point about access, with his concern that in certain months a student's chances of access are improved. I refer him to the UCAS equal consideration deadlines. UCAS states explicitly that the undergraduate admissions service uses two equal consideration deadlines: 15 October and 15 January. An equal consideration deadline means that universities will treat all applications received by that deadline with equal priority. I hope that does reassure my noble friend.

I can assure your Lordships that I share the aim of ensuring that students and prospective students can access all the information they need. That is why we are introducing the teaching excellence framework to provide students with robust, comparable information on teaching quality. From this year, institutions will be asked to provide detailed course information, including contact hours, on their websites. These links will be added to Unistats—the official website for comparing UK higher education course data. This will provide a central resource for students easily to compare different institutions.

My noble friend Lord Lucas raised the point that students need to have all the relevant information, such as contact hours and so on, and that the OfS should be given the powers to require that. I reassure him that our reforms aim to ensure that all students have all the right information in the right format and time to help them make decisions which are, in turn, right for them. Clause 59, which we have already referred to this afternoon, establishes a duty for the OfS—or, where there is one, the designated data body—to publish appropriate information about higher education providers and the courses they provide. When determining what information to publish, the OfS must consider what would be helpful for current students, prospective students and registered higher education providers. In deciding what to publish, the OfS must periodically consult with interested parties, including students, to ensure the approach for information still meets their needs.

Amendment 99 raises the question of relationships on campus. The Government are keen for universities to take their responsibilities around sexual harassment seriously. We expect every institution to put in place the right arrangements to ensure the welfare of their student body and continuously work to improve them.

[BARONESS GOLDIE]

That is why we asked Universities UK to see what more could be done to tackle harassment on campus. We must now ensure that the task force's work goes on to make a real difference to students.

On Amendment 100, HE providers, as autonomous bodies, are best placed to decide how to support the mental health of their student population. That said, this is a very important issue that the sector needs to grapple with. I am pleased to note that Universities UK recently established a programme of work on well-being in higher education to support and strengthen the work that universities are already doing in this area.

On Amendment 102, academic freedom is central to our higher education system. The Bill introduces new protections for academic freedom, making the Secretary of State's powers to guide and direct the OfS, and set conditions of grant made to the OfS, subject to a general duty to protect academic freedom. It includes specific areas in which the Secretary of State may not interfere, including the content of courses and the criteria for appointing academic staff and selecting students. On Report in the Commons, the Government introduced a further protection prohibiting the Secretary of State from requiring the OfS to operate in a way that causes the opening or closure of particular courses.

In response to my noble friend Lord Lucas's comments on predicted grades and actual grades, in terms of tariff scores Unistats publishes the percentage of entrants in each tariff band commencing on each course at each institution in the past three years. Publishing information on the median and standard deviation of tariff scores would provide less clarity than the existing data available. Information on entry requirements, course descriptions and other course data is already widely available through providers' own websites and through UCAS. HE providers are incentivised to make those data readily available in order to attract applicants.

In summary, my noble friend Lord Lucas has raised a number of very important points, and, if I may say so, the noble Lord, Lord Stevenson, interjected a number of observations that are worthy of consideration. I intend to meet my noble friend Lord Lucas, and I hope I have reassured him that we agree in principle with the points he has raised. In those circumstances, I ask him to withdraw Amendment 94.

Lord Stevenson of Balmacara: Before the noble Baroness sits down, I wonder whether she could possibly come back to the question of where the OfS stops and the CMA starts. Will that be subject to further discussion and debate?

Baroness Goldie: I hope that the noble Lord will permit me to respond to him in greater detail by writing to him.

Lord Lucas: My Lords, I am very grateful to my noble friend for her offer of a meeting. Of course, if any other noble Lord wants to attend that meeting, I should be delighted if they would let me know and I will make sure that that happens. For now, I beg leave to withdraw the amendment.

Amendment 94 withdrawn.

Amendments 95 to 109 not moved.

Amendment 110

Moved by Lord Wallace of Tankerness

110: Clause 9, page 6, line 14, at end insert—

“() the number of students who completed their course by each degree classification.”

Lord Wallace of Tankerness (LD): My Lords, I will speak to Amendment 110 and also to Amendments 112, 117, 228 and 233 standing in my name. These amendments have been prompted by the discussions and engagement I have had with the Equality and Human Rights Commission. Obviously, higher education institutions are public bodies for the purpose of the public sector equality duty and, as a result, have existing obligations placed upon them under the Equality Act 2010. The concern that has been expressed, and which these amendments seek to address, is that in the very worthy objective of trying to promote transparency with the publication of equality data and to have participation plans with key equality objectives, because there is not a proper match between the requirements in the Bill and those under the public sector equality duty, higher education institutions may find that they are somewhat confused as to what their obligations actually are. They may well think that if they have satisfied the Office for Students, they have probably satisfied the public sector equality duty as well, only to find out that that may not be the case. I am sure the whole House would agree that when Parliament imposes obligations on bodies, it is not satisfactory that there should be confusion or lack of clarity as to their full extent. As I said, these amendments seek to address these issues.

Amendment 110 relates to the subject we have just been discussing: the mandatory transparency condition under Clause 9. Clause 9(2) relates to the information that will be sought, which covers most of the cycle of higher education provision including the number of applications for admission; the number of offers made by the provider in relation to these applications; the number of offers that were accepted; and the number of students who accepted those offers and who subsequently completed the course with that provider. Amendment 110 seeks to extend that to require the publication of information on the grade of degree that those who completed the course achieved.

In many respects, that is an important part of the information that would be provided, for obvious reasons. Look at the situation. It is all very well saying, “Here is the number of students who applied and here is the number with different characteristics”—I will come later to the characteristics that are relevant—“Here is the number who were given offers and here is the number who completed the course”, but it seems crucial to have some information as to what level of degree they achieved. For example, the information given to me is that, in 2013-14, a higher proportion of white undergraduate students achieved a First or a 2.1—76.3%—compared with 60.3% of ethnic-minority

undergraduate students. The gap was particularly high among male undergraduate students. As we well know, very often the higher the degree, the greater the potential for higher earnings at a subsequent stage. If one is seeking to embrace the Government's objective of greater social mobility and employment for disadvantaged groups, it is important to have that information. If it shows disparity—and a continuing disparity—clearly that is something that the institutions need to address to see how they can achieve greater parity among different students from different backgrounds.

Amendment 112 relates to the characteristics for which information should be sought. At present, the Bill seeks information on the gender and ethnicity of the individuals to whom the numbers relate—it goes only as far as that. This takes me back to my original point. Those are only two of the personal characteristics that are covered by the Equality Act 2010. The amendment seeks to remove Clause 9(3)(a) and (b) and extend the definition to include,

“the particular protected characteristics of the individuals to which they relate”.

Amendment 117 defines “protected characteristics” as those listed in Section 149(7) of the Equality Act 2010. Again, this goes further than is proposed in the Bill, but it appears to me to be relevant. I seek to argue—and hope that the Government have some sympathy with this—that characteristics such as age, and perhaps particularly disability, are important, as well as ethnicity and gender. A Government who seek to address issues of discrimination against people with disabilities would, I hope, be sympathetic to including disabilities within the definition in Clause 9.

The Secretary of State for Business, Energy and Industrial Strategy last year asked the Director of Fair Access to target his focus on access, retention and outcomes for students with specific learning difficulties or mental health needs. There is a concern that this objective and very worthy goal could be compromised if the Office for Students does not in turn require higher education institutions to submit data on disability. The Minister in the other place said that it was a personal matter of self-declaration, and that seemed to be the barrier to including it here. However, all personal data, including those on gender and ethnicity are self-declared. Public bodies should be able to create the kind of environment where people feel safe and able to self-declare so that the data can be used and will be useful.

I hope that the Government will accept the spirit of this amendment. My concern is that if only two of the personal characteristics have been singled out, will higher education institutions feel that they have fulfilled their obligations in circumstances where other important personal characteristics are not also included?

7 pm

Amendment 111 in the name of the noble Lord, Lord Stevenson of Balmacara, very much reflects the spirit of this. What it does not do is retain what is already in the Bill in subsection (3)(c) on “their socio-economic background”. It is worth while keeping that. I do not know if it was just oversight that it was taken

out. Otherwise, I think Amendment 111 sits fair and square with what is proposed in the amendments I have spoken to.

In a similar vein, the amendments to Clause 31 relate to the access and participation plans. Clause 12 will require an access and participation plan if a higher education institution seeks to be able to raise its fees. Again, the Government make a very worthy proposal in Clause 31, but when it relates to what the regulations might include, Clause 31(3)(d) talks about, “setting out objectives relating to the promotion of equality of opportunity”.

Unfortunately, the promotion of equality of opportunity is nowhere defined in the Bill. Amendment 228 seeks to make it clear by adding the words,

“set by the institution in compliance with specific duties imposed under section 153 of the Equality Act 2010”.

Amendment 233 would add a further definition:

“The ‘promotion of equality of opportunity’ describes the matters set out in section 149(1)(a) to (c) of the Equality Act 2010”.

In other words, if the higher education institution already has a plan or is already doing things to honour and fulfil its public sector equality obligations under the Equality Act, it will be meeting the requirements under Clause 12. That should take away any dubiety or confusion, because one can certainly anticipate someone turning around and saying, “We have fulfilled the obligations under Clause 31. Does that not mean we have also done it under the Equality Act of 2010?”.

It is only fair that when we make laws in Parliament and impose important obligations on bodies, they are very clear as to their extent. There is a real concern that what we have here can lead to confusion. Although there is a considerable overlap here, it does not go as far as the Equality Act 2010. I think it would be regrettable—I hope it is not the Government's intention—if the obligations of the 2010 Act were diluted in any way for higher education institutions. I beg to move.

Baroness O'Neill of Bengarve: My Lords, we need to clarify a point that I have raised a couple of times already, which is whether English higher education providers are indeed public sector bodies and therefore fall under the 2010 Equality Act. I speak as a former chair of the Equality and Human Rights Commission. That legislation, which I think is better than it is usually given credit for, is very clear that it applies to public sector bodies. We do not yet know whether the definition of an English higher education provider in the Bill means a higher education provider that is a public sector body or even whether it has to be incorporated under the laws of England.

I suspect that there will be many overseas higher education providers which are extremely tempted by the high prestige, the system and the fact that students here are entitled to student loans, to seek to become higher education providers in England without being incorporated under English law and certainly without being public sector bodies, as the 2010 Act would require them to be to fall under this legislation.

Even were we talking only about a subset of English higher education providers that are incorporated under English law and that are going to fall under that Act, I am not sure that we would want all nine protected

[BARONESS O'NEILL OF BENGARVE]

characteristics to carry the same weight. In particular, one has to think extremely carefully about age. It is not, of course, right to discriminate against people on the ground of their age, but to refer to disproportionality in the age distribution of a student body of an institution might seem ludicrous in view of the fact that, on the whole, people seek their higher education before they seek their careers.

There may be other difficulties here. I suspect that many people discussing equality fail to note that the 2010 Act sets out “due regard” duties. Those duties are met providing someone has due regard to the different characteristics at the point of making a decision. That seems to me to be correct, but it has no read-across to the question of proportionality and disproportionality, although that is a common misunderstanding. Perhaps we need not worry about the obvious implications of thinking that the proportionality would be an important consideration in these matters in that the fact—they are now facts—that more young women than young men go on to higher education in the UK and in England and that poor white boys and poor boys in particular, but not other ethnic minority students, are less likely to go on. It is quite surprising when one looks at the profile of different groups going on to higher education. I suspect that this is something that we need to untangle before we go any further.

Lord Willetts: My Lords, that fascinating intervention gets to the heart of the direction of travel that is being debated in many different amendments this afternoon.

My understanding—I am sure the Minister will correct me if I am wrong—is that universities and higher education institutions are not public sector bodies. Nevertheless, in a range of different contexts, Parliament has decided to impose on them the obligations they would have if they were. The public sector equality duty could be one example. Freedom of information is another example. My concern—here I am a bit of a purist—is that universities are not part of the public sector and it is quite important for universities that they are not. If I were running a university—which I am not—I would start feeling two kinds of pressures on me. On the one hand, a significant number of Members of this House and elsewhere want to treat universities as if they are public bodies, so that whenever there is a nice public sector duty around they say, “Let us add it to universities although they are not part of the public sector”. Both FoI and public sector equality are examples. On the other hand, at the same time the Government—and this process goes back before 2010—are saying, “There is a private contractual obligation to deliver a service to a student so really they have got to be subject to competition law and the CMA and so on”. They end up being subject to a pincer movement, where they have got all the private obligations as if they were a company that needs to be competing, plus we throw in all the public obligations as if they were in the public sector when they are not.

The dynamic of these debates begins by saying we must do more to preserve the autonomy of universities and then spend the rest of the time adding extra obligations we would like them to comply with. If at

the end of the legal process of preparing what will become an Act of Parliament we have ended up with more obligations on the universities, making them subject to the CMA, and more public sector duties despite them not being in the public sector, we will leave universities even more burdened than they are at the moment. We require some self-denying ordinance so that we do not keep piling more obligations on them. We have already imposed on them a range of obligations that go way beyond what any other private body is susceptible to. At some point there is a danger that universities will end up in the public sector. There is a danger that we all talk about them as if they are part of the public sector and treat them as if they are hospitals, schools and so on. They are not. They are independent bodies outside the public sector and we should be wary of imposing obligations on them as if they are inside, especially when we are in parallel and subject to greater market competition as well.

Lord Kerslake (CB): My Lords, I strongly endorse what the noble Lord, Lord Willetts, has said. I declare an interest as chair of the board of Sheffield Hallam University and the chair of Peabody. An explanation for that will follow

There is a cautionary tale here in relation to housing associations and the story around their public body status. For a long period of time they were regarded as not public bodies and therefore able to exercise borrowing and take forward proposals outside of the public sector. The effect of successive changes of regulations and controls on housing associations then led to a reclassification by the ONS as public bodies. As a consequence we are now in a process of seeking to deregulate housing associations to move them out of that situation. We do not want to go through the same process for universities. We should proceed with care on this issue.

Lord Stevenson of Balmacara: I always proceed with care. I am not afraid of that sort of gibe. We could get ourselves in an awful tangle if we start following the noble Lord, Lord Willetts, down this route. It is a familiar theme that he runs with all the time whenever he gets close to something he does not want to do. We must all be careful not to have too many loads on us. We can worry too much about form and not enough about content and I want to challenge him on that. I understand what the noble Lord, Lord Kerslake, is saying on this, but these bodies are, if you stand a little apart from the close intricacies of how they operate, performing a public function, a function that is valued by the public. I have said already that they are public bodies but not public sector bodies, but as the noble Lord said, there is an issue about FoI and the implications around that. We have got to find a balancing point on that.

Let us park the philosophy for a second and return to the substance of the original amendment. Our Amendment 111 is a probing amendment to try to get a little further on this, because I could not reconcile the drafting in the original Bill with what I thought would be the sorts of issues reflective of the health or otherwise of the sector and would be required as mandatory transparency conditions. The obvious point

about using the existing equality legislation occurred to others who are more versed in these issues than I am. I tabled a probing amendment on those lines to try to get that out and it has revealed an interesting topic. I do not know where we go with this. I understand the issues that the noble Baroness, Lady O'Neill, gave us an insight into and which we will need to reflect on.

Three things occur to me. It was rightly pointed out that our Amendment 111 would delete the socioeconomic background requirement in Clause 9(3). There was a reason for our madness on that point in that it seemed a wide-ranging issue on which to request transparency. We are talking about mandatory transparency and socioeconomic background is a term of art, not a term of science, although one could get close to it from a number of directions. It is so imprecise as not to have a particular value. Moreover, ethnicity is not the same as race and the gender of individuals is a multiple, complex issue. These issues are raised within the Equality Act and we have to be much more subtle about how we approach them. I was looking more at the detail and working back from that.

7.15 pm

I do not object to the mandatory transition policy; it is right, and there should be a minimum core of information made available. I find it extraordinary that disability is not listed as one of the issues given that it is not only a material factor in many people's decision about whether to go to university but an issue for which the Government—until recently at least—had significant sums available. Somehow those sums have not survived through to the current day but very large amounts were taken up under the 2010 reforms and brought forward in a way that gave specific advantages to places such as the Open University, which has a terrific record of encouraging applications from students from disadvantaged areas, many of whom would have fitted into the protected characteristics.

I align myself with the points made by the noble and learned Lord, Lord Wallace of Tankerness. He is absolutely right on this. There is a judgment here to be made about how we do what we do, but there is no sense in setting off on completely the wrong track. If this clause is to work, it must reflect better where we currently are in relation to the law of the land, and the Equality Act is a very good starting point.

Baroness Goldie: My Lords, I thank noble Lords for their contributions, which have certainly provoked thought. The amendment of the noble and learned Lord, Lord Wallace, to include data on attainment and the transparency duty raises an interesting and important point. For example, there is a difference between the proportion of white students and BME students obtaining a First or a 2:1. Another aspect of that was raised by the noble Baroness, Lady O'Neill. That is why we asked the Director of Fair Access to look at unexplained differences in degree attainment in our most recent guidance. While we know the sector takes this issue seriously and has acted, problems persist. We will reflect on the noble and learned Lord's amendment, which raises a significant point.

Amendments 111, 112 and 117 would mean that all eight of the protected characteristics to which the public sector equality duty under the Equality Act 2010 refers would be included in the transparency duty. This would expand it considerably to include age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. The transparency duty is focused on those characteristics where the greatest impact can be achieved through greater transparency and where comparable and robust data are available. Such data are not currently available for all the protected characteristics. The Equality Challenge Unit has shown that information on religion and belief, sexual orientation and gender reassignment was unknown for more than half of all students in higher education. With such low returns, comparing institutions using such data as are there would be both unreliable and unfair.

The noble and learned Lord, Lord Wallace, raised the important issue of disability. That will be extensively covered under the following group of amendments at Amendment 110A and, with his leave, I will deal with that issue specifically in the next group of amendments.

Under the transparency duty, gender, ethnicity and socioeconomic background are captured. Universities may voluntarily publish further information if they wish. Again we have been mindful of the need to be proportionate when making this new legislation.

There is also a risk that by including protected characteristics, the transparency duty confusingly begins to resemble aspects of the existing public sector equality duty. Institutions may operate under the misapprehension that by complying with the transparency duty, they have met the requirements of the public sector equality duty. That would not be the case because the PSED is a vital policy, underpinned by the Equality Act, and requires institutions to publish information to show their compliance with the Equality Act. In addition, it requires institutions to publish equality objectives to demonstrate that they have consciously considered the aims of the PSED as part of their decision-making processes.

The noble Baroness, Lady O'Neill, raised a very important and significant question: are English higher education providers public sector bodies? I know that the noble Baroness, earlier in our consideration of the Bill, asked about the definition of "English higher education providers". I would be very happy to respond to her on the additional question on higher education providers as public sector bodies when we write to her in response to her first question. I hope she will find that acceptable.

The transparency duty, in contrast to the public sector equality duty, is deliberately discrete and narrowly focused on widening access to higher education by shining a spotlight on universities' admissions records. These two duties are designed to be complementary. We expect the sector to comply with both duties wherever relevant. This will be made clear in guidance issued on the matter by the OfS.

I turn to Amendments 228 and 233. An access and participation plan is a condition of registration for those fee-capped providers charging fees above the basic fee level. That means that the OfS can apply

[BARONESS GOLDIE]

sanctions for failure to comply with registration conditions. Let me make it clear that, in order to be approved, access and participation plans must include provision relating to equality of opportunity. Amendment 233 would have the effect of limiting efforts to widen participation through access and participation plans by reference to protected characteristics only, and this does not take into account the importance of action to support those suffering from other disadvantages, such as care leavers or people who are carers, or those with disadvantaged socioeconomic backgrounds entering higher education. I do not consider that there is benefit to be gained by duplicating reference to the Equality Act in this Bill, given that compliance with the Equality Act is already required by law.

On the other amendments, I assure noble Lords that we believe the Bill already delivers the policy intent behind amendments 236A and 236B. The OfS will be required, through Schedule 1, to provide an annual report covering all its functions. Given that the OfS will have a general duty covering equality of opportunity in connection with access and participation, we expect this to feature prominently in its annual report. Clause 36 allows the Secretary of State to direct the OfS to report on equality of opportunity issues if there are specific concerns.

I trust it is clear that the Government take very seriously equality of opportunity through this Bill and the duties on institutions set out by the Equality Act. In the light of my comments, I ask the noble Lord to withdraw Amendment 110.

Lord Wallace of Tankerness: My Lords, I am very grateful to all noble Lords and noble Baronesses who have taken part in this debate, particularly the noble Baroness, Lady Goldie, for her reply. In the noble Baroness's first point she indicated that she would be willing to look at the issue of attainment, and she herself echoed the points that I made about the different levels of attainment between students, particularly male students from both white and BME backgrounds. There is an issue there and I am grateful to her for agreeing to look at it.

The noble Baroness also made the point that we do not need the whole range of personal characteristics; obviously, some were more personal than others. She made the point that in trying to promote transparency there might be a limited value where information is not always readily forthcoming. That is something I obviously want to reflect on and discuss further with the Equality and Human Rights Commission. It is a personal point; I am not saying that it is a killer point.

The point that the noble Baroness did make, and it was the one that I was trying to make too, was that there was a concern that some higher education institutions may well feel that by meeting their obligations under the transparency requirements, that would somehow mean that they met the public sector equality duty. She made it very clear that that was not the case: they are two separate things. The fact that she made it clear is helpful, but I think she will recognise the point that has been made, that there is still the opportunity for confusion.

The point which the noble Baroness, Lady O'Neill, made about what constitutes a public body was very pertinent. Obviously, it is accepted that HEIs in England are subject to that duty under the Equality Act, and this was only to put it on a par. An interesting question is whether those which are, perhaps, coming into the market and registered abroad would be subject to the same extent of equality duties under the 2010 Act. Certainly, my amendments would take away any dubiety in that regard, but it is still a point that probably needs to bottom out. The points made by the noble Lords, Lord Willetts and Lord Kerslake, are important; I have heard them rehearsed already at previous stages. I do not think they are particularly pertinent to this set of amendments because we accept and agree that the PSED actually applies at the moment. There would not be any extension in that regard.

With respect to the second set of amendments, about the participation plan, I hear that the Minister's point is that it might actually be limiting to go down the route of the definition that I have proposed. I certainly would not wish to limit plans brought to increase participation. Again, that is a pertinent point that I would like to reflect on. This debate has been useful, and some important issues have been raised, but in the light of the Minister's comments, I beg leave to withdraw the amendment.

Amendment 110 withdrawn.

Amendment 110A

Moved by Baroness Garden of Frognal

110A: Clause 9, page 6, line 14, at end insert—

“() Information provided to the OfS and published under subsection (2) must separately identify the number of care leavers within each overall figure.”

Baroness Garden of Frognal: My Lords, I recognise that the noble Earl, Lord Listowel, is not here to move the initial amendment in this group, but the other two are my Amendments 113 and 115, which have already been spoken to, largely by my noble and learned friend Lord Wallace, the noble Baroness, Lady O'Neill, and the noble Lord, Lord Stevenson. These amendments have been proposed by the Open University which, of course, has a tremendous record in encouraging diversity of applicants, both through age and through disability.

An analysis of current statistics demonstrates the dramatic decline in the number of part-time students aged 21 and over. In England, the number of part-time students aged 21 and over has declined by 57% since 2007-08. Since then, nearly 400,000 part-time students aged 21 and over have been lost from higher education. Most initial entrants into higher education studying part-time are aged 31 to 60. Participation by this age group has declined more steeply than any other, a decrease of nearly 60% since 2007-08 compared to 2014-15. As age group data are already collected by the Higher Education Statistics Agency from HEIs, it would not be overly resource-intensive for HEIs themselves to publish such data if this is included in the Bill.

The second amendment refers to disability, which is also seen as a disadvantage to social mobility. The Bill makes no provision for compulsory reporting to improve

transparency. By introducing compulsory publication of data relating to the access, participation and attainment of disabled students, not only will transparency be markedly improved but HEIs will be encouraged to take greater responsibility for working towards eliminating the disabled student attainment gap. The Equality Challenges 2015 data report indicated that 68.7% of disabled students attained a First or 2.1 degree qualification compared to 70.4% of non-disabled students. Therefore, closing or substantially narrowing gaps such as these between those with or without disabilities is a key theme in the recently published Green Paper on work, health and disability.

I recognise the point made that disabled students may choose not to self-declare, but, in any event, it could be helpful in raising both aspiration and attainment to have these characteristics listed. I look forward to the Minister's response. I beg to move.

7.30 pm

Baroness Goldie: My Lords, I thank the noble Baroness, Lady Garden, and, in his absence, the noble Earl, Lord Listowel, for bringing forward these amendments, which would expand the scope of the transparency duty. The amendments raise important issues, and the Government recognise that there has been considerable interest in including the categories of information proposed.

As noble Lords know, we must always seek to ensure that new legislation is balanced and proportionate. This is paramount where we are introducing a new duty on independent and autonomous bodies such as HE providers.

We know that the numbers of students with the characteristics covered by the amendments progressing to higher education are too low. I can see that the amendment is about changing those statistics, but imposing further requirements under the transparency duty is not the best way to achieve it.

The transparency duty is designed to be a minimum requirement, and we are prioritising those areas that we recognise as having the greatest need for a renewed focus in widening participation, where the data are comparable and the publication of those data is not too intrusive. We are mindful, too, of the importance of accurate data—a point to which I referred in my previous comments to the noble and learned Lord, Lord Wallace of Tankerness—to ensure that the transparency we are aiming for is successfully achieved. The data also need to be readily comparable so that we know that comparisons drawn between institutions are fair.

Universities are taking a number of steps to address the important issue of the low number of care leavers in higher education through measures such as all-year-round accommodation, substantial cash bursaries and tuition fee waivers, and providing a named contact. Care leavers are a priority group for the Director of Fair Access, and four-fifths of access agreements detail the activity that universities are undertaking to support care leavers into and through higher education.

However, in terms of the transparency duty, the data collected on care leaver status are self-declared and so are not completely comparable, which makes it

difficult to draw reliable conclusions from the data available. In addition, individuals do not necessarily wish to disclose their care leaver status when they apply for university, which is their choice. Furthermore, they may not wish to have that information published where it may be possible to determine who that individual is because of the relatively small numbers involved. That is a personal matter, and we must respect their right not to have that information made public. Equally, where this information is suppressed due to small numbers, it would further limit the comparability of the data.

Amendment 115 refers to disability. On disability in particular, we cannot currently be completely confident in the comparability of the data. UCAS and HESA collect data on disability, but again this is self-declared and not exclusively focused on registered disability so it may not provide an accurate depiction of disability across institutions. Additionally, some students may choose not to declare their disability and we must respect that because, again, it is a personal choice.

Amendment 113 covers age. We have chosen not to include age as a category at this time due to the volume of activity in this area already taking place. Many mature students study part-time, so we have introduced tuition fee loans for part-time study and intend to introduce part-time maintenance loans so that the way one chooses to study does not impact on the support available. It is worth noting that HE providers are already subject to specific legal duties in relation to age and disability under the Equality Act 2010.

The amendments raise important and interesting points and we will reflect on them.

Lord Willis of Knaresborough (LD): Will the Minister reflect also on the fact that the HESA statistical database is not available for public scrutiny? Many issues which should be in the public domain are not because one cannot access the information other than through a particular route and by paying fees. Even our own Library here in the House of Lords cannot access that database without paying for it. That information should be in the public domain. When reflecting on these amendments, will the Minister also look at ways in which the HESA database could be made much more readily available?

Baroness Goldie: I am very grateful to the noble Lord for raising that point; it is something of which I was unaware and it seems an important matter. We will reflect not only on the comments that he has just made but on those made by others of your Lordships during the debate. I undertake to write to the noble Lord on the specific point which he raised.

Lord Wallace of Tankerness: The Minister spoke again about the problems of self-declaration in relation to disability and personal data, but personal data on ethnicity and gender are also self-declared. Is she saying that data in those two regards are much more reliable than they are for disability and, if so, what is the Government's position? By how much are they more reliable? Should we not accept that it is the same principle?

Baroness Goldie: For reasons which I think are apparent to us all, there are issues of sensitivity there. It would be ill-advised either to disregard or underestimate the significance of that sensitivity. I repeat that interesting and important points have been raised. We will reflect on them. On the specific issue raised by the noble and learned Lord's colleague, I undertake to write. I ask the noble Baroness to withdraw the amendment.

Baroness Garden of Frognal: My Lords, I thank the Minister for responding, in particular to the amendment in the name of the noble Earl, Lord Listowel, who as we all know is a tremendous champion for those in care. All the amendments aim to make it a more level playing field for groups which have not hitherto had the same advantages. I also thank my noble friend Lord Willis and my noble and learned friend Lord Wallace for their interventions—my noble friend Lord Willis raised an interesting issue about the data of HESA not being accessible. We shall all seek ways of increasing the engagement of these particular groups in higher education. In the light of the Minister's remarks, I beg leave to withdraw the amendment.

Amendment 110A withdrawn.

Amendments 111 to 117 not moved.

Clause 9 agreed.

House resumed. Committee to begin again not before 8.38 pm.

Courts and Tribunals: Administration Charges

Question for Short Debate

7.38 pm

Asked by Baroness Gardner of Parkes

To ask Her Majesty's Government what assessment they have made of the impact on litigants in person of the introduction of administration charges and other costs when bringing claims in courts and tribunals.

Baroness Gardner of Parkes (Con): My Lords, in opening this debate, I remind Members that my declaration of interests is in the register. I am raising this matter today because I find it cause for great concern that the rights of the individual to deal with their own problems have been seriously eroded. It is essential that this does not go unrecognised. Whereas in the past everyone had direct, affordable access to some fair processes of resolution, these have been and are being removed. In my opinion, this is a retrograde step and, whatever our means, we should not be forced to line the lawyers' pockets. I deplore the changes to tribunals, which were accessible and affordable for so many people. It seems wrong that self-help has gone.

I intend to concentrate my remarks on the employment tribunal and the leasehold valuation tribunal, where I have had direct personal experience. Employment tribunals were introduced by Ted Heath in 1974 under the name "industrial tribunals". At the beginning, panel members were appointed as individuals and it was only later,

when the value of the system was appreciated and agreed, that the lay nominations came from the TUC and the CBI. Normally, two lay members sat with a chairman. I sat in central London. Because so few women had been appointed at the beginning, my appointment was picked up by the CBI and I served from 1974 to 1997. The cases were very wide-ranging and some were very lengthy. No fee was payable by the applicant. Now it is £160 to £250 to issue a claim, and £950 to have a hearing. Any employee who considered they were wrongly dismissed or unfairly treated was entitled to bring their case in person to the tribunal. I believe they always got a fair hearing.

One day my faith in the fair hearing was thrown into question when the hearing panel members assembled prior to the case. We had a considerable quantity of paper about the case of a man who had worked for a large beauty products company for 40 years. The TUC representative said to the other two of us, "This is a scandal. This man has worked for the company for 40 years and they are putting him off. It is not right". The chairman said we would know more when we heard the case. I said nothing but I was worried that a member's mind might be set prior to the hearing. There were many witnesses and the case took all day. We retired to consider our decision. The chairman sought our views and the TUC man immediately said, "Forty years? I don't know how they stuck him for that long. They did everything they could, moving him from job to job in the firm. They could do no more". This restored my faith in the importance of actually hearing both sides of these cases. I believe the system was fair and well used.

When this House was on Report on what became the Commonhold and Leasehold Reform Act 2002, I was responsible for an amendment which outlawed frivolous or vexatious litigants. The head of the Tribunals Service advised me in the drafting of the amendment and the Government, after changing one lower-case letter to a capital, accepted the wording in its entirety. The need for that amendment was brought to my attention when an applicant appeared before our tribunal and it emerged that he was making a full-time living travelling around the country, basing his cases on failed job applications. He was a qualified radiographer. He applied for every hospital radiology job advertised and if he did not get an interview he went to the tribunal on grounds of discrimination. He had all travel and accommodation expenses paid, in many interesting places, and often got good compensation. He was abusing the system and being paid to do so. If he did get an interview, he never got the job as hospitals needed radiographers who had worked with human beings and his experience was specifically with concrete blocks and other inanimate objects.

There are charities which try to help individuals with advice. As they do not charge fees, they rely on grants and donations and the lawyers are generally not very well paid. The citizens advice bureaux still exist but their resources are really stretched and in many cases are simply not available to people. My neighbour, an employment lawyer since 1990, has volunteered to help others through the citizens advice bureaux for years. Welfare and debt account for the largest number of cases. Employment cases were 6% of 10% of the

more than 10,000 applications they had last year. She has told me that a major problem is that the individual very often has no idea what their terms of employment are, and that they do not know that under Section 1 of the Employment Rights Act 1996 they are entitled to a statement of particulars of employment. There is often a real problem in identifying the correct name of the employer. Many employers use an organisation whose name appears on the payslip but it is not the employer and getting hold of documents can be very difficult. Individuals have often had but lost their copy of the terms of employment.

Whereas in the past many of these things could be done on a do-it-yourself basis, now it seems that people find that they have no choice but to use legally qualified people, which involves extra costs that they can ill afford. Some lawyers help people on an ex gratia basis. There are many good specialists who do pro bono work, either because they dislike a system which fails to protect vulnerable groups in society or because they need the practice; for example, junior barristers cutting their teeth. Large firms encourage junior solicitors to do pro bono work, perhaps because it impresses corporate clients. Organisations such as the Employment Lawyers Association have a pro bono arm, where people can volunteer to take on a case. This is not and should not be a substitute for the right to a fair trial, which should be available without relying on the kindness of strangers. It is essential that individuals should have the tools made available to enforce their rights, otherwise these rights are meaningless. Those who have savings and therefore do not qualify for remission of fees have to find the money before they can start a claim. This means that “bad” employers can benefit from the fact that people who save are hit with having to pay a fee to claim their employment rights.

My other direct experience was with leasehold valuation tribunals. These were abolished in 2013 and many people are disadvantaged by this. I took a full part in what became the Commonhold and Leasehold Reform Act 2002, which introduced these tribunals. It was fully debated in your Lordships’ Chamber and after hearing that the Government proposed covering full costs,

“down to the milk for the office cat”,—[*Official Report*, 10/7/1996; col. 348.]

the House’s decision was that those who brought their cases, even if they lost, would not be required to pay more than £500. Now these cases go straight to the First-tier Land Tribunal and I understand that it is at least £500 to enter your case.

An important role of the leasehold valuation tribunal was determining the value for a lease extension and the terms thereof. Most flats and some houses are held on leasehold tenure and, if the lease drops to too few years, its value becomes very small and the amount that has to be paid to extend the lease increases exponentially. The hearing of my own application for a lease extension took the form of four days in front of the tribunal and a visit to the flat by the chairman of the hearing panel. Everything seemed to be done very thoroughly. As other cases were heard by different members of the tribunal and there were periods when you had to just sit and wait, I sat in on a lot of cases and the standards were very high.

The 2002 Act made it clear that normally, if costs were charged, they would not exceed £500 per application. Now these cases have to go to the First-tier Land Tribunal. One of the worst things is that unscrupulous head lessees or freeholders often employ a QC and, win or lose, they charge those high legal fees back to the leaseholders as part of the service charge. This is not fair and I consider it an abuse of the system. The leasehold valuation tribunal was abolished by statutory instrument in 2013 and I was the only Member to speak in opposition, perhaps because with those instruments you have to say yes or no; you cannot consider any review.

The Prime Minister has spoken and made it clear that those who work hard and whose family budgets are already under heavy pressure should not continue to be disadvantaged. Surely it is time to look again at helping with access to tribunals and their replacements. Unless ordinary people can access a system available to help them enforce their rights, those rights are meaningless, as I said. These fees are preventing genuine cases being heard.

7.49 pm

Lord Low of Dalston (CB): My Lords, I am grateful to the noble Baroness, Lady Gardner of Parkes, for asking this Question for Short Debate and proud to be the sole representative of the Cross Benches among the select band from across the House which has assembled to discuss it. The available evidence indicates that the proportion of litigants appearing before the civil and family courts without legal representation—litigants in person, also sometimes called self-represented litigants—has increased since the Legal Aid, Sentencing and Punishment of Offenders Act took many civil and private law children and family cases out of the scope of legal aid in England and Wales from 1 April 2013. I have become involved in these issues through the work of the commission that I chaired on the future of advice and legal support on social welfare law, and I declare that as an interest.

One of the policy responses that the commission has been concerned with has been the Ministry of Justice’s decision, two years ago, to fund and support a Litigant in Person Support Strategy, encouraged by the Civil Justice Council’s work and drawing on many of the resources from the pro bono, legal information, personal support and other support sectors, such as Law for Life’s Advicenow website, with a personal support unit providing additional capacity and better co-ordination of pro bono. More than 1 million people used the Advicenow website last year, with 50,000 accessing pro bono legal advice through clinics supported by the strategy and more than 50,000 being provided with practical and emotional support via the personal support unit. The litigant in person strategy is an excellent initiative but one has to remember that it has been developed in a context in which more than 700,000 people have lost their entitlement to legal aid in family and civil matters. Moreover, they now have to pay much steeper fees if they want to bring cases as litigants in person. In terms of access to justice, this amounts to a double whammy.

Over the past few years, fees for litigants bringing cases have increased and mushroomed across our civil

[LORD LOW OF DALSTON]

courts, family courts and tribunals. There have been a number of proposals for further increases. These issues have to be considered together with the impact of legal aid cuts on the outcomes delivered by the justice system. Take employment tribunals, for example, where legal aid was cut to zero and steep tribunal fees were introduced, as we heard at length from the noble Baroness, Lady Gardner. Since August 2013 the issue fee in employment tribunals, having been nothing at all, may now be £250 and the hearing fee as much as £950 in more complex cases. These may include discrimination, equal pay and unfair dismissal claims. For claims to the Employment Appeal Tribunal, the issue fee is £400 and the hearing fee is £1,200. Fees can be waived if the party cannot afford to pay but however that may be, since introducing fees the volume of employment tribunal claims has plummeted.

Between October 2013 and September 2014, single claims brought by individuals were 64% down on the previous 12 months and multiple claims—those brought by more than one person—were down by 67%. In 2015, the number of employment tribunal cases brought by single individuals declined by 67% and the number of multiple claims by 72%. Even if one accepts that the imposition of fees was flushing out some unmeritorious cases, they are clearly having a very negative impact on access to justice.

Last July's report from the Justice Select Committee in the other place criticised many aspects of the fees and charges regime: not just employment tribunal fees but civil fees, which have risen by up to 600%. Last autumn, there were proposals for an increase of up to 500% in immigration tribunal fees—again, a jurisdiction that was mostly taken out of scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act. Only a matter of weeks into their implementation, the Government had to abandon them when they realised that the projected levels of fee income from this increase would not materialise, as the volume of claims would be so depressed. This seems to follow a familiar pattern from the time when Michael Gove had to scrap the criminal courts charge, which was clearly not working but just serving to penalise poor people for the right of citizens to use the courts. There is clearly also a strong case for reviewing these massive increases in employment tribunal fees. I should be grateful if the Minister told us whether the Government would be willing to consider this.

The respected commentator Roger Smith has spoken about,

“the economic cleansing of the ... courts”,

by deliberately denying poor people access to justice through new economic barriers and much reduced public assistance to support litigants through the system. I could go on at length about the false logic and false economy of the MoJ seeking full-cost recovery, and more besides, from court users and trying to use court fees as an income-generating vehicle to offset the Treasury's meanness to the MoJ. However, I am interested more broadly in the question of how we reclaim the courts and tribunals for citizens, especially poorer and disadvantaged citizens. Part of the answer must be to make the whole process cheaper, with less reliance on expensive paper-based bureaucracy, the removal of

costly delays in proceedings through more streamlined processes and better case management systems to minimise the wastage of court and judicial time.

The whole process also needs to be redesigned with the needs of litigants in person in mind. I am encouraged by the Briggs proposals for court reform and digitisation, and the Government's take-up of those proposals. However, until one actually sees them in operation one must have reservations about whether the Government's commitment to funding better assisted digital legal services to help the least legally or IT-literate communities will actually materialise in practice.

7.58 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I too congratulate the noble Baroness, Lady Gardner of Parkes, on securing this debate and, I would add, on the eloquent and sympathetic way in which she opened it. The central problem highlighted by this debate, through the rather different approaches of the noble Baroness and the noble Lord, Lord Low, whom I and the whole House commend for the impressive work that he and his commission have carried out in this area, is that less legal aid has meant more litigants in person, while dramatic increases in court fees have restricted access to justice by another route.

Cuts in legal aid, particularly cuts in scope, were bound to lead to more litigants in person but their impact in so doing has been dramatic. This has been particularly severe in family cases, as mentioned by the noble Lord, Lord Low, because most are out of scope. The National Audit Office reports an increase since the LASPO Act in cases with neither party represented of 30% in child contact cases and 22% in family cases overall. Approximately 80% of all family cases have at least one litigant in person, and of course in such cases this is serious, because most litigants come to court when their lives are turbulent and feelings between the parties are highly emotional and often deeply hostile. This does not achieve calm and cool dispute resolution and is certainly not in the best interests of any children involved.

However, in other civil litigation too, judges are daily frustrated at trying to get through their lists efficiently and justly while battling to explain to angry litigants how and where they have gone wrong in the process, as well as trying to understand how parties are trying to put their cases in a way that makes sense in law. So the speed and efficiency of the judicial process have suffered, and inevitably and sadly, so has the quality of justice. At the same time, the cost of cases to the public purse has significantly increased, as the National Audit Office and the Public Accounts Committee have pointed out, diminishing the savings made by cutting legal aid.

To add to the problem, the Government have thrown into the mix increased court fees, increasing the burden on litigants struggling without representation. These are not just fees to cover administering litigants' own cases, but so-called enhanced fees to pay for running the whole system, allowing the MoJ to make profits in some areas to pay costs incurred in others. Many of us believe that the state has a fundamental responsibility to provide courts to resolve citizens' disputes in accordance

with the law, and to do so free of charge. Even many who do not take that purist view in difficult times believe there is something deeply offensive about enhanced court fees, charged at levels that exceed the cost of administering the cases concerned so as to make the whole court system self-financing.

Furthermore, it was always obvious that introducing very high court fees would reduce the number of cases brought. In 2015, a number of professional bodies assembled evidence which showed that,

“the total value of cases brought by individuals would likely fall by around one-third ... under higher court fees. For small- and medium-sized companies it would halve”.

This evidence was in sharp contrast to the complacent and misguided assumptions underlying the Government’s impact assessment of enhanced court fees, which said first that the,

“changes will not affect case volumes”,

that there would be,

“no ... detrimental impact on outcomes for ... court cases or access to justice”,

and thirdly that,

“there would be no impact on legal services used to pursue and to defend a claim”.

I accept that we were in coalition at the time, but I spoke out against those fees then and make no apology for doing so again now. The Lord Chief Justice and senior judiciary described the assumptions as,

“very sweeping and, in our view, unduly complacent”.

Last year, Lord Dyson, the then Master of the Rolls, gave evidence to the Justice Select Committee, that they were based on a “very limited evidential base” and that he was “extremely sceptical” about them. He described enhanced fees as wrong in principle, and the Government’s preparatory research as “lamentable”.

In practice, the dire predictions of a reduction in case numbers are proving justified. We need more evidence on civil cases generally, but as the noble Lord, Lord Low, pointed out, the immediate 70% reduction overall in employment tribunal claims was severe. Furthermore, there was no increase in the success rate of claims, so one can deduce that fees have not discouraged spurious claims but have only prevented claims, meritorious or not, from being brought.

When Michael Gove was Justice Secretary—before his career took a different direction—he said in the House of Commons that,

“one of the biggest barriers to justice ... is costs. Action needs to be taken to reduce costs in civil justice. It is not enough simply to say that the taxpayer must shoulder the burden. We need reform of our legal system to make access to justice easier for all”.—[*Official Report*, Commons, 26/1/16; col. 145.]

On that issue I agree with Michael Gove. I also agree with the Conservative chair of the Justice Committee, Bob Neill MP, who said in June:

“Where there is conflict between the objectives of achieving full cost recovery and preserving access to justice, the latter must prevail”.

Access to justice has been subjected to a pincer movement of restricted legal aid and increased court fees, which has had the dual effect of deterring litigants and reducing the effectiveness of the court system.

On legal aid, we need an urgent review of the areas in scope to see where the hardship is biting deepest and to relieve it. Social welfare and family cases are two of the prime areas for alleviation. We must make it easier to apply for and to secure exceptional case funding, and we must review the system for applying for legal aid in domestic violence cases to make it more humane and easier to navigate.

On court fees, I suggest there are three things to be done. First, we should be reducing court fees to a reasonable level—never more than the cost of administering claims—to ensure that litigants are not deterred by fees from bringing genuine claims. Secondly, we should be introducing a far fairer fee remission scheme. The present capital and disposable income thresholds are far too low and stop poor litigants bringing genuine claims. Thirdly, we should be looking at spreading fees in civil litigation more evenly over the life of cases—which is done in part already in employment cases—rather than front-loading them, as is done now in civil cases, with huge issue fees and only modest fees later on. The present arrangements deter claims to collect difficult-to-recover undisputed debts and encourage unscrupulous debtors to avoid payment in the hope that the fees will put off their creditors.

These are practical steps, intended to go some way to reverse a steady decline in access to justice under successive Governments in recent decades. The measures I have suggested have cost implications, but they are targeted to address the most urgent crisis points. In the longer term, only a more wide-ranging review will enable us to restore and sustain access to civil justice to the standard we would all wish to see, and to which we all claim to aspire, but which I fear we have painfully failed to attain in recent years.

8.08 pm

Lord Beecham (Lab): My Lords, first, I declare my interest as an unpaid consultant in my former solicitor’s practice, and I suppose I should mention that my daughter practises in the fields of housing and employment law, and sits as a part-time deputy district judge. I join others in congratulating the noble Baroness on securing this debate. Her initiative is the more welcome coming, as it does, from a respected occupant of the Government Benches.

Access to justice has been an all too regular subject of debate in my six and a half years’ membership of this House, with the coalition and Conservative Governments laying down road blocks in the form of huge increases in fees where they already existed, new impositions where—as in the case of employment tribunals—they did not exist and savage reductions in legal aid, to which noble Lords have already referred. Senior members of the judiciary have repeatedly complained, rightly, that these measures have led to a significant increase in the number of cases in which parties are not represented, with the consequent legal equivalent of bed-blocking wasting the time of the courts and proving the validity of the old maxim that justice delayed is justice denied.

A year ago, the then Master of the Rolls, Lord Dyson, giving evidence to the Justice Select Committee, described the evidence on which the Government based

[LORD BEECHAM]

their increase in court fees as “hopeless” and pointed out that they had consulted all of 31 people on the proposal. Sir Ernest Ryder, in charge of employment and immigration tribunals, pointed to the 70% reduction in tribunal applications, which he described as,

“an extraordinary position that demands an explanation”.

Needless to say, no such explanation has been vouchsafed. In one sense, of course, the explanation is simple: the fee can be as much as £1,200.

The Civil Justice Council had warned that the,

“reductions and changes in legal aid will have the most serious consequences. This is not simply because of their scale, it is also by reason of their design and incidence. Among other things they will have a disproportionately adverse effect on the most vulnerable”.

It forecast correctly that,

“the number of self-represented litigants will increase, and on a considerable scale”,

leading to cases being longer than they need to be, and with,

“increasingly wide and serious of consequences for the individual, for families, and the state”.

Indeed, there have been large reductions in important areas of the law, including housing, where there has been a reduction of 18% in cases at a time when there have been record numbers of repossessions of private rented property. Some 43,000 households were evicted in 2015—an all-time high and 53% more than in 2010. Legal aid is available in housing eviction cases, but the problem here is the collapse of the supply side in the shape of legal aid lawyers specialising in housing law, such that there are areas of the country with very few legal aid housing lawyers and in a couple of cases, Suffolk and Shropshire, none at all. One-third of legal aid areas have just one solicitor providing legal aid in housing cases. As Legal Action Group director Steve Hynes observed:

“Civil legal aid services are in freefall, with solicitor firms and advice agencies closing”.

Given that even where legal aid is available fees are only £57 per hour, or £63 per hour for a court appearance, it is hardly surprising that not too many people are practising. My charging rate when I was last in practice 13 or 14 years ago was higher than that, and I venture to surmise that the Minister’s charging rate at the Scottish Bar might have been somewhat higher still. Interestingly, McKenzie Friends, unqualified people assisting litigants, are now charging as much as £125 an hour for their services. Shelter has 17 offices offering legal assistance, some of them being the only source in their area.

So how much have the Government been saving from the impact of the changes in housing law? How much have council housing and other budgets such as those for benefits and social care been affected as a consequence of evictions and disrepair, which might otherwise have been dealt with via the justice system? In the area of family law there has been a significant drop in cases where domestic violence, which could trigger legal aid, is not an issue, so that in those cases legal aid is not available. However, the much-vaunted alternative to court proceedings, mediation, has fallen by two thirds. The people most likely to be affected by that are, of course, women and children. Mental health

cases have also declined—due largely, it again appears, to a shrinking of the supply side of legal advice, as in housing. Debt and welfare cases have seen large reductions of 61% and 56% respectively. Nor are these difficulties confined to individuals. Small businesses also face difficulties from higher court fees.

The Justice Select Committee’s report was damning about the Government’s policy. It is unlikely to have been impressed by what passes for the Government’s reply, published five months later and consisting of four full pages and five other pages containing a total of all of 15 paragraphs. One of those pages deals with the controversial proposal for immigration tribunal fees, and I am thankful that the Government have at least abandoned that proposal. The Government declared that they would publish their review of employment tribunal fees “in due course”. How long will this pretty simple issue take to resolve? How long does the Minister expect the review of pregnancy and discrimination claims to take?

The Government dismissed the committee’s concerns about the significant increase in the fees for issuing divorce petitions, saying that help is available for those unable to pay. But how widely is that known? In so far as the Government are right to claim that women are less likely to have to pay the full fee than men, is it not the case that by the same token they are less likely to be able to pay for legal advice and representation, thereby being placed at a disadvantage and increasing the problem of litigants in person, especially acute in cases of this nature?

In responding to the committee’s suggestion that there should a pilot of graduated fees, the Government declared that a balance had to be struck between the certainty of fixed fees and charging more for those who,

“make greater use of the courts and tribunals”.

Can the Minister explain this wording? Does “greater use” refer to frequency and, if so, in what sense, or content? Would an income-related or means-related system not be sufficient?

The committee suggested that in employment tribunal cases the respondent should pay, but the suggestion was rejected because respondents have,

“little influence over the decision to litigate”.

That is an interesting argument. A recalcitrant employer must not be troubled by paying a fee, but in many cases a dismissed employee must fork out with a fee that is disproportionate to the claim.

I mentioned immigration cases. Again, I welcome the fact that the Government do not propose to increase the fees, but already immigration judges report very high levels of unrepresented applicants, contrary to the impression given by the official statistics. The latter were questioned in a letter to Michael Gove by the Immigration Law Practitioners’ Association in 2015. Litigants in immigration tribunals will often suffer the additional difficulty of being unable to speak English.

The Government have been pressed time and again to review the working of LASPO but so far have resolutely resisted, and insist that they will do so only after five years of the Act’s operation. Given the scale of concerns and the time that such a review will take, why will the Government not now set a review in train, at least in respect of the most contentious areas?

I conclude with three further short points. The first is to remind the House that the Government's proposals on the increase of the small claims limit is likely to engender still more problems for would-be litigants and a further depletion of qualified lawyers willing to undertake cases.

The second is that the closure of courts imposes additional costs on parties who now have to travel to have their cases heard.

Thirdly, I commend the work of the Public Support Unit, which has been mentioned today, whose staff and volunteers do valiant work in non-legal support of litigants in person as they encounter an unfamiliar and daunting experience in the 13 court centres that it supports. Will the Government at the very least help this organisation as it attempts to help those whose access to justice has been made ever more difficult by this Government and their coalition predecessor?

8.16 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am grateful to the noble Baroness, Lady Gardner, for securing today's debate on this important subject and to noble Lords for the valuable contributions they have made to the debate.

The Government are committed to ensuring that the justice system continues to be accessible to all, that it deals with disputes fairly and justly, and that it continues to work for all its users. A number of noble Lords, including the noble Baroness, Lady Gardner, referred to the matter of employment tribunals and employment tribunal fees. As the noble Lord, Lord Beecham, noted in his observations, that has been the subject of a review at the instance of the Government. That review, which was essentially to address the issue of applications in light of the fee matters, the impact of the reduction of fees on the employment tribunals, and indeed on the employment appeal tribunal, has made very good progress. We expect to publish the results of that review in the very near future. I regret that I cannot be more specific at this stage, but I hope the noble Lord, Lord Beecham, will accept that it is our intention to publish as soon as we reasonably can. That is anticipated to be in the near future.

It is appreciated that the number of employment tribunals has reduced since the introduction of fees, but I note that the introduction of fees was coincidental with the development of the mediation services in the context of employment applications. Therefore, one cannot simply attribute any reduction to fees being introduced in that respect. It would not be appropriate for me to anticipate the outcome of the review that has been carried out and which is to be published in the near future.

Lord Marks of Henley-on-Thames: Has any work been done to assess how far there is a match between the increase in mediation services and the drop in claims?

Lord Keen of Elie: As I said, I would not want to anticipate the outcome of the review, and we will look at the matter in light of that review once it is published.

I turn for a moment away from employment tribunals to the matter of the property law issues raised by the noble Baroness in her opening speech. It is necessary to remember that when we look at the matter of cost, it is not just fees or legal costs that may be incurred in the litigation. There is also the matter of recovery of costs in that context. In that area considerable progress has been made, particularly with regard to applications to the property chamber.

As noble Lords will be aware, provision had already been made with regard to preventing landlords, in some instances at least, from recovering costs from the tribunal by way of service charges against leaseholders. That will be extended by virtue of Section 131 of the Housing and Planning Act 2016, which will also endeavour to prevent landlords recovering such costs by way of administrative charges, so steps are being taken to try to limit the cost liability of those who have regard to these tribunals and courts. The noble Baroness also expressed some concern regarding the operation of cost awards in the property chamber. Of course, in general, parties meet their own costs of litigating in the tribunal system even when they are successful in a claim, although there are some exceptions to that in the procedural rules.

As the noble Baroness noted, there was a cap of £500 in respect of the cost rules of the property chamber, although I understand that that was rarely used. The Tribunal Procedure Committee has noted that there is concern about the removal of that cap, and it intends to run a consultation to seek views on whether to reintroduce a cap for costs for unreasonable conduct in the residential property and leasehold cases and, if such a cap is to be reintroduced, to address the question of the level at which it should be set. Again, in that regard some progress has been made, and I hope to report further in due course.

The noble Baroness referred to those appellants who do not have legal representation when they come to the tribunals and courts. Appellants using the tribunal system are not required to be legally represented and tribunals are characterised by an approach that is deliberately less formal than is generally found in the courts. The tribunal panel members themselves, as the noble Baroness noted, are trained to assist unrepresented parties by helping them to frame the way in which they present their case to the tribunal.

Of course, this issue is dealt with differently in the courts, but in November 2014 the support strategy for litigants in person was launched. This involves work by a range of partners across the sector to improve the experience of vulnerable litigants in person in three fundamental ways. The first is providing online and self-help resources, and making sure that those who need them know where they are and how to access them, a point raised earlier by the noble Lord, Lord Marks. The second is providing practical and emotional support. The third is providing access to free or affordable legal advice and representation wherever possible. Any legal proceedings are likely to be stressful, which is particularly the case in matters concerning families and children—one could not doubt that—but there is support for those who become involved in these proceedings.

[LORD KEEN OF ELIE]

I shall move on to the more general issue of costs. We have to address the fact that the cost of our courts and tribunals has to be met in some form or other. The Ministry of Justice is not a protected department and it has a very challenging financial settlement. We must reduce annual spending by 15% in real terms—about £1 billion—by 2019-20.

Achieving that scale of financial saving inevitably requires difficult and tough decisions. We need to look at every area of the department's spending and there can be no exceptions for tribunals. I hope that noble Lords will recognise that, to ensure that they are properly funded and that access to justice is protected, increases to some court fees are required. The cost of our court and tribunal system to the taxpayer is unsustainably high and it must be right that those who use the system pay more to relieve that burden. However, Parliament has granted, through the Anti-Social Behaviour, Crime and Policing Act 2014, a power that allows the Government to set court and tribunal fees at a level above the cost of the service. The noble Lord, Lord Marks, made reference to that and I acknowledge it.

The income from those fees must be used to fund an efficient and effective system of courts and tribunals. When setting fees, the Lord Chancellor must have regard to a number of factors including the need to preserve access to justice. In respect of tribunal fees, the Government firmly believe it is right to ask users of the service to make a contribution to the cost of providing it. Reference has been made to the property tribunal: I note that the fees there are set at a level below the actual cost incurred, not above it nor even equal to it. The help with fees scheme exists to help those who cannot afford to pay, and the Lord Chancellor has the power to remit fees in exceptional circumstances. Specifically, for example, in the property chamber of the First-tier Tribunal, a new fee structure was introduced on 25 July 2016 to simplify matters: a single-issue fee of £100—hardly an insurmountable burden for a leaseholder—with a further fee of £200 for a review of an application.

We have to see all that against the background of proposals to modernise our whole court and tribunal system. The noble Lord, Lord Low, referred to the Briggs report and to the Government having decided to address that and review how they can take forward digitisation of the whole court process. The removal of paper and the streamlining of case management, wherever they can be achieved, are immediate goals of the present Government. Proposals are coming forward quite imminently to address the digitisation process. It will take time—years—to fully implement that sort of proposal, but we have begun that task, which will immeasurably improve the whole matter of access to justice. It will demystify the court process and, we hope, allow those who do not have legal representation to understand how to apply to and proceed through the courts in order to vindicate rights and to seek and secure justice. That extends to all those who may be vulnerable or in difficulty and who feel they have a just claim.

Ultimately, these changes will deliver swifter justice. Our wider reforms underline a guiding principle that our justice system must be proportionate and accessible

to everyone. That means members of the public, legal professionals, witnesses, litigants, the vulnerable, victims of crime, and the judiciary itself.

8.27 pm

Sitting suspended.

Higher Education and Research Bill

Committee (3rd Day) (Continued)

8.38 pm

Amendment 118

Moved by **Lord Lucas**

118: After Clause 9, insert the following new Clause—
“Freedom of information

The Secretary of State must use his or her best endeavours to ensure that all registered higher education providers are subject to the same freedom of information obligations.”

Lord Lucas (Con): My Lords, although I am a thoroughgoing advocate of freedom of information, I am very conscious of what my noble friend Lord Willetts said shortly before supper: we must be careful of the degree and direction of obligations that we put on universities. This amendment is therefore very much phrased as not prescribing any particular outcome but saying that it must be equal. That is born of my experience, when, under the last Government, UCAS was deemed to have public functions and made subject to the Freedom of Information Act. I immediately requested some information from it and was refused, and went through the appeal procedure. The case having been ruled partially in my favour, UCAS went through two sets of tribunals, with QCs. It must have cost it about half a million quid to resist the commissioner's attempts to pin it to the Freedom of Information Act obligations. That is perhaps why I reacted so fiercely to the noble Baroness, Lady Brown, when she quoted “commercial interests”. It was quite clear then that UCAS's order of priorities was: first, making money; secondly, looking after the universities; and thirdly, the students. I did not think that was right and nor do I think it is right that universities put money first and other things second.

We are dealing—or ought to be dealing—with different kinds of institutions. On the bits that I did not get through the commissioner, some of which is information now being made available through this Bill, I failed because of the inequality of treatment of universities, which were subject to freedom of information, and other higher education institutions, for instance BPP, which were not. That inequality created a commercial tension between those who might have been asked to reveal information and those who were not subject to FoI, which prevented information being released under it. My recommendation to the Government is, whatever you do, do the same for everybody and then everybody has to comply. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I have Amendment 238 in this group. It was proposed by Universities UK and follows on from what the noble Lord, Lord Lucas, has just been saying about equality of treatment. The Higher Education and Research Bill

creates three types of registered providers—basic, approved and approved with a fee cap. Universities, as public authorities, are currently subject to the Freedom of Information Act 2000. However, to ensure a level playing field for access to information it is important for all registered providers designated for the purpose of student support under Section 22 of the Teaching and Higher Education Act 1998 to be subject to the same level of public scrutiny. Schedule 11 to the Bill as currently drafted leaves open what categories of provider should be caught by freedom of information by leaving it to the Secretary of State to specify categories and regulations. If there is the appetite to be more prescriptive, the schedule could adopt the revised new Clause 4A wording as proposed.

Universities are currently subject to the Freedom of Information Act 2000. We propose further consideration be given to whether adherence to the FoI Act should be a condition for initial registration for higher education providers designated for the purpose of student support under Section 22 of the Teaching and Higher Education Act 1998. This new clause would amend the Freedom of Information Act to apply its provisions to all higher education providers designated for the purpose of student support registered with the OfS. This means registered providers eligible for public grant funding and/or access to student loans. I look forward to the Minister's reply.

Lord Liddle (Lab): My Lords, I have not thought about this topic before, so I welcome the amendment. On the face of it, I very much agree with what the noble Lord, Lord Lucas, and the noble Baroness, Lady Garden, have said. It seems to me that there is a case for a level playing field in principle. It would be very interesting to know what the Minister regards as the argument against a level playing field on this question. I am relaxed about new entrants to the higher education market. I want to see more diversity and innovation in higher education but, if that is to happen, there will clearly be risks of the Trump University type, as we know from the United States. I do not believe that universities are public sector institutions—they are public institutions—but requiring everybody to be open in their dealings and comply with freedom of information obligations seems highly desirable.

8.45 pm

Lord Mackay of Clashfern (Con): My Lords, I am not certain whether the two amendments in this group will place a statutory duty on higher education providers or whether they are intended to enforce some kind of contractual obligation—that is, in order to be registered, they have to agree to do this and that, which would not be quite the same thing. There are important distinctions between universities and other providers of higher education. Whether the level playing field that has just been referred to applies across that divide is an interesting question, on which I would be glad to know the Government's view.

Lord Storey (LD): It is incredibly important for students and for society as a whole that all providers of higher education are subject to freedom of information requests. I shall give your Lordships an example. A number

of private colleges provide higher education, but if you wish to find out their progression rates, you are not allowed to do that—the books are closed. However, if you wanted to know the progression rates for students from year to year at a university, that could be obtained in a freedom of information request. There should be a level playing field. In higher education, the same should apply to universities and to any private provider.

Baroness Brown of Cambridge (CB): My Lords, I think that those in receipt of public money, with students with fees from government loans, should indeed operate on a level playing field. However, we should reflect on the comments of the noble Lord, Lord Willetts, in which he asked whether we want to add more requirements or take some of them away. Having recently been a vice-chancellor, I know that universities get numerous FoI requests, many of them relatively vexatious and from local newspapers in the area wanting bits of information about vice-chancellors, staff and other things. Is it really reasonable that we should spend students' fees on responding to this sort of trivial request?

I think that the Bill will make sure that the kind of key data that you need to know about universities—things such as progression rates—are available from registered providers, and that is very important. It is not about universities trying to hide things; the Bill requires universities to provide the sort of data that students need to know. In levelling the playing field we should follow the advice of the noble Lord, Lord Willetts, and think about taking off some of the requirements rather than adding more on.

Lord Stevenson of Balmacara (Lab): My Lords, having blasted off at the noble Lord, Lords Willetts, on the previous amendment but one, I cannot possibly go back on that, so I shall not follow the noble Baroness, Lady Brown, on this amendment, although I have followed her on many others. Rather like the noble and learned Lord, I think that universities either come within the Freedom of Information Act or they do not. If they do not, we will in any case get the information in other ways, so that probably does not matter. However, it is interesting to look at the question the other way round. If a university sector of the size and prestigiousness of our institutions was not covered by the Freedom of Information Act, you would find that very strange.

Viscount Younger of Leckie (Con): My Lords, the Government have given careful consideration to the range of views expressed in response to our 2015 Green Paper in relation to the application of the Freedom of Information Act 2000 to higher education providers. Over 100 consultation responses were received on this issue and, perhaps surprisingly, opinion was divided. The underlying principle behind freedom of information legislation is that people have a right to know about the activities of public authorities. Although not traditionally regarded as public authorities in the wider sense, the Act does currently apply to HEFCE-funded institutions in recognition of the fact that they are in receipt of direct public funding.

[VISCOUNT YOUNGER OF LECKIE]

In seeking to apply the Freedom of Information Act equally to all registered providers, the effect of the amendment tabled by my noble friend Lord Lucas—and I thank him for that—would either be to remove all higher education providers from the remit of the Act, or impose an additional freedom of information obligation on providers which are not already covered, irrespective of whether they receive direct public funding. This amendment would extend the scope of freedom of information obligations in this case to all registered higher education providers with courses designated for student support.

In the 2015 Green Paper, we considered the application of the Act and the regulatory costs it could impose on higher education providers, some of which may be relatively small organisations. Having considered the views expressed by a range of stakeholders, our decision was, so far as possible, to maintain the status quo by applying freedom of information obligations to those providers who, in future, are eligible to receive direct grant funding from the Office for Students—namely, approved fee-cap providers. As part of our overall principle of risk-based regulation and seeking to reduce regulatory costs and barriers to entry where appropriate, we did not consider that there was a strong case for expanding the scope of the Freedom of Information Act more broadly. We already believe that more higher education providers will be regulated through our reforms.

In this short debate, I wanted to address an interesting question posed by the noble Lord, Lord Liddle, and supported by the noble Lord, Lord Storey. The gist of his question was why the Bill does not seek to provide a level playing field of regulatory obligations. I would like to expand a bit on my answer. The Bill continues a rather different approach, whereby those that receive the most significant funding directly from the public purse are subject to the provisions of the Freedom of Information Act. This is a targeted approach to regulation, imposing requirements on those—

Lord Liddle: I am not trying to be difficult with the noble Lord, but when he talks about direct public funding, does he mean any institution where a student can receive a loan in order to carry out their studies? In my view, when anyone is eligible for a student loan, there is an element of public funding because, as we know, there are going to be write-offs of these loans in the future by the Government. I think this phrase about “direct public funding”, with the greatest respect for the Minister, is a bit of a cop-out.

Viscount Younger of Leckie: It is slightly more complicated than that, and it may be that I should write a letter to clarify this, but there is the funding on the student side that the noble Lord is talking about, the tuition fee, where a private individual is receiving private funding, and on the other side, what we are talking about, funding that comes in the form of a grant to help with the top-up—for example, for a high-cost STEM course. I think it would be good if I wrote a letter of clarification on that. There has been some discussion outside the Chamber on this aspect

and it gives me the opportunity to write further on this. Having said all that, there is a bit more I wanted to say about that.

Baroness Brown of Cambridge: Before the Minister finishes his speech, can he tell us whether “direct public funding” includes QR funding, HEIF and research funding from UKRI?

Viscount Younger of Leckie: I would be delighted to add that to the letter for clarification. These are complicated aspects that require proper clarification.

To complete my answer to the noble Lord, Lord Liddle, providers, as he would probably guess, will come in the future in many shapes and sizes. A one-size-fits-all approach to regulation risks would impose an unwarranted cost on smaller providers and new entrants that could stifle the positive effects of competition in the sector. The Independent Commission on Freedom of Information, chaired by the noble Lord, Lord Burns, concluded that the current application of the FoI Act is appropriate. It considered evidence that it may place traditional universities at a competitive disadvantage compared with alternative providers and found it unpersuasive.

In addition to comments made by my noble friend Lord Willetts, I thought that the noble Baroness, Lady Brown, put it rather succinctly. That backs up the equivocal aspect of this debate. I believe that there is a balance, and it has been helpful to have this discussion.

Given the importance of information to the effective regulation and scrutiny of higher education providers, we have introduced provisions elsewhere in the Bill to provide a high degree of regulatory oversight and transparency. For example, Clauses 8 and 9 would require the Office for Students to impose ongoing registration conditions on higher education institutions to provide it with the information it requires in order to carry out its functions and to publish specified information.

The noble Lord, Lord Storey, raised a point about information availability and I will attempt to deal with that. Through the Bill, we are making more information available to students than ever before, as I hope he will know. For example, both approved and approved fee cap providers will be subject to the transparency duty in Clause 9, which we discussed earlier in Committee, and the TEF will make much more information available for students. With that, I hope that my noble friend will agree to withdraw his amendment.

Lord Lucas: My Lords, I am grateful to my noble friend for that answer, if a little disappointed. As I learned in making my application for information and in going through the tribunal and afterwards, if you allow this difference of treatment, you are effectively saying to all the institutions covered by the Freedom of Information Act that all they need to do is claim “commercial confidentiality” and they will not have to publish anything. Anything that is commercially confidential is information that might affect a student in making a decision about which institution to patronise. Therefore, anything really important and interesting becomes unpublishable, and so the freedom of information registration has no function—except to find out what

the vice-chancellor had for breakfast, which is clearly not commercially confidential and therefore we can continue to plague them on that. There is no point in registering institutions for the Freedom of Information Act if you then disapply it on such a large scale by failing to register their competitors. I understand that the Government have reached a decision and I will not trouble them again at Report, but I think that they have gone down the wrong road on this. For now, I beg leave to withdraw my amendment.

Amendment 118 withdrawn.

Clause 10: Mandatory fee limit condition for certain providers

Amendment 119

Moved by Lord Stevenson of Balmacara

119: Clause 10, page 6, line 26, at end insert—

“(1A) The OfS may, with the approval of the Secretary of State, waive the fee limit condition in respect of courses which in its view would enable a student to achieve an honours degree within two years of full time study.

(1B) For courses to which subsection (1A) applies, the governing body of the provider concerned shall be required to obtain prior approval of the OfS of any fee to be charged.”

Lord Stevenson of Balmacara: My Lords, for the convenience of the Committee, I will attend to Amendments 119 and 120 together. If it is then possible for the noble Lord, Lord Lucas, to follow me on that, that will be helpful.

These are probing amendments, the background to which is that the Bill contains aspirations—and may be amended to contain even more aspirations—to see the current rather rigid structure for undergraduate curriculum and courses in this country changed so that there are, for example, more two-year degrees and more flexibility towards taking part courses, or “credits” as they are sometimes called, to build up an entitlement to the award of a degree. This is common in many other higher education systems and has been much talked about on all sides of the political spectrum in recent years, though progress has been quite slow. The amendments seek to probe the idea that part of the delay on this is due to of the way in which the financial regulations for higher education are structured. The finance works in sessions—there is an academic year, as defined in Clause 11, to which we are coming—but the funding for courses is done in relation to the whole course rather than any part of a course. That is the way we have done it historically and there is no particular reason why that is wrong or right. However, it will not be flexible and if a student attempts to do half a course, with a view perhaps to stopping after a bit and then coming back and doing the rest at some later date, or if a new institution was attempting to provide a different type of course, they would have to do it in years; they could not do it in part years.

9 pm

That seems to me to speak to a discourse of inflexibility and difficulty. It is no surprise that those who currently occupy the position of challenger institutions, or are from smaller independent institutions, have been vigorous

in arguing that the current arrangements for the provision of funding for courses do not allow them to do the sort of work that they would like to do. They would be interested in seeing a way of getting a more flexible approach, whereby perhaps, as set out in Amendment 119, a student could get an honours degree in two years, because that was the way it was taught and examined, and that was appropriate for the subject and agreed with by all the regulators and everybody else involved—all the people the noble Lord, Lord Willetts, does not like. Yet it would still not be possible to do it, because the fee limit would be for a four-year course and not for a two-year course, or a three-year course and not a two-year course. The student would get money for only two years, not for the third year.

Alternatively, might it be possible to do it more flexibly with credits? An element of a course could account for perhaps four credits in a year, and the student would have to pay for a full year's course, within which they might take only two or three credits. These things do not stack up to a more flexible system. There is no particular model in mind, but I hope the amendments give the Minister the opportunity to respond in a way that might open this up in future. I beg to move.

Lord Lucas: Ditto.

Lord Liddle: May I add my tuppenceworth in support of the amendments? This seems crucial to the socially progressive innovation in higher education many of us on these Benches would like to see. The truth is that there has not been much attempt to enable people to do courses faster than the standard three or four years. Creating the financial possibility for this to happen would be a very good thing.

Viscount Younger of Leckie: My Lords, I wish to respond to Amendments 119, 120 and 121. The Government are committed to encouraging more accelerated degrees and other flexible provision. Indeed, we stated this in our last manifesto and I hope there will be an element of agreement between us on this.

The Bill will level the playing field for high-quality new entrants, making it easier for new specialist and innovative providers to enter the sector. Accelerated degrees are a particular strength of new and alternative providers, and this will help to ensure that students can access learning in the form that suits them. For example, Buckingham, BPP, Condé Nast College of Fashion and Design and the Greenwich School of Management all offer students the opportunity to complete an honours degree over two years. This means that the student incurs less debt and can enter or re-enter the workforce more quickly.

We are interested in understanding what more we can do to support flexible provision. We carried out a call for evidence in the summer seeking views from providers, students and others. This call for evidence resulted in more than 4,500 responses. A clear majority of these came from individual students and we were delighted to see this level of engagement. Many of the responding students expressed an interest in accelerated degrees, so this is clearly an important issue and the demand seems to be there.

[VISCOUNT YOUNGER OF LECKIE]

On 20 December 2016, the Government published a summary of the call for evidence. This is a complicated policy area and we are now fully considering the evidence. Let me reassure noble Lords, however, that we are looking carefully at the options to remove barriers to accelerated degrees. While we certainly sympathise with the underlying intention of this amendment, as we continue carefully to consider the key issues, I ask that this amendment be withdrawn.

I move on to the amendments spoken to by my noble friend Lord Lucas. In a very similar approach, they both seek to link funding to academic credits as well as academic years. Again there is considerable sympathy with the issues that are raised here. The Government are committed to improving diversity of provision and to increasing student choice. Supporting students who wish to switch a higher education institution or a course is an important part of our reforms.

We also recognise the importance of part-time study, and this gives me another opportunity to trumpet this aspect of our reforms. There should be no doubt about our intention to promote this side. Studying part-time and later in life can bring enormous benefits for individuals, the economy and employers.

This area is also being considered as part of the call for evidence and is all part of us looking closely at the 4,500 responses. Again, it is complicated and I hope the Committee will indulge me and remember that it requires quite a bit of time to gather all the information. We will do that and return with the response in due course. Overall, the Government are already taking action to address some of the key areas of student choice as well as working to support students and their diverse needs.

I assure the Committee that we are actively considering all options in this area. I hope these warm words will

be helpful. As we continue to consider the key issues as highlighted in our call for evidence, I ask that the amendment is withdrawn.

Lord Stevenson of Balmacara: I thank all noble Lords who have spoken in the debate. If I get the support of the noble Lord, Lord Liddle, who is quite mean with his support for some of the things that come from this side of the Committee, I am obviously on a winner. We will jump over that.

I make two points. If I gave the impression that this was about only new entrants, that was a mistake. I did not want to say that. I think the Minister accepts that the interest is there from all institutions that might follow what the student demand is. If the demand is for that, courses will follow.

I am puzzled why it takes so long to process 4,500 submissions. I understand that due attention must be given to them but the Minister has about 4,500 sheets in his file and has probably read it for today's debate. I cannot believe it will take him much longer to get through the submissions. In the course of the debate on this amendment, we have now discovered a fifth way of the Government saying that they are not quite sure whether or not they will bring this back on Report. The Minister simply says he is spending more time reviewing the evidence before him before considering how he might bring it forward. He will only have to tell us and we will happily put it down on Report. I beg leave to withdraw the amendment.

Amendment 119 withdrawn.

Amendments 120 and 121 not moved.

House resumed.

House adjourned at 9.08 pm.

Grand Committee

Monday 16 January 2017

Arrangement of Business

Announcement

3.30 pm

The Deputy Speaker (Viscount Simon): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Brexit: Fisheries (EUC Report)

Motion to Take Note

3.30 pm

Moved by Lord Teverson

That the Grand Committee takes note of the Report from the European Union Committee *Brexit: fisheries* (8th Report, HL Paper 78).

Lord Teverson (LD): My Lords, this is the first debate on a series of Brexit reports produced by the Sub-Committees of the European Union Committee. If you are here, you know that it is about fisheries, but I stress that these reports are about identifying the challenges and opportunities of Brexit: they are not about defining what the future detailed policies in these areas should be—we leave that to our more boring colleagues at the other end of the building to sort out. We are at the front end of this, and this report therefore does not go into detail about management regimes or any other such thing.

Fisheries is different from the other subjects in a number of ways. Perhaps I could go through some of them. First, the great reform Bill will be important to regulation of fisheries, but it will in no way be sufficient. Why is that? Because the moment we leave the European Union, the EEZ will become our exclusive economic zone, exactly as it says on the tin. There will be no automatic right for us to fish in other people's EEZs; nor will there be any automatic right for other nation states to fish in ours. We will be excluded immediately, if we have not renegotiated access, from agreements with Iceland, Norway and the Faroes, which are particularly important to our Scottish fleets. Fisheries is also all tied up with the maritime environment—the sea and the oceans—which is shared with all our neighbouring littoral states. Fish and other forms of sea life do not tend to know boundaries, so we will not have exclusive control over our stocks of biomass, even though we may have control over the EEZ boundary itself.

Importantly, in comparison with many of the other industries that are talked about in terms of Brexit—financial services and the motor industry—the fisheries industry accounts for a full 0.5% of UK GDP. You might think that that does not necessarily give us a lot of leverage in this area, but it provides the livelihood of 12,000 fishers in this country and jobs for 14,000 people in the fish processing industry. It is particularly

important for coastal communities across the United Kingdom, especially in Scotland and the south-west of England—elsewhere as well, but it is concentrated in those areas.

One issue with fisheries is the curse of the commons, in that if there is no regulation, whether international or national, people are incentivised to go out to catch whatever they can while they can, before the person in the next port or in the next nation state manages to catch those fish first. Immediate individual welfare challenges long-term community welfare. That is why, wherever we live on the globe, fisheries management is an important and difficult issue. When we talk about the number of fish caught in particular EEZs or nations, we must remember that life cycles will change from area to area. For instance, it is pointed out that sole tend to spawn mostly outside the British EEZ, even though most stocks are caught within it. So we have complex systems that makes this area difficult.

When we launched this report and issued a press release, many people assumed, given my stance on the referendum, that the report would look upon fisheries as simply challenges and threats. In fact, fisheries is one area where there are perhaps good opportunities for rebalancing the UK's position. Much of that will depend on negotiations, and I will return to that later.

One thing is certain: as we say very strongly in the report, we must have a management system. Indeed, we probably agree with the Minister on this. In many ways, I praise the appearance of the Minister, George Eustice, before the Committee. Frankly, my experience of other Ministers—I am referring, of course, not to the noble Lord, Lord Gardiner, but to other Ministers from the Commons—is that they have often avoided questions or not gone into much detail. George Eustice did quite the opposite. He was well in control of his subject and gave a good indication of where the Government might go on these issues.

One area on which we agreed with him entirely is that we continue to need management systems. Almost certainly, they will be based on quotas. That is not the only way things can be done; it is the way our coastal neighbours, including non-EU states such as Norway and Iceland, operate, so it would be very difficult and probably counterproductive to come out of that system, certainly in the short term. We agree with the NFFO that it would be possible to change the regulations to make them far more specific to the needs of the UK national fleet. Changes to technical regulations could happen, and the committee hopes the Government will address that in the right way: not deregulation but different regulations to make sure they reflect the needs of the fleet.

Our most important recommendation is probably that quotas and management be based as much as possible on scientific evidence, rather than on political decisions. In the past the CFP has been based too much on politics, rather than scientific evidence. Scientific evidence on fisheries, as on all marine areas, is not perfect, but we should remain a member of ICES, we should use that evidence and we should continue to move towards sustainable seas. I am sure the noble Viscount, Lord Hanworth, will talk about maximum sustainable yield and other issues, but basically, we must continue with scientific evidence.

[LORD TEVERSON]

I pay tribute to my noble friend Lady Scott of Needham Market for the work the committee has previously done on regional fisheries policy. We feel very strongly that, because fish know no boundaries, we must try to keep regional co-ordination with EU and non-EU states, particularly in north-western waters and in the Celtic Sea with the Republic of Ireland and others. That must continue.

Turning to international agreements, we will have to have follow-on agreements with the EU, but if we wish to have an overall plan, control and management with nations that share our stocks, we need agreements with Norway, the Faroe Islands and Iceland. They have agreements with the European Union, which are very important, for Norway in particular, and we have an agreement with them for the Scottish fleets. We will leave that, so we have to make sure that we negotiate those relationships as well. As I said, that means concluding an interim or a permanent agreement before we leave in April 2019, as it is reckoned to be. Indeed, in leaving the common fisheries policy through Brexit, we have what is rightly named a cliff edge—a sea cliff edge—if we do not sort out international agreements. That is particularly true outside international waters and in the area of the North-East Atlantic Fisheries Commission, one of the regional organisations. Although we are a member of it, we have to become an active member, as we will not have the European Union working with us, although we very much led those negotiations at the time.

The committee was quite surprised to learn from our academic experts that there is no obligation on us internationally to continue to respect historic rights. However, when we change the quota allocations, which have been quite negative for parts of the United Kingdom, particularly in the Channel area, we have to make sure that we take historic rights into consideration to a certain degree, not least in trade, to which I am about to turn. Quota-hopping is more a matter of business ownership, rather than the common fisheries policy itself.

Trade is one of the last major areas of discussion. It is often said that we export 80% of the fish we catch, and some 60% of that goes to the European Union, and we import 80% of the fish we eat. That is more in value terms than in volume. So trade is incredibly important, and there are various tariffs on fish products. Some are set at zero, going up to about 25% for farmed salmon; that will probably present a great challenge to the Scottish industry. That is why Norway tends to inward invest in Scotland, to keep within the customs union. So we need to make sure that we maintain access to the single market and our broader international economies, which have trade agreements with the EU, as well as our ability to import to satisfy our own needs. In trying to readjust what is called relative stability—the amount of fish stocks that we catch in our own EEZ—making sure that we keep market access is equally important.

I have a couple of other important footnotes. Fisheries, like agriculture and environmental policy generally, is a devolved subject. The details of the management regimes will fall to the Scottish Government, Wales and Northern Ireland, as well as to Defra. We think it important that some framework be maintained, but it

is particularly important that the devolved nations be kept very close and involved in the Brexit fisheries negotiations. That is paramount, particularly as the Scottish industry is the largest in the United Kingdom.

In many ways, Defra has the greatest challenges in the changes arising from Brexit. Agricultural policy has to be redesigned and the fisheries policy dealt with through a number of international agreements. Then, there is the whole issue of the environment, given that some 80% of UK environmental legislation comes from Europe. So Defra must be well resourced and informed, and it must play an important part in the Brexit negotiations.

When I was an MEP, I was extremely critical of the common fisheries policy, which I felt did not succeed in its conservation aims; it was not particularly fair to the United Kingdom, and there were a number of other issues. The irony is that, through the great work the British Government have done over the last few years, we have regionalisation and the banning of discards, and European fish stocks are moving much closer to sustainability. Much of that work was done by the British lead on the CFP negotiations, and it showed that that change was possible. The committee thought it was important that, although there are many opportunities for further change to make the common fisheries policy work better for the United Kingdom, we should not throw away the advantages we have gained.

Lastly, despite the fact that the fisheries industry represents only a small amount of GDP—it is important to certain regional communities—for environmental, economic and cultural reasons it is vital that it not be used as a bargaining chip and then forgotten, compared with the United Kingdom's other great industries. I beg to move.

3.45 pm

Baroness Wilcox (Con): My Lords, I thank our committee's chairman for a most wonderful exposition. He has not looked at one note. I feel really drippy now. I register my interests in the fishing industry. I have owned and worked inshore fishery boats for most of my life. I established, and am now patron of, the National Lobster Hatchery in Padstow, Cornwall, which is doing jolly well.

Joining this House enabled me to put forward a Private Member's Bill to license lobster ranching. This was to encourage fishermen to trust the scientists. As our chairman said, at that time, every time the scientists told us something, the fishermen said, "What do they know? They've never fished in their lives". It was important for us to come up with something that would allow the scientists to get closer to the fishermen. Therefore, it has been a great success for us to have built this aquarium right down on the edge of the water where the boats come in, where fishermen can walk up with the lobster, hand it over, and a year or so later we can hand them back a couple of thousand baby lobsters and say, "There we are, see if you can carry on growing those". It has been a great success. It was funded by the European Community, so we must say a hurrah for that. We have an aquarium for children to learn about fish and fishing, and for PhD students

to complete their studies, find new ways for lobsters to be raised and hand them back and forth between what were, in the beginning, two great enemies.

Our chairman wisely advised Members to speak to one area only. That did not apply to him, but it applies to us. It is a very good thing, otherwise we will be here all day. I will devote myself to quotas, for it is by quotas that I have seen two particular things happen. Quotas have stopped the rape of our seas that technology allowed us. I remember the first time I looked at a screen and saw that we could see the fish swimming around down there. We could pick exactly where we wanted to go fishing. When the Scottish boats came down with a cod-end net with an opening at only one end and fished in two boats, pulling the net behind them, all they had to do was look down at the screen at one or two miles of pelagic fish, which always swim together, put the net down and rape the sea with it. Standing and watching that happen, I realised this could not continue. Very quickly, they raped out their own area of pelagic fish and ours too.

I am keen on quotas in that way because they have stopped us doing that. The thing that has been difficult and caused a great deal of unhappiness for our fishermen is the lack of enforcement that has followed. It has infuriated us to see the Spanish fleet come swanning up and take as much as they like. We are not allowed to police them. They can be policed only by their own police, who sat in Madrid and never came down. As far as that was concerned, our fishermen were only too delighted to lead Cornwall to vote to leave the European Community.

Withdrawal from the common fisheries policy is an opportunity for the UK to review fisheries management practices and develop a management regime tailored to the United Kingdom. It is also an opportunity for the United Kingdom to address concerns regarding the current fisheries management regime and to reflect the needs and interests of coastal communities, the wider marine environment and the industry. However, this will need enforcement and monitoring. Therefore, my question to the Minister is: how will the Government resource the policing of the UK zone waters?

I finish where I began with science and the fishermen. As we have just heard, our UK domestic production consists of 451,000 tonnes of fish landed by UK vessels into UK ports, but 215,000 tonnes of fish is produced by United Kingdom aquaculture producers—back to the lobsters. It is amazing to see how much has been done through scientists and fishermen working together. We will do better and better at this but we still need monitoring and enforcement, as I have asked for. Will the ministry encourage this increasingly successful industry by bringing fishermen and scientists together to ensure a brighter future? Let us face it: the way they fish, there is no need for a quota.

Adam Nicolson said that the experience of evolving as an island race, with intimate contact with the waves, has had a profound effect on who we are, from love of liberty to xenophobia, practicality and propriety, our water, our common law. After never having been invaded for a thousand years, we are again to be an island race. Sink or swim, I believe we shall enjoy our freedom yet again.

Lord Teverson: I apologise to the Committee that I forgot to declare my interest as a board member of the Marine Management Organisation. That must be recorded.

3.51 pm

Viscount Hanworth (Lab): My Lords, the preservation of fish stocks in the face of unbridled consumption is one of the greatest challenges to human social organisation. It is a challenge on a global scale, and it has been met with widespread failure. The failure to preserve European fish stocks is one of many examples of this all too common tragedy.

As we have heard, in spite of highly efficient modern technology aimed at locating shoals of fish and capturing them, the quantity of fish landed in UK ports is less than a third of what it was in 1930, when it reached a maximum. The UK fisheries statistics to which I refer are readily accessible in a briefing paper from the Commons Library. The quantity of fish landed today is significantly less than it was in 1890, when much of the fishing fleet consisted of small vessels under sail. The decline of the catch in the face of the ever-improving technology of fishing points unequivocally to a decline of fish stocks.

The two world wars saw sharp reductions in the size of the catches, which was largely restored when the wars ended. Leaving aside the effect of the subsequent war, there has been a steady downwards trend since the 1930s, on the back of which there have been significant annual variations. However, after 1973, the decline accelerated. That happens to be the year when Britain joined the European Union. This was also the era when the confrontation between the United Kingdom and Iceland regarding fishing rights in the north Atlantic ended with Iceland's victory. Iceland established an exclusion zone around its territories of 200 miles from the coastline, and British trawlers ceased to fish in Icelandic waters. The fishing fleets of Hull, Grimsby and Lowestoft, and elsewhere along the east coast of Britain, were decimated.

At the same time, Britain's accession to the European Union ensured that all European waters should be accessible to the fishing fleets of the members of the Union. In the years that followed, there was a growing recognition of the radical depletion of the fish stocks, and in 1983 a version of the common fisheries policy—the CFP—of the European Union was enunciated that has prevailed until recently. By limiting the total allowable catch, the policy aimed to address the problems of depletion. The common fisheries policy has been strongly criticised by British fishermen. They attribute most of their distress to this EU policy. They have been virtually unanimous in declaring that its constraints and empowerment of fishermen of rival nationalities are responsible for the threat to their livelihoods. They feel that others have robbed them of what is rightfully theirs.

In 1992, the European Commission proposed a policy whereby fishermen would be encouraged to scrap vessels that were surplus to their requirements. This was intended as a means of alleviating the pressure on fish stocks. The Commission proposed that money should be provided from the European Union budget for the purpose of purchasing the vessels for scrap.

[VISCOUNT HANWORTH]

In the case of the UK, that money would have been deducted from the rebate to their contribution to the budget that Margaret Thatcher's Government had won. Instead of participating in this policy, Britain proposed to allow our fishermen to dispose of their surplus vessels by selling them on the open market.

Foreign owners were keen to buy British boats because, under British regulations, if you own a boat you also have a guaranteed share of the British national quota. It was a policy of the British Government to break down the national quota boat by boat and to allow the sale of quotas in this manner. The result is that numerous Spanish and Dutch boats fly British flags and catch part of the European Union stocks allocated to Britain. Their catches are counted against the British quota. This arrangement, known as quota-hopping, exacerbated the opinion of British fishermen that they have been robbed. In fact, the ineptitude of the British Government, rather than the policies of the European Union, is to blame.

By general consent, the EU common fisheries policy enacted in 1983 has been, until recently, an unmitigated failure. It was based on a concept of allowable catches, intended to limit the amount that each nation may extract from the seas. Those quantities have been guided by scientific advice but almost invariably that advice has been ignored in the process of the competitive bidding of the nations for their quotas. Much of the blame for this can be attributed to Britain. We approached the negotiations in an aggressive manner in the belief that we were denied our rightful share of the resources. There have also been suspicions of widespread disregard of the quotas. It has been incumbent on the European Union nations to enforce the quotas but most have been lax in doing so.

The Scottish black fish scandal of 2012 was notable for uncovering illegal landings designed to evade the European Union quotas. Fraud of almost £63 million was revealed. The common fisheries policy has also been vitiated by allowing fish that have been caught in excess of the quotas for their species to be cast overboard. It has also allowed undersized fish to be discarded as well as fish of lesser commercial value. Invariably, discarded fish are dead when they hit the water.

The most recent revision of the common fisheries policy took effect in January 2014 and promised to address some of the principal defects of the former policy. The most significant revision is the intention of gradually introducing a landing obligation whereby all catches of regulated species must be landed and counted against quotas. This would ban the practice of discarding unwanted or surplus fish. Further features of the revised policy concern rules on access to waters, controls of fishing effort, and technical measures to regulate gear usage and to determine where and when fishing is allowed. There are signs that the CFP is making progress towards the objective of preserving fish stocks. Nevertheless, the policy is bedevilled by its failure to take proper account of the biological, ecological and economic principles of fish stock management.

The policy makes frequent reference to the objective of catching the fish at the rate of their so-called maximum sustainable yield or MSY. This term seems

to suggest both sustainability and economic efficiency, but the pursuit of the MSY achieves neither. The MSY is the maximum rate at which the fish are capable of replacing themselves in the face of the depredations of fishing. If such a rate of fishing is exceeded for any length of time then, inevitably, the fish will be driven to extinction. To pursue the fish with such intensity is also uneconomic. It would be more profitable to derive a smaller harvest from the more abundant population that would result from lesser depredations.

I have already noted that, in 1890, more fish were caught by sailing boats from abundant stocks of fish than are caught today from depleted stocks, using technology that was unimaginable in the 19th century. A communication from the European Commission of June 2015 not only declared the objective of fishing at the MSY, but made allowances for the difficulties of achieving that objective immediately. Thus, it stated that if the policy of fishing at the MSY,

"would imply very large annual reductions of fishing opportunities that seriously jeopardise the social and economic sustainability of the fleets involved",

then,

"a delay in reaching the objective beyond 2016",

would,

"be acceptable, through a more gradual reduction of fishing opportunities to achieve MSY".

This defies logic. If the harvest were allowed to exceed the MSY, then the only way the population could recover is if the harvest were to be reduced subsequently to a level substantially below that of the MSY. Otherwise, the extinction of the fish stocks would be guaranteed. To allow the harvest to be reduced gradually from a higher level towards the MSY would be to guarantee extinction.

The deficiencies of the CFP suggest that it should be replaced by something more rational and more effective. I have little faith that this could be achieved, as many have proposed, by our taking full possession of the fish that lie within our so-called exclusive economic zone. That would be an unprecedented assertion of our fishing rights at the expense of other European nations, and it would be met, inevitably, by counterclaims. This could have a disastrous impact on the fish stocks. The impact on our negotiations to leave the European Union would also be severely affected by an attempt to exclude the fishermen of other European nations from our EEZ.

An exclusive economic zone is a concept adopted at the third United Nations Conference on the Law of the Sea in 1982. We call this conference UNCLOS. This was some time after Britain's accession to the European Union, when the basic features of the common fisheries policy were determined. An EEZ stretches out from the coastline of a maritime nation for up to 200 miles. In the case of two adjacent maritime nations, the common perimeter of their zones is equidistant from their shores. By virtue of its geography, Britain has by far the largest zone among the European nations, both in absolute terms and in proportion to the area of its landmass. Other maritime nations, such as Belgium, the Netherlands, Germany and Denmark, have highly constrained zones that are of negligible area in comparison to that of the UK. Therefore, it is wholly inappropriate to propose that their rights to

fish in European waters should be in proportion to the size of their zones. This would imply a significant reduction in their existing rights. Nevertheless, that is what appears to be proposed by our fishermen, seemingly with the support of at least one government Minister.

I propose that the only sensible way forward, in view of Britain's intention to leave the European Union, is to build on the existing common fisheries policy. This is notwithstanding its history of failure. The present objective of conserving the fish stocks should be supported and reaffirmed by the adoption of more appropriate regulations and directives, which the UK should help to formulate. The prevailing spirit should be one of mutual trust and co-operation.

I end by mentioning proposals to resolve the problem of quota hopping. This was attempted in 1988 when a Labour Government passed a law requiring three-quarters of the shareholders of British-registered trawler companies to be British. Three years later, the law was quashed by the European court as contrary to EU rules on freedom of movement of people and capital. If a similar attempt were to be made, after our leaving the European Union, to disbar foreign owners, then I fear there would be damaging political consequences.

4.03 pm

Baroness Scott of Needham Market (LD): My Lords, first, I congratulate my noble friend Lord Teverson, his committee and its staff on producing a report that is well researched, evidence based and very clear in its conclusions. Some seven months after the referendum, at a point where we expect Article 50 to be triggered imminently, there is an urgent need for an informed debate about the complexity of the choices we face and the likely consequences of various courses of action open to the Government. The noble Lord, Lord Boswell, and the EU Committee have therefore made exactly the right decision in focusing its attention and that of the sub-committees on issues which bring thoughtful and reasoned arguments to the table. I would like to think it might catch on, but I am not holding my breath.

Given the range of topics covered by the Energy and Environment Sub-Committee, it might seem strange that it chose fisheries—a sector that employed fewer than 12,000 people in 2014 and, as we have heard, accounts for only half of 1% of our GDP. But I am pleased that it did, partly because, although it is a small industry, it has a proud tradition which is a strong part of our heritage as an island nation, and because in the communities where it still holds, it is an important part of their modern economic well-being. I am also pleased because themes emerge from this report which resonate with many other sectors and are in many ways typical of the issues we will face in the coming years as we leave the EU. There is the complexity of working out transitional arrangements so that we do not create a regulatory gap. There are decisions about our future relationships with the EU27 and with neighbouring countries that are not members but are bound to the EU in various ways, and with countries—some very far away—with which the EU has fisheries agreements. Then, there are the different interests and legal frameworks governing the devolved Administrations, and the way in which different policy areas interact

with each other—in the case of fisheries, predominantly environment and market access issues. Finally, there is the question of control. A post-Brexit UK will still have to operate under a number of international rulebooks, and may choose to do so in other cases.

I think it is fair to say that the CFP is not the most beloved of EU policies, although the competition is quite fierce. The committee received much evidence suggesting that it has not been fit for purpose, and I agree that all too often, its one-size-fits-all approach has been problematic. Until fairly recently, insufficient account was taken of regional variations; applying the same policies to the Mediterranean and the Baltic was clearly never going to end well. This has greatly improved in recent years, with more bespoke multi-annual plans and the development of regional fisheries management organisations. These organisations include participation from non-EU states, so I hope the Government will still seriously consider remaining part of them. There is also some justification to the argument that the CFP has not taken into account the needs of smaller local fisheries, and that many of the technical measures were simply not grounded in the realities of the harsh conditions of working life at sea.

It is clear from the evidence received from Norwegian and Icelandic representatives that Brexit provides a potential opportunity to refocus fisheries policy on wider community benefits. Revisiting quota allocation to give less advantage to larger businesses is entirely within the gift of the UK Government now, and could be a quick win. Given that €243 million has been allocated to the UK from the European Maritime and Fisheries Fund for the next four or five years, thought needs to be given to what, if anything, will replace it.

It is fairly clear from the evidence that the fishing industry would like some quick changes to technical regulations, and I can see why, but there is a dilemma for the Government in how they handle such piecemeal repeal and reform, which can result in emerging policies that end up out of step with broader objectives. This danger is implicitly recognised in the approach that the Government intend to take with the great repeal Bill.

The problem of quota hopping is often cited as a major shortcoming of the CFP, and it is worth emphasising that the allocation of national quota to fishers is a national competence. The issue arises from decisions made by UK fisheries companies selling their companies and their quota allocation to EU businesses. We appear to have no idea what the future arrangement will be for either quotas or the right of a foreign-owned business to buy UK assets. However, when foreign companies wish to buy UK assets, government normally regards it as inward investment and welcomes it. As far as those currently in operation are concerned, perhaps the Minister can confirm that this will be part of a wider discussion about acquired rights not just of citizens but of businesses in any post-Brexit framework. A similar issue presumably arises with the existing agreements whereby member states fish within our EEZ.

It is worth emphasising that for all its shortcomings, the underlying objective of the CFP, which was to deal with overfishing, has met with some success. The report covers very well the challenges of, as one witness

[BARONESS SCOTT OF NEEDHAM MARKET]

described it, a common resource which can be accessed by many but which can be consumed only once. Evidence received by the committee highlighted that limitations, such as TAC and quotas, have delivered improvements in fish stocks, and the New Economics Foundation reports improved profitability.

The almost total collapse of cod fisheries in the Grand Banks of Newfoundland is a salutary lesson about what happens when overfishing and habitat destruction is allowed to continue. By the time the moratorium there was finally agreed, it had to be drastic, and it resulted in the loss of the jobs of 30,000 fishers and 15,000 ancillary workers. It is not in the best interests of the UK fishing industry to lose the momentum that we have gained, and nor should we understate the scale of the broader challenges that we face. The European Environment Agency's 2014 *Marine Messages* reported that less than 20% of all biodiversity features could be considered as of good environmental status. The sub-committee's 2015 report *The North Sea Under Pressure* goes into some detail on this, but for now I wish simply to make two points.

First, there is much we do not know about the marine environment. The creation of the European Marine Observation and Data Network has done much to ensure that data are shared and available. It is exactly the sort of body to which we should continue to belong and which we should support after Brexit. Secondly, the health of the marine environment has been a priority for the EU. I fully accept that the maritime spatial planning directive and the marine strategy framework directive might not be day-to-day topics in the Dog and Duck, but they are important parts of how we manage the seas and, given that the North Sea is a shared space, we will continue to be impacted by these policies even after we have left.

To return to fisheries specifically, the evidence received by the committee and that given to the balance of competencies review two years ago suggests that there has to be some sort of supranational body to manage fisheries. I was very interested in the points made in the report about the United Nations Convention on the Law of the Sea, which obliges coastal states to co-operate, based on scientific evidence, in the management of their fish stocks. Does the Minister agree that for this reason alone, and put alongside environmental considerations and the need to maintain good diplomatic relationships, the UK will need to remain a close and considerate partner?

The report fairly describes the opportunities for the industry which may come from Brexit, but it also makes the complexities clear. My time as chair of this sub-committee led me to see that the team in Defra, like most of the Civil Service, is highly competent and committed, but I am concerned that it was overstretched before the Brexit decision and will need more resource to ensure that the fishing industry, coastal communities and the marine environment are still to thrive.

4.13 pm

Viscount Ridley (Con): My Lords, I congratulate the sub-committee on an excellent and very interesting report and welcome, in particular, the opening remarks

of noble Lord, Lord Teverson, about the opportunity that this represents and about the need to manage being crucial to delivering an improved fisheries policy.

It is worth starting with the point that, despite recent improvements that have been mentioned, the common fisheries policy has been an abject failure in comparison with other policies around the world. Some 80% of EU fish stocks are still overfished, which compares without about 25% globally. EU catches are 25% below their peak in 1997. Most other fisheries are getting better at managing stocks. The EU is getting better, but it is rather too slow, and 1 million tonnes of fish have been thrown back in some years, which is equivalent to 2 billion fish dinners.

Rightly or wrongly, the common fisheries policy was seen as a great act of betrayal in 1973, so it is symbolically important that we should regain control of it in leaving the EU and that we should resume our full place on the North East Atlantic Fisheries Commission alongside Norway, Iceland, Russia, Greenland, the Faroe Islands and, of course, the European Union.

The report states:

"The UK Government will be in a position to renegotiate its quota of Total Allowable Catches".

Can the Minister explain how that point interacts with the historic rights issue raised by a number of other speakers—in particular, the sale of fishing licences to foreign vessels over the past few decades? I do not fully understand that spider's web myself. The organisation which I think is called fishermen for Britain says that 70% of the total allowable catch is likely to come back; some are bound still to remain in foreign hands. Is that number right, and what can we expect?

My main point is that, outside the perverse incentives of the common fisheries policy, which has imposed rather than evolved solutions to fisheries management top-down, whether from politicians or scientists, we should be in a position to design from first principles, on a blank sheet of paper, using best practice from recent experience around the world, a system of fisheries management that works much better. In taking best practice from around the world in casting the net as wide as we can, we should take into account the possibilities opened by new technology, in particular, to make fisheries management much more robust and sustainable than it has been in the past.

I want to touch on two examples of good practice from around the world that emphasise individual as opposed to national quotas. The first is the Falklands, which fortunately has something to do with this country, where the squid fishery was a free for all from 1986; by 2007, it was decided to impose individually transferable quotas, whereby each vessel bought a proportion of a total quota and was able to transfer it through sale. Since it was a proportion, it could increase in total tonnage. Therefore, they had skin in the game—they had the right incentives, and they were interested in policing the management of the fishery themselves. It has turned into a highly sustainable and successful fishery, economically and ecologically; it is very productive, and it deals with the problem that is rightly addressed in the report, that of shared stock. In this case, it deals with the illex squid, which come in from Argentinian waters at a certain time of year. Likewise, a similar system is working extremely well in South Georgia.

The other system, which is slightly different, is in the Faroe Islands, at the other end of the Atlantic, which regulates fishery by days at sea—by regulating effort rather than catch—and insisting that all catches be landed on shore so as to be able to check that there is no bad practice going on at sea. Again, it is crucial that those days at sea are transferable between vessels; in a sense, you can sell your days at sea.

In both cases, the Falklands and the Faroes, real-time information is being used to manage the fisheries. Instead of politicians sitting around a table in Brussels at two o'clock in the morning using two year-old data to decide a quota, in the Falklands there is live transmission of data overnight on what each boat is catching. Any vessel taking on too much by-catch is moved on the next morning. Iceland does the same thing at an hour's notice. So technology has brought great improvements as a management tool, with transponders on vessels and things like cameras on nets.

In designing that blank sheet, we need to take into account the latest science on no-take zones. It seems clear that, if you shut off certain parts of the ocean from fishing, you have remarkably good effects on the ability of stocks to replenish themselves, as long as you choose the zones carefully. Practice around the world has proved surprisingly successful in that respect.

Finally, it is worth mentioning that we are seeing competition increasing for taking fish in the sea. What I mean by that is that seal and whale numbers are recovering remarkably well throughout the north Atlantic. For example, off Iceland, humpback whale numbers have gone from 1,800 in 1987 to 14,000 today. They are now eating 6 million tonnes of fish around Iceland. That compares with the total Icelandic catch of 1.5 million tonnes, so the whales—all of the whales, not just the humpback whales—are taking four times as many fish as the fishing fleet. That does not mean that we should kill all the whales or anything like that, but it does mean that we have to take these factors into account.

The UK grey seal population has grown from 30,000 in 1985 to roughly 100,000 today. Of course, as was mentioned by my noble friend Lady Wilcox, that is all pointing in the direction of aquaculture. It is very important to note that the proportion of fish eaten in the world that comes from farmed, as opposed to wild, fish—I had very nice piece of farmed salmon for lunch today—is now about 50%. It is overtaking wild fish, and that is the right way to go, because it worked on land to go from hunting-gathering to agriculture, and it will work in the sea as well, although, of course, marine aquaculture still depends heavily on wild-caught fish as a feed stock.

4.20 pm

Lord Krebs (CB): My Lords, I join other noble Lords in thanking the noble Lord, Lord Teverson, for his excellent chairmanship of our committee, and our committee clerk and policy analyst for their outstanding drafting skills and ability to synthesise the evidence that we heard. I will spend a few minutes talking about international trade, which, as the noble Lord mentioned in his introduction, was one of the themes of this inquiry, along with access to territorial waters and allocation of quotas.

First, however, I want to set the scene by talking about what we actually do with fish: namely, eat it. A large proportion of fish that is caught is for human consumption. Given my past as the former chairman of the Food Standards Agency, I cannot resist talking for a few moments about diet and health and fish. I am tempted to pose a quiz question to noble Lords, which I posed to my wife and daughter over the weekend: how many fish and chip meals are eaten per annum in this country from fish and chip takeaway shops? My wife and daughter both guessed around 5 million to 10 million. The answer is 380 million meals a year, according to the Sea Fish Industry Authority, from the 10,500 fish and chip shops in the UK.

In spite of that apparently large figure, it is nevertheless true that most people in this country do not eat the recommended amount of fish, which is two portions of fish a week, one of which should be oily. I said that many times when I was chairman of the Food Standards Agency; it just rolls off the tongue without having to use the brain at all. In fact, three-quarters of adults in this country do not even know what the guidelines are. Although there are a large number of fish and chip meals eaten, and 97% of households buy some kind of seafood, only a quarter of the population eats the recommended amount. The average intake is only one portion per week, 140 grams. Among younger consumers—18 to 24 year-olds—a third of them are not even aware of what an oily fish is. As a nation, therefore, we should be doubling our fish consumption, although this is not the current trend. There was a steady increase in per capita consumption from the mid-1970s up until 2008, but for some reason the financial crash coincided with a crash in fish consumption, which has gone down by 14% since 2008.

I am leading up to international trade; noble Lords should not worry. Suppose we were all to eat more fish, where would the fish come from? There is a problem, which we have heard about eloquently from the noble Lord, Lord Teverson, and from the noble Viscounts, Lord Hanworth and Lord Ridley, of sustainability. The figures I will quote are slightly different from those of the noble Viscount, Lord Ridley, but not seriously. Daniel Pauly, the fisheries biologist, estimates that about a third of the world's fish stocks are seriously overexploited, a third are close to overexploitation, and a third are still being exploited at sustainable levels. As we have already heard from other noble Lords, an important part of European fisheries policy over recent decades—not necessarily totally successfully—has been to try to reduce over-exploitation. After Brexit, it is really an imperative, as others have already said, that we in this country manage our fish stocks sustainably. If consumption were to increase, where would the extra fish come from?

That brings me to the question of trade. Let me give a few facts. Some 70% of the seafood that we eat is imported, with cod, salmon, tuna and prawns or shrimps occupying the top slots in the league table by value. The top four countries from which we import are Iceland, China, Germany and Canada, with 32% of our imports coming from the European Union. At the same time, we export about three quarters of the fish caught by UK fishers or grown in fish farms, with salmon, langoustine—Dublin Bay prawns or scampi,

[LORD KREBS]

depending on what you prefer to call them—scallops and mackerel topping the value league. France, the USA, Spain and Ireland are the top destination countries. Two-thirds of our exports go to the European Union. In short, international trade is vital to the UK fishing industry, both for fishers who catch and fishers who farm fish.

The fish processing industry is, in terms of turnover, an order of magnitude larger than the fish catching and farming industries and relies heavily on imports from third countries, such as Norway, Iceland, the USA, Russia and Canada. The UK is able to access key species of fish from third countries at low or even zero tariffs because the EU has negotiated so-called autonomous tariff quotas with third countries. The UK Seafood Industry Alliance told us:

“A future relationship with the EU must maintain existing market access and our ability to import zero or reduced tariff supplies from both EU and non-EU countries”.

Does the Minister agree with this statement and can he reassure us that, in the Brexit negotiations, meeting this requirement will be a priority of the Government in order to sustain the fishing industry in this country?

Defra told us that, if the UK fails to negotiate a special trade deal with the EU, it would trade under WTO rules. For the top five fish products that we export to the EU, the tariffs would range from 2% to 20%. At the same time, EU countries would face tariffs in exporting to the UK. Will the Minister tell us what assessment his department has made of the likely impact of such tariffs both on the viability of the fishing industry and on per capita consumption, because presumably the price of fish would go up?

It was particularly instructive for me to hear the evidence from Norway and Iceland, which are both members of the European Economic Area and therefore in the single market for most purposes. Even under that relationship with the EU, these countries face substantial tariff barriers, ranging from 2% to 25% on some species. These tariff barriers were seen as a serious obstacle to trade, as were the export quotas. Perhaps it is an irony that the Norwegian witness, Mr Vidar Landmark, told us that Norway had not managed to negotiate tariff-free access for salmon to the EU. He said:

“We have not managed to do that largely due to the Scottish producers”.

Those producers have argued strongly against Norway having access. I imagine that Norway will be delighted to be able to compete with Scotland on a level playing field after Brexit, if the UK does not manage to negotiate a special trade deal.

Fishing industry witnesses were divided on whether the loss of preferential access to EU markets would be bad overall for the UK. Fishing for Leave told us that fish destined for the EU would be channelled into the domestic market or into exports to third countries. On the other hand, the Seafood Industry Alliance said that UK consumers were resistant to changing their eating habits to match the fish caught by the UK fleet. We also heard that negotiating trade deals with third countries after Brexit will be a long and complicated process.

From the evidence we heard, it would seem that international trade, both with the EU and with third countries, will be essential for the future health of the UK seafood industry. In a helpful evidence session, the Fisheries Minister, George Eustice, told us that his officials are analysing the most appropriate options for the UK post Brexit. Can the Minister give us an update on current thinking within his department? Does the department's position align with that of Fishing for Leave, which thinks that there is a great opportunity, or that of the Seafood Industry Alliance, which thinks that there will be real challenges?

Finally, I come to the question of trade-offs in negotiations. A number of our witnesses told us that the Brexit negotiations may require balancing the benefits of trading access against quota shares and access by other countries to our waters, which really underlines what we heard from other noble Lords: the complexity of the Brexit negotiations. I look forward to the Minister's responses.

4.30 pm

The Duke of Montrose (Con): My Lords, we all owe a great debt to the noble Lord, Lord Teverson, for securing this debate on such an important issue. I apologise that I was not here at the very start of his remarks and am grateful to the Committee for allowing me to continue.

We were fortunate to be able to interview a wide range of experts in the whole field of fishing. I thank the committee clerk and staff for putting together such an excellent summary of all that came before us. Brexit has caused all kinds of upset to our erstwhile continental partners but I suggest that the changes to fishing are likely to cause even more upset than other areas. The simple reason for this, touched on by my noble friend Lord Ridley, is that in the UK's initial negotiations for entry to the common market we gave away rather more concessions in fishing than any other field. Now we are looking at how much of this we can reclaim.

I received fairly extensive briefing jointly from the Scottish Fishermen's Federation and the Scottish Association of Fish Producers' Organisations, pleading that this time the Government, in considering any concessions on fishing, should look only at those that will assist the economics of the industry rather than a trade-off against other economic areas. In the final analysis, fishing—like agriculture—will have further issues to work out because the actual management competence of the activity is in the hands of the different devolved Administrations, whereas dealings with Europe must be carried out by the United Kingdom as a whole.

I find it very encouraging to hear that at this stage the fishermen's organisations across the UK are prepared to take a joint approach as this will be important to securing the best possible deal. However, the Scots will watch these negotiations with particular interest. The UK's exclusive economic zone was finally defined in the 2013 EEZ order, but the competence of the Scottish Government in this field goes back to the Scotland Act 1998. Many of your Lordships will be aware that 62% of the UK exclusive economic zone comes under

the responsibility of Scotland. The impact on Scotland is further illustrated in a 2004 review by the Royal Society of Edinburgh which stated that although Scotland contains only 8.6% of the UK population, 60% of the total UK catch is landed there. That shows the importance of fishing in that context; it is rather more important than in the UK as a whole.

The brief from the industry states that currently 58% of the fish caught in what will become exclusively our waters is taken by other EU fishermen. The noble Viscount, Lord Hanworth, touched on this. As an independent coastal state, we are told we will have the power to say who fishes in our waters and, as our report outlines, there are currently about 25,000 jobs involved in the fishing and processing industry. One must look at both elements together. This can only mean that there is scope for a massive expansion of the UK industry if most of this asset is retained for our fishing fleet. This is of particular interest to the more remote coastal communities, which are numerous in Scotland and various extended parts of the United Kingdom. A great expansion in our fishing industry could put us at the centre of world sustainable seafood production.

For those who set their heart on various forms of independence there is a small consequence not mentioned in the report and which might just bear a mention. Marine conservation and biodiversity have been functions of the EU Commission. All participating states had to follow its directives and were subject to sanctions if found to be negligent. This is now an area where each Administration will have its own authority, as far as we can see, as to how far they wish to go. This puts an extra lot of work on anybody who wishes to increase biodiversity regulation because they will have to deal with each independent Administration separately.

4.35 pm

Baroness Sheehan (LD): My Lords, I speak as a member of the committee who has had the benefit of listening to and reading the words of expert practitioners and thinkers in this industry. Experts may not be the flavour of the month post-Brexit, but some of those on the leave side on the argument who gave evidence to the committee, either written or in person, are included in that term. We certainly welcomed their views. I thank my noble friend Lord Teverson for the sure touch he displayed in chairing this very complex topic, and the clerks for producing a very well-presented document, all in record time. I take my hat off to the clerks, who must be putting in a great many extra hours in fulfilling all the requirements that producing these sector-by-sector reports must place on them.

I draw attention to one aspect of this excellent report: the great importance of adhering to scientific advice if we are to avoid depleting fish stocks to unsustainable levels, to the detriment of all. MAD—mutually assured destruction—is an acronym that can be applied not only to nuclear warfare; the fishing industry has its own version to contend with. We have already heard about the mobility of commercial fish stocks, which requires states to manage them jointly or risk destruction of the stock altogether. With the stock goes the livelihood of thousands of people in

coastal communities who depend directly or indirectly on the catch. The tragedy of the commons inevitably leads to overexploitation unless there is recognition that, over its lifetime, a resource is finite. To be sustainable it must be managed jointly and/or severally by all concerned, otherwise all parties risk reaching a position where nothing is left to share.

The United Kingdom's approach to managing fisheries is largely determined by the EU's common fisheries policy, which ensures that fishing is environmentally, economically and socially sustainable among fishers of member states. These stocks of highly mobile or migratory commercial fish species—plaice, cod, sole, haddock, herring and mackerel all fall under one of these categories—are typically managed by setting catch limits, total allowable catches, and divvying them out in quotas. This ensures that, to the best of their knowledge, fishers of all nations will not risk over-exploitation of their livelihood. Every year, based on scientific advice from the independent International Council on the Exploration of the Sea—ICES—and the EU's Scientific, Technical and Economic Committee for Fisheries, the European Commission proposes a TAC for commercial species for each area in the EU zone. It is scientists who provide an assessment of the health and state of a given fish stock—an assessment that will become more important as climate change impacts on stocks and migratory patterns.

In disengaging from the EU, the UK will no longer be part of the common fisheries policy and in a position to reset its approach to the exploitation of its fishing waters within the EEC. The complexity of disentangling ourselves from the CFP and emerging with a fisheries policy that satisfies UK fishermen in all the devolved nations in terms of access to affordable markets, restricted access to the EEZ for EU vessels, and maintaining supply for the processing and production industries—is not to be underestimated. The Minister, George Eustice MP, indicated in his evidence that the great repeal Bill may prevent a regulatory vacuum while we negotiate our future relationship with the EU and non-EU states. However, other elements of the CFP do not lend themselves to a great repeal Bill approach. When the UK leaves the EU, it will no longer take part in Council negotiations or the annual assessing of TACs for shared stocks. The UK will also cease to be included in the quotas and mutual access agreements that the European Commission negotiates on behalf of member states with third parties. Without this framework for co-operation, stocks that are shared between the UK and the EU risk becoming overexploited. Therefore, it was reassuring to hear the Minister fully recognise the pitfalls. He has said that he will resist mismanagement of resources. It was also reassuring to hear that witnesses unequivocally agreed that fisheries management should continue to be based on scientific evidence alone, which should remain an uncrossable line.

There was also widespread agreement that the UK should continue to fund and take advice from the International Council for the Exploration of the Sea. That is an absolute must, because although the TACs are informed by science, the ultimate decision is a political one. Sometimes political considerations lead to the scientific advice being ignored. According to the

[BARONESS SHEEHAN]

New Economics Foundation, the TAC currently held by the UK was on average 17% higher than that recommended by scientific advice, and TACs negotiated by the EU and third countries such as Norway and Iceland were often higher, so the temptation is there and is not always resisted. Therefore, I, for one, applaud the recommendation in the report that the Government's approach to fisheries management must be based on scientific advice. I hope the Minister will confirm today that that will remain the case, as the outcome of Brexit for the fishing industry must not mean a return to past scenarios such as cod and mackerel wars.

4.42 pm

Lord Selkirk of Douglas (Con): My Lords, it is a great pleasure to follow the noble Baroness, who rightly stressed the importance of managing stocks and sustainability and the expertise of the clerks. They helped to produce a report which, due in large measure to the work of the chairman, the noble Lord, Lord Teverson, is thoroughly comprehensive and will stand us in good stead when it is relied upon in later years. When the report was prepared, I was concerned that it should not in any way give the impression that the interests of our fishing industry are undervalued, or that they can be bargained away to benefit other sectors of the economy when Brexit negotiations get under way.

Bertie Armstrong, the chief executive of the Scottish Fishermen's Federation, claimed that leaving the European Union's common fisheries policy offers the industry "a sea of opportunity". However, he also warned that this opportunity must not be traded away. The United Kingdom and Scottish Governments must work together as a team to ensure,

"the best possible deal ... for our hardworking fishermen", he told the *Shetland Times*.

The Scottish Fishermen's Federation, working alongside the National Federation of Fishermen's Organisations, wants the Brexit negotiations to achieve their aims of full control over fishing fleets' access to the waters in the UK's exclusive economic zone, which normally stretches 200 nautical miles from a state's coastal baseline. It also wants the creation of a mutually beneficial trading relationship with the EU and other countries and a new, ambitious management strategy. In fact, our final report stressed that the hopes and aspirations of those who live in coastal communities around the UK must not be marginalised, even if some compromises may have to be accepted in the interests of the industry's sizeable export trade, as new arrangements are agreed with our former European partners.

Achieving a successful outcome will take dedication and commitment on the part of our Brexit negotiators. Our report refers to the huge challenge facing the Government in Recommendation 29. It also states in Recommendation 24:

"Trade with the EU in fish products will be a key factor to the future success of the UK fishing industry and fish processors. We therefore urge that the fish sector should be included in the Government's consideration of priorities for a future trading relationship with the EU".

Fishing may make only a small contribution to our GDP—less than 1%—but its value to local societies and their sustainable economic growth is hugely important to the places around our shores where fishing communities are embedded. It is also of great importance to the health and well-being of our nation, through the provision of nutritious seafood brought up from our seas in what are often dangerous and life-threatening circumstances.

The essential importance of the role of the fishing industry in our national life should certainly not be measured solely in terms of GDP. We all know the hymn written by the Anglican churchman William Whiting in 1860, traditionally associated with seafarers, which urges God's protection:

"For those in peril on the sea".

One of the worst disasters ever in the waters around Scottish shores befell the fishermen of Eyemouth some miles down the coast from where I live. On 14 October 1881, a terrible storm took the lives of 189 men from the port and surrounding area, capsizing their boats and dashing them on rocks at the entrance to the harbour. A starkly poignant memorial in granite depicting a broken mast commemorates that black Friday. In addition, on the 135th anniversary only last October, a bronze sculpture entitled "Widows and Bairns" was unveiled to commemorate the many women and children who were left widowed or fatherless.

I remember, when I was very young, asking what was the purpose of the lookout, referred to as a crow's nest, which I had spotted high up on a house on the east coast of Scotland. I was told that such places were where the concerned mothers, wives and daughters of the fishermen would stand during storms, scanning the horizon to discern the fate of their next of kin far out to sea. Fishing is a global occupation, and since then I have learned that you can see similar railed cupolas, known as widow's walks or widow's watches, in north American seafaring communities.

I had a very small taste of the dangers of the deep when, as a boy, my father took me out in a rowing boat off the shore at North Berwick heading for a small island. We were quite a long way from safety when the wind got up suddenly and mountainous waves began to tower over our small boat. Rowing back in such high winds might have become impossible, and eventually we were rescued by the pilot boat. I remember the kindly old fisherman who greeted us at the harbour when we arrived back with the wonderfully understated observation: "I see you've had a wee sea breeze". For me, this is a painful memory because, very sadly, despite his great seafaring skills, he would fall victim to a storm and be drowned at sea.

In conclusion, I ask the Minister to assure us and make certain that the Government's Brexit negotiators will be equal to the challenge which the UK's exit poses for the future of our fishing industry, as identified in the report. Can he promise that the Government will not let down those who routinely put their lives on the line on behalf of their country men and women? Can he pledge that when they are sitting around the table in a comfortable conference room in Brussels, those representing the UK will not forget for an instant that they are negotiating on behalf of a very special

community of people who have served and continue to serve their country well and with courage, come hell or high water?

4.50 pm

Lord Trees (CB): My Lords, I join others in thanking the noble Lord, Lord Teverson, for his excellent chairmanship of our committee and this report. I echo the thanks of several noble Lords to our clerk and policy analysts for a fantastic job in pulling together a huge amount of evidence, analysing it and writing it up in a very digestible form. They are at the minute doing something like a PhD thesis every three or four weeks and are to be much commended for their efforts.

In 1833, William Forster Lloyd, an economist, wrote an essay in which he used the example of the unregulated grazing of common land to describe a situation where individuals acting out of self-interest in exploiting a common resource will tend to deplete that resource contrary to the common good. This “tragedy of the commons” has been mentioned by several noble Lords already, though it was more than a century later, in 1968, that the concept became widely known following a much-cited publication by the ecologist, Garrett Hardin.

Apart from economic situations, the concept applies to many biological, environmental and ecological situations and is especially relevant to fisheries. Indeed, it is even more complex for fisheries than Lloyd’s example of a piece of grazing land that is geographically fixed. In the seas, fish are not only a resource potentially accessible to many but they move around and migrate, spawning in one area and perhaps growing and feeding in another. Although post-Brexit we will have control of our exclusive economic zone, fish do not and will not respect such boundaries.

Others in the debate have already discussed this issue and many like it that must be considered in negotiating with the EU 27. However, the tragedy of the commons also applies to how, within the UK, we will manage our EEZ among the devolved nations. A coherent plan of how, post-Brexit, we want to manage our fisheries within UK waters is an essential prerequisite to how we approach our external negotiations. The fishing industry has particular and significant social and economic importance for England, Scotland, Wales and Northern Ireland in different ways and in different parts of each of those countries. The economic importance of fishing to rural and coastal communities in particular is much greater than its overall contribution to UK GDP suggests. The particular needs and concerns of the devolved Administrations are important.

Several of our witnesses emphasised that Brexit provides an opportunity to design a UK-based fisheries policy better suited to UK needs. As Fishing for Leave argued, the UK could,

“implement a decent, fit for purpose management policy for the benefit of the whole UK industry ... and the coastal communities that depend upon it”.

This is a great opportunity, but equally our evidence indicated the variable priorities of the devolved nations. The importance of resolving and agreeing within and between ourselves what in toto best suits the component parts of the UK was accepted by our witnesses. Mr Bertie Armstrong of the Scottish Fishermen’s Federation told us that the size of the UK EEZ,

“creates a critical mass that gives ... a very powerful negotiating position, which we would wish to retain and not have diluted by any—what you might call arm wrestling north and south”.

It is thus regrettable that, quite recently, following the latest quota negotiations in Brussels, the National Federation of Fishermen’s Organisations, which represents fishermen in England, Wales and Northern Ireland, has been publically critical of our Fisheries Minister, George Eustice, for what they regard as an unfair quota concession in favour of Scotland, to the disadvantage of the Humberside-based Fish Producers’ Organisation.

I am not competent, nor is it my role, to comment on the rights or wrongs of that particular issue, but I suggest that washing our proverbial dirty domestic linen in front of the EU is not likely to be to our collective advantage. As John Donne famously said, “no man is an island”. Ironically we are an island kingdom, but in the forthcoming negotiations we will still need to recognise the relationships with neighbouring states both within and outwith the EU, and with the adjacent parts of the UK. One hopes that before negotiations get serious, we will have worked out an optimal plan among all parts of the UK for how we are sustainably to manage the fisheries within our UK EEZ for the collective and long-term benefit of all the UK. Finally, what mechanisms have been set up to ensure that all the devolved nations have adequate input into formulating a UK negotiating position, a position that, by inclusivity, they can all support?

4.56 pm

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I congratulate the noble Lord, Lord Teverson, and his sub-committee on their excellent and wide-ranging report. I fear that I will not heed his advice at the outset of this debate as, in common with other speakers, I will stray into the territory of future arrangements. I agree with many of the comments made by my noble friend Lord Selkirk of Douglas in his excellent speech, which set the scene for those future negotiations so well.

The UK became a net importer of fish in 1984, a year after the common fisheries policy and its quotas were introduced. The industry has been shrinking ever since, from 948,000 tonnes at the end of the 1970s to 451,000 tonnes in 2014. Although it is, perhaps, a small industry in terms of its 0.5% contribution to the UK’s GDP, it is still one of significant value to the 11,800 UK fishermen and the communities in which they live.

Brexit represents an opportunity to rebalance the industry back in favour of UK fishermen. While the UK will act as a single coastal state in its negotiations with the rest of Europe, domestic fisheries management activity is, as others have said, a devolved matter. It is therefore crucial that a co-operative management regime is established between the four states: Wales, Scotland, Northern Ireland and England. Any new post-Brexit domestic regime should reflect the needs and interests of all coastal communities, while ensuring the sustainability of a valuable, renewable, but—by definition—very mobile resource.

There will be significant differences between the needs of the four countries. Scotland lands the greatest tonnage of fish, generally from the largest vessels in the UK fleet. Fish constitute 3% of all Scottish exports.

[BARONESS BLOOMFIELD OF HINTON WALDRIST]

Wales, however—my home country—has the smallest fleet and the smallest number of fishermen in the UK, but the seafood sector is disproportionately important to many of its coastal areas. Professional sea fishing is worth millions to the Welsh economy. It was worth £7.6 million in 2015, up from £4.9 million in 2012.

Despite the huge diversity of species caught by the Welsh fishing fleet, whelks, scallops and lobsters account for some 70% of the value of landings. Indeed, I am told that many of the lobsters caught in north Wales are flown to China each Wednesday from Manchester airport. Equally, the Spanish are keen importers of Pembrokeshire lobster and the French of spider crabs. Mussels constitute 44% of landings by weight, but less than 1% of the total value. The reason for the focus on non-quota shellfish stocks is related to the value of the fish and the small size of the vessels. The industry in Wales is characterised by a large proportion—more than 90%—of small fishing vessels under 10 metres. When devising a new regime, it is vital to support local concerns operating smaller boats, the very sector that has been damaged most by EU regulations and legislation and by the current method of allocating quotas within the UK.

The UK is responsible for international negotiations. As a result of successful talks at the meeting in Brussels in December 2016, the EU Fisheries Council agreed a deal with Wales allowing the retention of selective netting within the sea bass fishery, a roll-over of the arrangements for recreational sea bass fishing and a 5% increase in the total allowable catch of commercially important skate and ray in the Bristol Channel.

I hope that as all devolved Administrations facilitate joint working with Her Majesty's Government on the regimes to be put in place once we leave the EU due regard will also be given to the importance of recreational sea angling to the Welsh tourist industry. Studies by Bangor University in 2015 reported some 76,000 sea anglers resident in Wales, with approximately 6% of all tourists to Wales engaging in sea angling. The total annual expenditure of all sea anglers in Wales was estimated to be an average of more than £100 million, and total employment directly created from sea angling spending was estimated at 1,706 full-time equivalent jobs. Many regular tourists who visit coastal villages own small boats and lobster pots—including me, the proud owner of a 10-foot fishing boat and two lobster pots—operate in accordance with Defra regulations and are actively policed by the local fisheries authorities. In contemplating the new, post-Brexit world, it is vital that we create a regulatory framework that allows professional and recreational fishermen to continue their significant contribution to their local economies.

5.01 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Lord, Lord Teverson, for introducing this report with such clarity. I am also grateful to all members of the committee, who have worked hard to produce a timely and authoritative piece of work. I echo a number of noble Lords' comments about the usefulness to this House and the wider parliamentary process of the work that the committee has done.

If anyone was in any doubt about the complexities of the negotiations ahead, a quick read of this report would quickly expose the fact that, even in this one compact policy area, huge challenges and pitfalls lie ahead. As we go on to debate other issues in the coming months, that issue will be replicated time and again. As with so many other farming, food and environmental obligations, it becomes clear that we are bound not just by ongoing EU agreements but by other agreements beyond the EU. The future is not just about exiting one organisation, as some would have us believe—we have to think about our future in terms of all the other international agreements and obligations that we will continue to have. So I do not envy the Ministers, and their officials, who carry high expectations on their shoulders, for the many competing interests that they will have to balance, as well as for the impossibly short time that they have to come up with something better than the status quo, which is what lots of people expect of them.

The report captures very well the moveable feast of fish spawning and maturing around our waters. Unlike many other aspects of our EU trade, they truly have a mind of their own and cannot be neatly counted in and out. They can travel hundreds of miles from their breeding grounds to their feeding grounds. They do not respect borders and fisherman do not stop fishing at the end of their country's territorial waters. This presents a real challenge to the scientists who are advising the EU on the total allowable catches for commercial fish stocks. This uncertainty is being compounded by the impact of climate change on warming sea temperatures. So what used to be the case no longer necessarily is. Fish are moving out of their old feeding grounds in search of cooler waters. The species on which the old fishing quotas are based are moving north, making the scientific system and calculations increasingly outdated. On the one hand, this could provide new opportunities for us, but only if we can negotiate new multilateral quota agreements. As we have learned in the past, there cannot be just a free-for-all, which means declining fish stocks for all, so acting unilaterally cannot, and must not, be the answer. Therefore, in that context, there are a number of challenges for our negotiators.

The noble Lord, Lord Krebs, raised the important issue of the necessity for us to eat more fish, and therefore questioned where it was going to come from. Historically, the UK has not eaten the fish caught by British fishermen: 80% is exported to other countries and four of the five biggest export countries are in the EU. Therefore, if we withdraw from the single market, as appears to be the Government's intention, there is no guarantee of preferential access to that EU market in the years to come. In these circumstances, it seems almost inevitable that some tariffs will need to be paid. The noble Lord, Lord Krebs, detailed the kinds of tariffs which have to be paid under the WTO trade schedules and which are paid by others. They vary from 2% to 20% and would have a significant impact on the profitability of UK fishing fleets, as they do for the Norwegian and Icelandic fleets, for example.

At the same time, we import the majority of fish which we consume within the UK, 32% of which comes from the EU. Potentially that imported fish, of

which we all want to eat more, would also be subject to EU tariffs. Therefore, the cost to us of importing and exporting fish within the EU could adversely affect profitability unless a special deal is done, which is desirable but highly unlikely given both the lack of precedent for this type of agreement and the limited timeframe we will have to negotiate it. Therefore, will the noble Lord clarify how these negotiations will be structured? Will the Government seek a comprehensive UK-EU trade agreement, of which fisheries will be only a very small part, or will there be some separate negotiations purely Fisheries Minister to Fisheries Minister, if I can put it that way? If this is the case, has the Fisheries Minister had any initial conversations with his EU counterparts in the light of the fact that we do not have many precedents on which to base the discussions? Whatever strategy is adopted, what will happen if the negotiations are not completed within two years? Does he envisage a transitional agreement being put in place and, if so, what are its likely terms?

These negotiations will need to go well beyond trade and tariff agreements. Between 2014 and 2020, the EU allocated €243 million to the UK for sustainable fishing initiatives, diversifying coastal economies and training initiatives. As we know, many of our coastal communities are blighted by low pay and high unemployment, so these subsidies have been crucial to them. What will happen to those EU subsidies that they currently receive? The National Federation of Fishermen's Organisations seems to think that this funding will continue post-Brexit. But, realistically, for how long are the Government able to guarantee these funds, and what will be the process for deciding priorities for subsidy post-Brexit? Perhaps the Minister could update us on the Government's thinking on this issue, particularly in the light of the WTO restrictions on subsidies of this kind.

We then come to the issue of where our fishermen expect to be able to fish in future. During the referendum, lots of promises were made about reclaiming our waters and giving UK fishermen open access to our seas once more but, of course, this is not as simple as it first seems. As we have heard, the exclusive economic zones, when they were first agreed, took into account historical precedent of fishing activity around our shores. I think the noble Viscount, Lord Ridley, was right when he said that these arrangements cannot simply be ignored or be unilaterally cancelled when we have other international obligations which will also come into play. There would have to be a new deal with those countries claiming those historic rights.

There is a public perception of UK fishermen as brave and hardy trawlermen, and the noble Lord, Lord Selkirk, captured the perils under which they operate extremely well, but, while our trawlermen are undoubtedly hard-working, the majority of the UK's quotas have been allocated by the UK Fisheries Minister to large commercial fishing interests, which run huge factory ships off our shores. To complicate matters further, as my noble friend Lord Hanworth described, over a period, some of those vessels have been sold and are now owned by EU-based companies, giving them access to UK quotas—so-called quota hopping. I echo the question of several noble Lords to the Minister: can he clarify what will happen to those

quotas post-Brexit? Will they be redistributed among UK-owned fleets, with an emphasis on supporting smaller enterprises, or will the Government continue to respect the current multinational ownership and involvement?

Finally, I hope that it goes without saying that we should continue to enforce genuine environmental and sustainability standards. The UK has played an important role in EU negotiations to strengthen the use of scientific evidence on the sustainability of fishing stock. Although that is not perfect, I believe that we have made progress in that area. I hope that we will continue to champion this approach and adopt it for our own total allowable catch limits and ensure that we continue the enforcement of a ban on discards. However, there may be other EU legislation that may no longer apply but is equally essential to sustainability in the longer term: for example, the EU's marine strategy framework and the water framework directives, which act to keep areas where fish live in high-quality condition. I hope that the Minister can assure us that continued environmental protection in the broadest sense will be a priority for this Government and that the associated directives will be transposed unamended into UK law.

In conclusion, this report and today's debate have once again underlined the complexities of the negotiating task ahead; the financial threat to our economy, if we are unable to secure favourable tariffs; and the fact that, whatever happens, we will need to be part of an ongoing international community if our global fish stocks are to be managed successfully. Sadly, I suspect that many people living and working in coastal communities will be unhappy with the outcome of the Brexit negotiations, because it simply will be unable to match the promises made during the campaign. In particular, this is why it is important that we do not hit a cliff edge, with all the detriment that could flow from that. It is also why it is important for everyone, including those coastal communities, to be kept informed of the progress of those negotiations.

I hope that, in responding, the Minister can indicate how the Government intend to keep us and those stakeholders with a direct interest in the loop as the discussions continue, so that there are no horrible surprises at the end of the process. I look forward to his response.

5.13 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, first, I thank the noble Lord, Lord Teverson, and all members of the committee for holding this inquiry on such an important issue and for the thought-provoking and timely debate today. Fisheries will be a key area in the UK exit negotiations, which give us a once-in-a-generation chance to regenerate UK fishing grounds and improve the conditions under which they are finished.

The committee's valuable report highlights some of the complex and challenging issues. It was quite right that the noble Baroness, Lady Scott of Needham Market, used the words "complex and challenging", as did the noble Lord, Lord Krebs. I do not underestimate those challenges because they will clearly have to be

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addressed if we are to make the most of this opportunity, and I welcome the debate that the report has stimulated today and which I am sure it will continue to stimulate.

As the noble Baroness, Lady Scott of Needham Market, also said, since time immemorial, fishing has been a key part of the national fabric of our island race, and I take this opportunity to pay tribute to our fishermen, who do such a difficult job in often dangerous conditions. My noble friend Lord Selkirk spoke powerfully and movingly about this. I know that noble Lords will join me in expressing sincere condolences and sympathy to the families and friends of fishermen who have lost their lives or are missing as a result of their work. We should never forget.

In the UK, the fishing, aquaculture and fish-processing sectors account for 34,600 jobs, and in 2015 UK vessels landed 708,000 tonnes of sea fish in the UK and abroad with a value of £775 million. The sector is economically significant to Scotland, where fish accounts for 3% of exports, as well as to local coastal communities across Wales, Northern Ireland and England. I was very pleased that my noble friend Lady Bloomfield expanded on the features of the Welsh fisheries industry and raised the issue of recreational sea angling, which is a very popular activity.

This Government take seriously their role in supporting the fishing industry. To deliver a profitable fishing industry, we must fish sustainably now and in future. This is why the UK has been at the forefront of arguments to ensure that catches are within sustainable scientific limits. In referring to some of the historical records and catches, the noble Viscount, Lord Hanworth, framed this very strongly. The approach we have been taking has started to bear fruit, and I am pleased that in December, at the Fisheries Council, we were able to agree a balanced package, including further increases in quotas on some valuable species, as stocks have recovered, especially in the North Sea. This year, 1 January saw the implementation of the next phase of the landing obligation to include two additional species, North Sea cod, and north-western pollock, which must now be landed and should no longer be wastefully thrown back into the sea. This is an important step towards helping the UK achieve sustainable fishing levels by 2020.

As we move towards leaving the EU, we will continue to work as constructively as we have always done with other member states and the European Commission to promote sustainable management of the seas and to safeguard the interests of the industry. In leaving the European Union we have an opportunity to build on this work to improve the health of our fish stocks and to improve their management in our waters. We want to take this opportunity to create a resilient, competitive and, ultimately, more profitable UK seafood sector and to deliver a cleaner, healthier and more productive marine environment. I very much agree with what the noble Baroness, Lady Jones of Whitchurch, said: it is very important that we have a cleaner and healthier marine environment. I was also very interested to hear my noble friend Lord Ridley's examples of best practice.

As the committee's report indicates, leaving the EU and the common fisheries policy means a new legal baseline on fisheries. This is something to which the

noble Lord, Lord Teverson, referred in his opening remarks. As an independent coastal state outside the EU, the UK will be fully responsible, under international law, for control of the waters in our exclusive economic zone—EEZ—and for the management of the resources within it, including fisheries. The Government will continue to champion sustainable fisheries. We are also committed to ongoing co-operation with other countries over the management of shared stocks. In future, our role in the annual setting of quotas will change fundamentally—something that the noble Baroness, Lady Jones of Whitchurch, raised—but our overall objective of championing sustainable fisheries and ending wasteful discards will be as strong as ever.

The committee's report rightly points out that as an independent coastal state under the UN Convention on the Law of the Sea and the UN fish stocks agreement, the UK will be required to manage the living resources in a sustainable way. This will include continued co-operation with the International Council for the Exploration of the Sea to produce the best possible stock assessments and working within regional fisheries management organisations, such as the North East Atlantic Fisheries Commission, and with neighbouring coastal states to ensure a fair share of quotas and proportionate and consistent enforcement measures. We will need to develop and implement a domestic fishing policy to do this. My noble friend Lady Wilcox referred to enforcement. We need to consider a wide range of issues, including how we would police an enlarged fishing zone and how that would be funded.

A number of noble Lords, particularly the noble Viscount, Lord Hanworth, my noble friend Lord Ridley and the noble Baronesses, Lady Scott of Needham Market and Lady Jones of Whitchurch, referred to quota hopping and historic rights. On quota hopping, we are aware that some sectors of the industry raised particular concerns about this. As the committee's report rightly points out, this practice is possible because of the EU freedom of movement rules rather than the common fisheries policy. Issues of foreign ownership are indeed complex but we are looking at the rules on the economic link as part of the development of our future fisheries management arrangements.

The common fisheries policy has set the framework for managing fisheries since we joined the EU. Our exit will require the establishment of a sustainable fisheries management regime. Any UK regime we put in place will need to be underpinned by a legal framework. We are currently looking at the different options for doing this, and I assure your Lordships that we will consult on our plans when they have been further developed. We are working closely with the industry and other stakeholders to understand their priorities for reform. We are also looking closely at different fishing management regimes across the world to support the development of our policies in the UK. The committee heard from Iceland and Norway as part of the inquiry. We are keen to learn the lessons from these and other coastal states.

As a number of noble Lords highlighted in the debate, fisheries is a devolved matter which is important to all parts of the United Kingdom. My noble friends Lady Bloomfield, the Duke of Montrose and Lord Selkirk mentioned this, the latter two in particular in

relation to Scotland, but I am very much aware of the interest in Northern Ireland as well. The noble Lord, Lord Trees, also mentioned the diversity within our islands: the different characteristics of fleets in Scotland, England, Wales and Northern Ireland reflecting the rich variety and abundance of species around different parts of our coast. Obviously, we must work—and are working—as closely as we have always done with our colleagues in the devolved Administrations and Crown dependencies as we develop our positions, and will ensure that their views are fully taken into account as negotiations move forward.

The committee rightly notes that even after we leave the EU, co-operation with it and other coastal states will remain of upmost importance. I hope that that will reassure the noble Baroness, Lady Jones of Whitchurch. For instance, we will remain a signatory to the UN Convention on the Law of the Sea. This makes clear that coastal states control fishing within their territorial waters and EEZ but also includes obligations to co-operate with other countries to manage shared fish stocks. For instance, I am aware—the noble Lord, Lord Teverson, mentioned this—that some EU member state vessels currently enjoy historic access rights to fish in some parts of the UK's inshore waters under the 1964 London convention. The Government are also considering this issue very carefully and will seek to resolve it as soon as possible.

Whatever our approach on access to UK waters, we recognise that most of our commercial fish stocks are shared between UK waters and those of other EU and European coastal states. We will continue to co-operate with all parties when we leave the EU to ensure that our stocks are managed sustainably and that decisions are science-based.

As the committee's report rightly indicates, the setting of total allowable catches in line with maximum sustainable yield is an important tool for ensuring sustainable fisheries. We have always pushed for evidence-based policy which reflects the very latest science, and we will continue to do so on leaving the EU. This was a particular point that the noble Baroness, Lady Sheehan, rightly raised. Sharing quota is also hugely important to prevent overfishing. Under the common fisheries policy, quota is shared using the so-called relative stability mechanism, but this is based on outdated information and has resulted in some perceived unfairness in the allocation of quota. We estimate that other European countries, both EU and third countries, such as Norway, fishing in the UK EEZ account for more than 1 million tonnes of fish compared to in the region of 150,000 tonnes for the UK fleet in EU waters and third-country waters—predominantly Norway again—so there is a significant imbalance. We have commissioned work by experts at Cefas to look at zonal attachment of fish stocks and spawning grounds. This work is not yet complete but will better inform future discussions. My noble friend Lady Wilcox referred to the desirable partnership between scientists and industry. The two are highly interdependent, and we will be working with both to determine how best they can work together under a new management regime.

The committee also pointed out that a key issue in the negotiations will be access to waters. As the noble Viscount, Lord Hanworth, explained, under the

UN Convention on the Law of the Sea, coastal states control access by other countries' fishing vessels to their waters out to 200 nautical miles or, where appropriate, the median line with other countries. This will be the case for the UK when we leave the common fisheries policy and so will form the basis for negotiations on access to waters and share of quota. As recognised in the report, catching statistics suggest that other EU countries benefit considerably more from access to UK waters than we benefit from access to their waters. Our best estimate is that EU vessels caught 784,000 tonnes of fish worth £578 million in revenue in UK waters in 2014. EU vessels have a clear interest in preserving access to UK waters.

The committee noted the significance of trade. The noble Lord, Lord Krebs, specifically mentioned trade. Discussions are ongoing about the kind of trading relationship we want with the EU after we leave. We know how important market access is to the industry, a point which the noble Baroness, Lady Jones of Whitchurch, rightly raised. The catching and processing sectors export around £900 million-worth of fish to EU countries every year. The processing sector imports significant amounts of fish from the EU as raw material. It will therefore be crucial to secure access for imports and exports so that these sectors can continue to operate effectively in the EU marketplace.

I was particularly grateful to the noble Lord, Lord Krebs, for highlighting what a wonderfully nutritious source of food fish is. It was interesting that we had not reflected that this is a wonderful resource for our diet. It is essential that we ensure that it is a sustainable source.

We are committed to securing a balanced deal for British fishermen and processors, and we are already working closely with colleagues across government to taking our vital fishing interests forward. On leaving the EU, a key priority will be to take our own seat at the table in future international negotiations where the EU currently leads. An example is the North East Atlantic Fisheries Commission. The UK fleet benefits from significant pelagic fishing opportunities for species such as mackerel, herring and blue whiting under the coastal states agreements brokered by that commission. Indeed, the western mackerel fishery is the single most important for the UK fleet both by volume and value. In 2015, the UK fleet landed approximately 250,000 tonnes of fish with a value of around £160 million.

We will also be able to negotiate with fellow coastal states. The EU-Norway agreement remains the most important fishery agreement to the UK, with an estimated total annual value to the UK fleet of around £220 million in 2015. The agreement with the Faroe Islands provides additional opportunities to the UK fleet. I assure the Committee that Defra is aware in all these matters of the scale of the challenges and has already taken steps to ensure that suitable resources are in place to meet them. Not only have your Lordships had excellent officials working on this inquiry, but it has been my privilege to work with and see the many officials working on these matters at Defra. We are lucky to have such an outstanding team of officials.

It is very clear that there is a huge level of interest in the future of the UK's fishing grounds and its industry as we leave the EU. We will continue to engage with all

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interests and take all views into account as we prepare for exit negotiations and begin to put new management measures in place. As your Lordships' report rightly highlights, leaving the EU raises a number of complex issues for fisheries. We should be under no illusions that the discussions will be easy, but the negotiations also present great opportunities to set a future direction for sustainable fisheries which support our coastal communities.

I thank the noble Lord, Lord Teverson, and his committee for producing this really very insightful report as we proceed to negotiations. This is the first in a series of reports, and it was a great privilege to study and consider it—and it is very clear from all the remarks that have been made that it has been an outstanding committee, drawing together the expertise and knowledge which, I have to say, has always struck me as being of the essence of your Lordships' House. The report flags up many crucial issues, such as the clear importance of working with international partners and, as I have said and many noble Lords have said also, the absolute imperative to manage our fish stocks sustainably. The sustainable management of fish stocks is the most crucial part that we need to reflect on. After all, if we do not look after our fish stocks, how will our fishing industry do all the things that we want it to do and provide that extraordinary resource of food? We have a responsibility to get this right and international commitments to maintain a healthy marine environment, which we will honour.

I can understand your Lordships wanting to know more—I probably would like to know more—but in answer to the point made by the noble Baroness, Lady Jones of Whitchurch, on arrangements, we are about to start negotiations, and it would be wrong of me or the rest of the Government to set out unilateral positions in advance, including what transitional measures might be. But I well understand your Lordships' consuming interest in this. Over the coming months we will be devoting all our energies to securing the future of a vibrant UK industry and managing the stocks of fish in our waters. It is a complex matter, and this report has been of enormous value, as we work for a successful outcome—not only domestically, but internationally too.

5.34 pm

Lord Teverson: My Lords, I thank the Minister for a very thoughtful reply and as I said, I also thank the Minister in the other place, George Eustice. In this area we have had more back from the Government in terms of intention, if not so much of evidence, than we have in many others. That is valuable and will help the industry to be more hopeful and confident about the way things might turn out.

Like others, I thank the noble Lord, Lord Selkirk, for again bringing to our attention the fact that this is the most dangerous industry in terms of lives lost and injuries sustained. I have known people who have suffered in this regard.

The common fisheries policy is one of the most technical policy areas, and I thank everybody who has contributed to the debate for getting underneath its skin. Believe me, it makes the common agricultural policy look easy, and there are not many things you can say that about. The Minister mentioned quothopping—Defra may say, “That is not our problem, it is BEIS's problem”—and historic rights, which are very much a constitutional area. Those issues will have to be resolved but that will be very hard to do, and we do not necessarily know what is happening about that.

I particularly thank the non-committee members who have contributed to the debate—the noble Baronesses, Lady Jones and Lady Bloomfield. It is good to have a Welsh input, because I have to admit that we did not have a strong Welsh input on the committee. I also thank the noble Viscount, Lord Ridley. I absolutely agree about information technology and fisheries, but sometimes it is the other side which resists that in practice, not the bureaucrats. I say that from the heart. I of course thank our clerk, Celia Stenderup-Petersen, as has everybody else, who drew the report together excellently.

Finally, it seems to me there are two fundamental challenges. First, the fishing industry should not be forgotten about again. There was little forgiveness the first time that happened: if it happens a second time, there will be no forgiveness whatever. The second issue concerns a point made by our Norwegian witness. The noble Viscount, Lord Ridley, mentioned individual transferable quotas, which I have long advocated to a certain degree. Some time ago I visited New Zealand, which has some of the best regimes, as does Iceland. Both those countries operate that system. However, if you do not stratify those regimes, you have a total concentration of the industry. It always helps if you have your own continental shelf, as those two nations do. However, New Zealand probably has about four fishing companies with about six vessels each. It is a fantastically successful industry but with very few participants. I am not against that but, as our Norwegian colleague said, the Government need to decide what sort of policy they want. Do they want a policy like Norway's, that looks after coastal communities, or one like Iceland's, that looks for total efficiency and GDP? That decision will have to be made.

Motion agreed.

Committee adjourned at 5.38 pm.