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PARLIAMENTARY DEBATES
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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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House of Lords

Wednesday 18 January 2017

3 pm

Prayers—read by the Lord Bishop of Portsmouth.

Passport Applications: Digitisation

Question

3.07 pm

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

To ask Her Majesty's Government what representations they have received from the Photo Marketing Association and the Imaging Alliance about their proposals to digitise the passport application process, and what consideration they have given to enhancing and protecting passport security as part of the digitisation process.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, Her Majesty's Passport Office has been working closely with the Imaging Alliance and previously with the Photo Marketing Association to consider their proposals to further enhance HM Passport Office's digital passport application process. HM Passport Office works alongside the International Organization for Standardisation to ensure that the UK passport remains a highly secure and trusted document. System developments will enhance security and keep ahead of any evolving threats of fraud.

Lord Harris of Haringey (Lab): My Lords, I am grateful to the Minister for that Answer, but when I met the Imaging Alliance four weeks ago it did not feel that it was being as fully consulted as she suggests. As I understand it, the Government are seeking to arrange that any of us can send what is essentially a selfie to the Passport Office to form our passport. The passport is the gold standard as far as identity assurance in this country is concerned. Why is the opportunity not being taken to prevent a situation in which people can Photoshop images and to make sure that there is proper certification about when an image has been taken, that it was taken in a proper way and that it is a secure and viable basis on which we can prove our identity?

Baroness Williams of Trafford: The noble Lord is absolutely right that security standards are paramount, whether under the old system, as we can call it, or under the new digital system. I reassure the noble Lord that security standards are exactly the same under both systems. The USA and New Zealand allow people to take their own photograph. A photograph identified as a selfie that does not meet those security standards and requirements is rejected in the examination process. As the noble Lord is right to point out, that gold standard is paramount for the robustness of and the confidence in this very important document.

Lord Campbell-Savours (Lab): Does this Question not take us straight back to the issue of authenticity of information in national identity documentation? Do Ministers realise that once an amateur takes a photograph, we could end up with civil servants arguing about whether that photograph is an exact image, whether it is dark, whether it was taken at the right angle, and whether it presents an image of the quality necessary to be put into an official document, with the result that they may end up having to return it to the sender for the sender to resubmit it? Is that not a waste of Civil Service time? It will cost the state money.

Baroness Williams of Trafford: The noble Lord points out precisely the criteria that are used to measure quality and are required for photographs. Those security standards are no different in the online application process than they were in the old paper process. There was no more risk of the customer getting it wrong under the old system than there is under the new system.

Lord Paddick (LD): My Lords, under the old system, as it is called, somebody has to certify on the back of the photograph that it is a true likeness of the passport holder. How is that going to be achieved if it is a completely digital application process?

Baroness Williams of Trafford: My Lords, the current service, which has been in place since April last year, is available only to adults over the age of 26 who have previously held a British passport. That is where the rigour is in the new process.

Lord Cormack (Con): My Lords, what is the difference between a dodgy selfie and a genuine selfie?

Baroness Williams of Trafford: My Lords, a dodgy selfie is one that does not meet the rigorous requirements of a passport photo.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, with the increasing threats of terrorism and of identity theft, does the Minister agree that the Question highlights the need for a proper biometric identity card?

Baroness Williams of Trafford: The Government have rejected the idea of an identity card, but noble Lords will notice that when they go through passport gates now their face is compared with the photograph on the passport. The machines that do the face recognition, which is a form of biometrics, are very accurate indeed.

Lord Marlesford (Con): My Lords, is it not a fact that a photograph is merely a rather unsophisticated form of biometrics and that the only safe way of doing this is for the biometrics of any individual to be held centrally? When a person seeks to be identified, the person trying to identify them can, online, compare the biometrics of the person in front of them with those held centrally. That means that you cannot use a

[LORD MARLESFORD]
fake card or anything else. You need not an identity card but a number, with the biometrics attached centrally to that number.

Baroness Williams of Trafford: There are a number of biometrics through which a person can be compared—it could be a photograph or fingerprints. The biometrics that we use on the British passport are very robust.

Lord Tunnicliffe (Lab): I almost get the impression that the noble Baroness is saying that we have identity cards, but we simply call them passports. To go back to the Question, she seemed to give the Answer that the new system is exactly the same as the old one. I am not knocking the advances, as with facial recognition you have an electronic means of verifying that the individual in front of you is the person they say they are. However, that was clearly also true with old-fashioned photographs, which were much more difficult to manipulate. The problem surely is that digital photographs are much easier to manipulate and the possibility of fraud rises. I do not believe they are exactly the same, and if she wants to persist in that argument—I am sure it is what her brief says—I would be grateful if she would write to us with a little more explanation of the security measures that guarantee the validity of the electronic image.

Baroness Williams of Trafford: The noble Lord suggests that a passport is the same as an identity card, but actually it is a form of ensuring that the person's identity is what they say it is.

Noble Lords: Oh!

Baroness Williams of Trafford: A passport is a form of identity document. Whether you want to call it an identity document or a passport, it is a form of identity documentation. The noble Lord is absolutely right that digital photographs are easy to manipulate, but paper photographs are actually as easily manipulable, should someone wish to do so. That is the point that I am trying to make.

Tax Avoidance

Question

3.15 pm

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what further steps they intend to take to stop aggressive tax avoidance schemes by individuals and companies.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, during this Parliament we have announced that we will legislate for over 30 measures to tackle avoidance, evasion and aggressive tax planning. This includes a package of changes that close down avenues for tax avoidance by multinationals. We have also announced a new penalty for the enablers of tax avoidance that targets all those in the supply chain of tax avoidance arrangements.

Lord Harries of Pentregarth (CB): I very much welcome the Government's legislation to make international companies more transparent, and in particular to reveal the real centre of their economic activity and any possible misalignment between that and where they declare their profits for tax purposes. However, given that multilateral action is now less likely as a result of the decision to leave the European Union, will the Government take the lead on this legislation and ensure that companies have to reveal these data as part of their accounts, beginning with the next financial year?

Baroness Neville-Rolfe: The noble and right reverend Lord is right that we have very much been at the leading edge in this area. Our principle is that we should tax companies on where their activities take place. The OECD base erosion and profit-shifting projects, which we have been very much leading on, avoid strategies that artificially shift profits to low-tax or no-tax jurisdictions where there is little economic activity. That seems vital. Transparency is also important, as the noble and right reverend Lord says, but obviously that is something we have to tackle by acting together internationally. Our international work on tax avoidance and evasion continues, quite apart from anything that is going on at EU level.

Lord Davies of Oldham (Lab): My Lords, the Government are not at the leading edge of collecting taxes. They are in the process, over a five-year period, of implementing agreed EC tax avoidance measures. The Government expected that that would raise a certain amount of money but at present the total is £2.6 billion below what they had anticipated. Are the Government aware of how this looks in Europe? Do we not really need to reassure Europe on these matters? Otherwise, the sense Europe has that we might go for low taxation and look to be an offshore tax haven will strengthen their negotiating stance across all Treasury matters in the forthcoming negotiations.

Baroness Neville-Rolfe: I really do not see things that way at all. Actually, the UK tax gap is one of the lowest in the world. We are investing in work on avoidance and evasion, with an extra £800 million for HMRC, while the work we have done to bring in accelerated payments has yielded £3 billion in extra tax since 2014. The noble Lord talks about tax havens. I think the Prime Minister made it quite clear yesterday that Britain wants a new partnership with the EU and is hoping that we will get a good deal. The point about tax havens was the need to change the economic model if that was not possible. I am hopeful that, with that new agenda she set out, we will get a very positive agreement in this area.

Viscount Hailsham (Con): My Lords, does my noble friend understand the concern of many of those who have to advise on statute law? Does she understand that it is undesirable to give to the courts a power to strike down an arrangement which complies with the letter of the law on the grounds that it does not comply with the spirit of it? The trouble with that is that it produces unpredictability and therefore injustice. Better by far, if Parliament is unhappy with the interpretation of law, to amend the primary legislation.

Baroness Neville-Rolfe: I am always very interested to hear from my noble friend on such issues. This is a complex point which, as a new Treasury Minister, I look forward to talking to him about to understand the implications in this important area of evasion and avoidance. Since the coalition, there has been a lot of agreement on the need to move forward sensibly, whether by statute or the intervention of the courts.

Baroness Kramer (LD): My Lords, many of us have been very confused as to why the Government put so little effort into persuading the UK's overseas territories and Crown dependencies to lift the secrecy that covers tax avoidance. Are we now finding that the answer, as the Chancellor expressed to the German Government, is that he sees a tax haven as a potential economic model, even if by default, for the UK economy—in contravention, I suggest, with long-held British values and the basis of our economy?

Baroness Neville-Rolfe: I think I have already made clear the context of the Chancellor's remarks. We are seeking to get a good agreed deal, but clearly, you cannot forecast that. The CDOTs have now all signed up to the common reporting standard and started exchange of information in September last year. This is a result of the sort of international discussion and agreement that we need on these abuse issues, where I believe this country has led the way and, if I might say so, the coalition did some ground-breaking work.

Health Workers: Training

Question

3.22 pm

Asked by ***Lord Crisp***

To ask Her Majesty's Government what plans they have to increase the number of training places for doctors, nurses and other health workers.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, on 4 October the Health Secretary announced that from September 2018, the Government will fund up to 1,500 additional undergraduate medical places each year. Reforms to the funding of nursing, midwifery and allied health preregistration training will come into effect on 1 August 2017. The reforms will enable universities to offer up to 10,000 additional training places by the end of this Parliament.

Lord Crisp (CB): I thank the Minister for his Answer and welcome him to what I think is his first parliamentary Question. I am sure that the Government recognise that there is a growing shortage of health workers globally that comes about as countries, particularly in Asia, expand their workforce enormously. There is a global market and global competition for health professionals. The UK was going to be affected by it regardless of Brexit, but the uncertainties of Brexit make it worse. First, what assessment have the Government made of the scale of the risks from those two factors? Secondly, what assessment have they made of the opportunities? The UK is a world leader in the education of health professionals. What are the Government doing to help universities and others take the opportunity to train more health workers both here and abroad to meet both the UK's and the world's demand for increased numbers?

Lord O'Shaughnessy: I thank the noble Lord for his welcome. The WHO has identified a global shortage of medical staff of more than 2 million, so clearly there is a big need and, as he says, it is being driven by the development of countries, particularly those with large populations, and the need to grow their own staff. At the moment, about 25% of NHS staff in the UK come from abroad and, like all NHS staff, they do a fantastic job for us. Clearly, given the problem that the noble Lord identified, we will need to become less reliant on overseas staff, which is one reason driving our desire to increase the number of training places for doctors, nurses, midwives and others.

In answer to the second part of his question, I think something like 10 of the world's top universities are based in the UK. We are a world leader in education; that is a great strength of ours and something that we want to continue. Healthcare UK is the government body responsible for working with universities to unlock partnerships with other countries, and there have been a number of successful examples of where that has happened.

Lord Hunt of Kings Heath (Lab): My Lords, if we are such a world leader in education, it is disappointing that the Government are doing everything they can to stop overseas students coming to our universities to study. On the NHS, the Minister will know that it is under the most extreme pressure. Cancer operations are being cancelled, people are dying on trolleys waiting for beds, and all the Government can do is attack general practitioners. Has the noble Lord seen the NAO report this month which shows that, since 2010, almost as many GPs have left the service as joined and that falling retention and increasing retirement rates put the target of 5,000 extra GPs at risk? The Minister says that the Government hold NHS staff in high esteem, so why do they not talk to and work with GPs to put this right rather than slagging them off?

Lord O'Shaughnessy: I do not recognise the description of "slagging off". We know that GPs do a fantastic job and we are recruiting more of them—5,000, as the noble Lord said. More money is going into general practice as part of the five-year forward view. The Prime Minister in her statement paid tribute to the work that GPs do and said that there were obligations around extended hours and the provision of out-of-hours healthcare—and it is quite right, with the pressures we face, that every part of the healthcare system steps up to fulfil its responsibilities just as others are doing, in order to meet the pressure we are under.

Baroness Gardner of Parkes (Con): My Lords, in the past I have raised the issue of the standard of training for nurses and the fact that they have to have five A-levels to get in. The answer from the Government

[Baroness Gardner of Parkes]
is that they are about to introduce training that will not require five A-levels and therefore will produce many more nurses. Can the Minister tell us what is happening with that and whether there is any real progress?

Lord O'Shaughnessy: There are two routes into nursing. One is the university route, and because of the changes we are making, there will be the possibility for universities to recruit up to 10,000 more nurses. That is why we are removing the cap. We have also introduced an apprenticeship route, which does not involve going to university but follows the apprenticeship route practised in other fields. That will have 1,000 places in its first instance.

Baroness Brinton (LD): Data in December showed that applications for midwifery and nursing degrees and other allied health university courses in England had fallen by more than 20% since the Government's announcement of plans to scrap the NHS bursary in favour of loans for student midwives and nurses. Given that we are already extremely short of nurses and midwives, what will the Government do, first, to reverse the removal of the bursary given that most of the courses are on the wards, learning on the job, and, secondly, to encourage the recruitment of more nurses and midwives?

Lord O'Shaughnessy: I thank the noble Baroness for that question. We are recruiting and creating conditions for the recruitment of more nurses. Something like 37,000 applications were turned down for those wishing to take on nursing, midwifery and allied health professional degrees in 2014-15. That was one of the reasons for removing the cap and equalising the funding arrangement that goes to nurses on other courses within higher education. That will allow universities to provide more places for trainee nurses. We are still early in the cycle and are moving to a new system. I think the UCAS applications have just closed and it is certainly true that in the past when fees were introduced by whichever Government—Labour, coalition or whoever—there was sometimes a small dip in take-up in the first year. But following that, in all those cases across the system, there was a strong rebound in interest in higher education places.

Baroness Hollins (CB): My Lords—

Lord Turnberg (Lab): My Lords—

Lord Bird (CB): My Lords—

Viscount Ridley (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): It is the turn of the Cross Benches, but they will have to work out who is going to speak for them—and then we will have the Labour Benches.

Baroness Hollins: My Lords, my profession of psychiatry is the medical specialty which has recruited the most specialists from outside the United Kingdom, with 41% of trainees coming from overseas. It takes something like 14 years to train a consultant psychiatrist. Can the Minister confirm whether it is the intention of Her Majesty's Government to allow doctors, nurses and other health and social care professionals to remain in the United Kingdom after Brexit?

Lord O'Shaughnessy: The Prime Minister has been incredibly clear on this point—and was again yesterday. It is our intention to do so, and to agree that early with our EU partners. But that is something that needs to be reciprocated.

Lord Turnberg: My Lords, we certainly need more doctors and nurses. The problem is that we are not retaining as many as we should, and there is no doubt that they feel denigrated and devalued. They really need to feel appreciated rather than kicked around all the time. Are the Government going to help them in any way whatever, or are they going to be constantly criticised?

Lord O'Shaughnessy: I do not believe that we are criticising. To take the noble Lord's point, he is right that there is often negativity in the media about the performance of health professionals. But it is worth pointing out that in a recent poll earlier this week, those who believe that the NHS provides a high standard of care is now at 71%, up 13% since 2013. That is a huge testament to the amazing work that our NHS does.

Northern Ireland: Devolved Powers

Question

3.31 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what provision has been made for the continuing operation of devolved powers in Northern Ireland.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, following the resignation of Martin McGuinness last week, the Secretary of State for Northern Ireland has proposed a date for elections to the Northern Ireland Assembly on 2 March in accordance with his responsibilities under relevant legislation. As the Secretary of State made clear in Parliament yesterday, Northern Ireland needs strong and stable devolved government to continue implementing the Belfast agreement and its successors and to respond to the opportunities and challenges ahead.

Lord Lexden (Con): My Lords, this is a grave moment for part of our country—our precious United Kingdom, as the Prime Minister described it yesterday. The people of Northern Ireland must surely be at the forefront of our thoughts on all sides, in both Houses of Parliament, at this time. Will the Government confirm that it is within the framework of the union, and that alone, that the rebuilding of political stability in Northern Ireland will take place? Will this Conservative and Unionist Government now give a clear commitment

that the Irish Republic, a close and respected neighbour, will not be given an enhanced role in Ulster's affairs, and there will be no moves whatever towards joint authority over Northern Ireland?

Lord Dunlop: My Lords, first, I take this opportunity to wish John Hume a happy 80th birthday today. As the House will know, he, along with my noble friend Lord Trimble. was awarded the Nobel Peace Prize for his role in the 1998 Belfast agreement. My noble friend Lord Lexden raises an important point. I can confirm that the Government remain fully committed to the Belfast agreement, including the principle of consent governing Northern Ireland's constitutional position. It is on that basis that Northern Ireland is, and remains, a full part of the United Kingdom. Clearly, any form of joint authority would be incompatible with the consent principle. The Government's priority remains to work intensively to ensure that, after the Assembly elections, strong and stable devolved government is re-established in Northern Ireland.

Lord Hain (Lab): Why is it that the Government give the distinct impression of being hands-off rather than hands-on during this escalating crisis? Clearly, the parties, since their relations have deteriorated so terribly, are not going to sort this out on their own, even after an election. It is vital that the Secretary of State and the Prime Minister convene meetings—whether summits or other gatherings—to bring the parties together, and that they do so with the Taoiseach as well. Regardless of joint sovereignty arguments, which are irrelevant in this, the Irish Government are very influential, must be brought in, and are a partner in the Good Friday agreement.

Lord Dunlop: I do not accept the premise of the noble Lord's question. Both the Prime Minister and the Secretary of State for Northern Ireland have been very actively engaged in talking to the Taoiseach and the parties in Northern Ireland. We will continue to leave no stone unturned to ensure that we are in the best possible position after the election to re-establish a fully functioning Executive.

Lord Bew (CB): The Minister will be aware that just before this major crisis broke, the Northern Ireland Office issued a document on the issue of the donations to political parties, which are private and secret matters in Northern Ireland, for very good historic reasons. It is now calling for a consultation, giving the impression that it wants to review policy in this area. Does the Minister agree that, in fact, it is the suspicions in and around donations related to this great financial scandal which complicate the matter? Will the Northern Ireland Office carry on this work despite the fact that there are many other grave matters at this time?

Lord Dunlop: I agree very much with the noble Lord that this is an important matter. Indeed, the Secretary of State for Northern Ireland wrote recently to all the political parties in Northern Ireland to seek their views on it by 31 January, so that we are in a position to move forward with this once we have had the election.

Lord McAvoy (Lab): My Lords, it is a well-known fact that it can never be too early to start discussions regarding problems and issues in Northern Ireland. Notwithstanding the fact that an election will now take place, can the Minister confirm whether the Secretary of State for Northern Ireland is willing to consult with all political parties in Northern Ireland during the election process, so as to pave the way, hopefully, for that Assembly to operate, once it is elected?

Lord Dunlop: I do think that it is important to keep open the lines of communication with the parties throughout the election period for precisely the reason that the noble Lord gives. We need to have an open dialogue so that we are in the best possible position to re-establish a strong and stable devolved Government after the poll in a few weeks' time.

Lord Robathan (Con): My Lords, will this hiatus allow the Government to take forward in any way the legacy package of the Stormont House agreement? Former police officers went out to serve in Northern Ireland to protect both sides of the community and are being prosecuted disproportionately compared to the terrorists whom they were protecting the community from.

Lord Dunlop: I very much agree with my noble friend. The current situation is unsatisfactory and it remains a priority for the Government to build a consensus on this issue and to find a way forward. The Stormont House agreement provides a framework for reform and the new institutions and will, we believe, provide a fairer, more balanced and proportionate way forward.

Policing and Crime Bill

Commons Reasons and Amendments

3.38 pm

Motion A

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendments 24 and 159, to which the Commons have disagreed for their Reason 24A.

24A: *Because Lords Amendment 24 would involve a charge on public funds and Lords Amendment 159 is consequential on that Amendment; and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as the House is aware, Amendment 24 would require the Prime Minister to proceed with what is commonly referred to as the Leveson 2 inquiry into the relationships between the police and the media. When the House last debated this issue at Report stage on 30 November, I drew the House's attention to the likely financial implications of the new clause, given that part 1 of the Leveson inquiry cost in excess of £5 million. In disagreeing with Amendments 24 and 159, the House of Commons

[Baroness Williams of Trafford]
has done so on the basis of financial privilege. This was the second occasion on which the Commons has rejected—both times by a substantial majority—an amendment to the Bill on this issue. The *Companion to the Standing Orders* makes it clear that in such cases the Lords do not insist on their amendment.

To that extent, I therefore welcome Motion A1 in the name of the noble Baroness, Lady O'Neill, but while Amendment 24B is clearly different in terms to Amendment 24, it none the less still seeks to bind Ministers' hands and effectively compels the Government to proceed with part 2 of the Leveson inquiry. This is not how the Inquiries Act 2005 is intended to operate, and it is difficult to see why we should make special provision for one particular inquiry established under that Act. The 2005 Act already includes provision for changes to be made to the terms of reference of an inquiry and for the termination of an inquiry. Under the Act, the responsible Minister must consult the chair of the inquiry before changing the terms of reference or terminating the inquiry and must then notify Parliament.

In the same way as a Minister of the Crown is best placed to decide whether to establish an inquiry under the 2005 Act, we believe that the responsible Minister is also best placed to determine the public interest both for and against the continuation of an inquiry. Accordingly, we should not now be putting in place additional hurdles over and above those already set out in the 2005 Act.

I want to stress that, in putting forward Motion A, the Government's case goes wider than simply one of cost. As I argued on Report, the Government are firmly of the view that, given the extent of the criminal investigations related to this issue that have taken place since the Leveson inquiry was established, and given the implementation of the recommendations following part 1, including reforms within the police and the press, it is appropriate that we now consider whether proceeding with part 2 of the inquiry is appropriate, proportionate and in the public interest.

It is for this reason that we launched a consultation on 1 November to help inform our further consideration of this issue. That consultation closed on 10 January, and it is estimated that we have received more than 140,000 individual responses as well as a petition estimated to contain more than 130,000 signatures. Noble Lords will be aware that an application has been made to judicially review the consultation. While I cannot comment on the ongoing legal proceedings, the Government have committed not to take any final decisions relating to the consultation until these legal proceedings have concluded.

Given the process that we have set in train for considering whether to proceed with Leveson part 2, and the fact that further legislation is not required should we decide to proceed with the inquiry, I put it to noble Lords that there are further good grounds for not continuing to press these amendments. As I have said, the elected House has already rejected an amendment on this issue on two separate occasions. I put it to noble Lords that we should not now send back to the Commons a revised amendment which would simply invite a further rejection. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Baroness O'Neill of Bengarve***

At end insert "and do propose Amendments 24B and 24C in lieu—

24B: After Clause 26, insert the following new Clause—

"Public inquiries into police conduct etc: requirement for approval for termination or changes

(1) A Minister of the Crown may not terminate, or change the terms of reference of, a relevant inquiry unless—

(a) each House of Parliament approves a proposal laid by the Minister for the termination or change, and

(b) the chair of the inquiry consents in writing.

(2) In subsection (1), "relevant inquiry" means an inquiry under the Inquiries Act 2005 whose terms of reference include matters relating to police conduct connected with the press industry."

24C: Clause 150, page 171, line 16, at end insert—

"( ) section (Public inquiries into police conduct etc: requirement for approval for termination or changes),"

Baroness O'Neill of Bengarve (CB): My Lords, we have been on this terrain a number of times. I understand the Minister's objection that there should not be a charge on public funds. Therefore, these amendments do not propose any charge on public funds that has not already been agreed by Parliament. I therefore think that that reason does not now hold.

We know that the status quo is unacceptable and that the form of press regulation that we now have is unstable and needs to be clear in supporting freedom of speech and the future possibility of democratic debate. That is a wider question and I will not go into the details here.

However, there is a second procedural issue which the Minister needs to address. When Parliament has already reached agreement, as it has on this matter, surely it is not acceptable to have a retrospective consultation. Consultation should take place before Parliament determines a matter. In this case, the consultation is retrospective. For that reason, we should not leave matters as they are. I beg to move.

3.45 pm

Lord Paddick (LD): My Lords, I support the remarks of the noble Baroness, Lady O'Neill of Bengarve. If anybody is in any doubt about the need for Leveson 2, which was intended to be an inquiry into the potential for corrupt practice between the police and the press, let me say that, with the former Prime Minister, David Cameron, the then leader of the Opposition, Ed Miliband, and the former Deputy Prime Minister, Nick Clegg, I met with the family of Milly Dowler. The Sunday before that series of meetings took place, Mr Dowler received a phone call from Surrey Police to tell him that the *News of the World* had told Surrey Police at the time of Milly Dowler's disappearance that it had hacked into Milly Dowler's voicemail and retrieved information from it. Surrey Police did nothing at all to prosecute the *News of the World* over that issue, and it was only the day before that series of meetings that Surrey Police told Mr Dowler that it had known all along that the *News of the World* had hacked into

Milly Dowler's voicemail. This is the sort of matter that we have not got to the bottom of yet, and Leveson 2 should be held in order to establish what happened.

On financial privilege, I agree with the noble Baroness, Lady O'Neill of Bengarve. Parliament has already committed to the expenditure for Leveson 2; the amendment simply says that it is Parliament itself that should decide that that money should not be spent. The amendment would not involve additional money which has not previously been committed.

However, there is an issue with the wording of the amendment. Our reading of the amendment, if correct, suggests that as the chair of the inquiry, Lord Justice Leveson could override the view of both Houses of Parliament, in that if both Houses voted not to hold Leveson 2 but Lord Justice Leveson himself disagreed with that, the inquiry would still go ahead. We feel that that is a defect in the amendment. Clearly, there will be an opportunity for that to be corrected if we support the amendment today and it goes to the other end, but I hope that the noble Baroness will consider that carefully in considering whether we are on firm enough ground to divide the House on the amendment.

I cannot stress strongly enough from our side how important we think Leveson 2 is and how it needs to take place. We will take every opportunity we are offered to ensure that the Government hold the Leveson 2 inquiry.

Lord Rosser (Lab): Like, I imagine, many other Members of this House, I have received an email from Margaret Aspinall in her capacity as chairwoman of the Hillsborough Family Support Group, asking me to support this amendment. I will not repeat the terms of the email, which I believe has been widely circulated, but it is an indication of the widespread and heartfelt concern that Leveson part 2 might not proceed.

The Leveson inquiry was set up with cross-party agreement and firm commitments from the then Conservative Prime Minister that Leveson part 2 would take place. Let us be clear: Leveson part 2 was in the agreed terms of reference of the Leveson inquiry. The words in the terms of reference for part 2 conclude with:

"In the light of these inquiries, to consider the implications for the relationships between newspaper organisations and the police, prosecuting authorities, and relevant regulatory bodies—and to recommend what actions, if any, should be taken".

When the Lords amendment on Leveson part 2 was considered in the Commons last week, the Government said that,

"given the extent of the criminal investigations into phone hacking and other illegal practices by the press that have taken place since the Leveson inquiry was established, and given the implementation of the recommendations following part 1, including reforms within the police and the press, the Government must consider whether proceeding with part 2 of the inquiry is appropriate, proportionate and in the public interest".—[*Official Report*, Commons, 10/1/17; col. 247.]

Those are words with which we are uncomfortable. They sound like the words of a Government who have already decided they do not wish to proceed with part 2 and are looking for their public consultation, which has now concluded, to give them a cloak of respectability for going back on previous firm pledges that part 2 of Leveson would take place.

The inquiries under the terms of reference of Leveson part 2 have not taken place, and thus neither have we had, nor, I would suggest, if this Government think they can get away with it, will we have the considered implications, in the light of those inquiries, for the relationships between newspaper organisations and the police, prosecuting authorities and relevant regulatory bodies with recommendations on what actions, if any, should be taken, called for and provided for under the terms of reference of Leveson part 2.

The Government appear in effect to have decided that they already know what would emerge from the Leveson part 2 inquiries and, likewise, what the recommendations would be without those inquiries taking place and recommendations being made. Frankly, it begins to look as though some powerful individuals and organisations behind the scenes know that they have something to hide and are determined to stop Leveson part 2 and, with it, the prospect of it all coming out into the open.

When the Lords amendment on Leveson part 2 was considered in the Commons, the Speaker certified it as engaging financial privilege, and that is the reason the Commons has given for disagreeing with it. Whether the amendment before us today would likewise be deemed as engaging financial privilege is not something on which I have any standing. However the amendment, which I saw for the first time only at a very late stage, does say that Leveson part 2 proceeds unless both Houses of Parliament and the chairman of the inquiry agree that it should not.

We are thus in a situation where, if both Houses decided that Leveson part 2 should not proceed—I sincerely hope they would not so decide—that decision would mean nothing if the chairman of the inquiry was not of the same view. I think that however strongly we may feel that Leveson part 2 should proceed, we are in difficult territory if basically we say that the view of the chairman of an inquiry that Leveson part 2 should proceed can override a decision by both Houses of Parliament that it should not proceed, particularly when at heart the issue is whether a clear and unambiguous promise made by a Conservative Prime Minister, with cross-party agreement, that Leveson part 2 would proceed can be tossed aside. That is the kind of issue that Parliament has to address and determine.

We feel very strongly that Leveson part 2 should proceed and that cross-party agreements and associated prime ministerial promises should be honoured and not ditched by this Government. We are unhappy with the wording of the amendment. However, whatever the outcome, we will continue to pursue all credible opportunities to ensure that the pressure is maintained and that Leveson part 2 takes place.

Baroness Hollins (CB): My Lords, many victims of phone hacking, harassment and press intrusion are relying on part 2 of Leveson to proceed and to provide answers to suspicions of corruption between the press and public officials, including the police. Many noble Lords will have received correspondence from the Hillsborough Family Support Group and from Jacqui Hames. Those letters are quite concerning and show the need for further understanding of what happened

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and what went wrong so that we can appreciate whether adequate measures are in place to ensure that that kind of activity does not happen again.

My family has an interest in part 2 being carried through, as promised by our previous Prime Minister. Dozens of other families and individuals have been affected and also want answers. It does seem fair that we have the inquiry. The misinformation by some newspapers leading up to the close of the consultation may indeed have led to a very large number of formulaic responses. I hope that Her Majesty's Government will have the wisdom and moral courage to stand up for what is right in this situation and to go through with part 2. I find it very difficult to believe that financial privilege is really the reason for the current caution in this matter. I support the amendment.

Lord Strasburger (LD): My Lords, I will speak briefly to the amendment in the name of the noble Baroness, Lady O'Neill. On two occasions, this House has previously considered the subject of whether Leveson 2 should proceed and, on both, came down firmly in favour of it going ahead. Whether or not the noble Baroness decides to test the opinion of the House today, it is important that the Government be reminded that your Lordships' House is not going to let the matter drop.

Some very pertinent questions remain unanswered. I draw the House's attention to just one of the terms of reference for Leveson 2 and the important issues that remain unresolved. The sixth term of reference is:

"To inquire into the extent of corporate governance and management failures at News International and other newspaper organisations, and the role, if any, of politicians, public servants and others in relation to any failure to investigate wrongdoing at News International".

It is essential that, in such a vital industry as the press, the extent and nature of corporate governance and management failures be established. This is underscored by the fact that many of the leading executives are still in post, have returned to their post or retain key roles in the industry. These include the chief executive of News UK, the editor-in-chief of Associated Newspapers and the director of legal affairs at the *Telegraph*, who had the equivalent post at Trinity Mirror during the phone hacking scandal and its cover-up.

The questions that need addressing are as follows. First, how did it come to be that phone hacking and the unlawful blagging of personal data persisted on such an industrial scale at certain titles for so long; in the case of News UK and Trinity Mirror for at least 10 years, and for several years after journalists at both companies were first questioned by the police under Operation Glade in early 2004? Secondly, how and why was phone hacking and the unlawful blagging of personal data covered up at some of the largest newspapers, in the face of emerging evidence that executives knew about the practice and some findings and admissions in the civil courts to that effect? Thirdly, is it appropriate that no executive has lost their job over the corporate governance and management failures that took place? Has there been a cover-up of the cover-up of wrongdoing?

I will not delay the House further as I suspect noble Lords would like to move on to other matters. Suffice it so say that there are several other topics that Leveson 2 is scheduled to examine and they are of equal importance to the one I have highlighted. Leveson 2 is needed to inquire into suspicious matters affecting our police, our newspapers and our politicians. Since the completion of part 1 of Lord Leveson's inquiry, the case for part 2 has become even stronger.

Lord Pannick (CB): My Lords, I declare an interest as a regular adviser to the press on regulatory matters. It has not yet been mentioned today, but your Lordships may wish to take into account that, since Leveson was instituted, there have been large numbers of criminal trials and civil proceedings in which the conduct of the press and the police has been on trial. I am far from convinced that the time, expense and use of judicial resources that will be required by Leveson part 2 are therefore justified. However, your Lordships do not need to decide that issue today—it is the very matter under consultation by the Secretary of State. If the Secretary of State's answer is unsatisfactory to noble Lords, this House and the other place are perfectly entitled to, and no doubt will, reconsider the matter.

The noble Lord, Lord Rosser, mentioned the unsatisfactory element of the amendment of the noble Baroness, Lady O'Neill: that it appears to give Lord Justice Leveson a veto over the views of Parliament. I hope that when considering the consultation issues, the Secretary of State will privately talk to Sir Brian Leveson and take his view as to whether he thinks, with all of his enormous experience, that Leveson 2 would be justified. I cannot support the Motion of the noble Baroness, Lady O'Neill.

4 pm

Lord Lester of Herne Hill (LD): When I was young at the Bar there used to be a judge whose concurring judgments were commendably brief—he would simply say, "I agree". I can say that about the speech of the noble Lord, Lord Pannick—I agree with him—and would add a few words. I declare an interest because I have given evidence in the consultation on why Section 40 is, in my view, arbitrary, discriminatory and contrary to freedom of speech and should not be brought into force. I have not given evidence on the other question in the consultation to which the noble Lord, Lord Pannick, referred, upon which many views have been expressed. I agree with what the noble Lord said about that.

As I have said again and again in debates in this House, Parliament has not shown itself to be fair minded in the way it amended two Bills in order to create a scheme to bully the newspapers into entering a regulatory framework other than the one now being admirably well conducted by Lord Justice Moses—IPSO. Contrary to what the noble Baroness, Lady O'Neill, has said, we now have an effective system of voluntary press regulation and the state and politicians ought to give it breathing space. I wish to make that clear.

When I was young I began believing in the philosophy of John Stuart Mill. That is why I am a Liberal. I remain a Liberal today, and that is why I am sympathetic to the Government's position.

Baroness Williams of Trafford: My Lords, I shall respond first to the point made by the noble Lord, Lord Pannick. He is right to assert that Sir Brian Leveson

will be consulted formally in due course in his role as the inquiry chair before any decision is taken. The noble Lord also made a point about the cost and other issues that have already been addressed. Lord Justice Leveson said:

"Before leaving the Ruling, I add one further comment … If the transparent way in which the Inquiry has been conducted, the Report and the response by government and the press (along with a new acceptable regulatory regime) addresses the public concern, at the conclusion of any trial or trials, consideration can be given by everyone to the value to be gained from a further inquiry into Part 2. That inquiry will involve yet more enormous cost (both to the public purse and the participants); it will trawl over material then more years out of date and is likely to take longer than the present Inquiry which has not over focussed on individual conduct".

On the point made by the noble Baroness, Lady O'Neill, about Parliament voting on part 2 of the inquiry, in fact Parliament did not vote on part 2; the inquiry was established by Ministers under the powers of the 2005 Act. Parliament voted on Section 40, but in this Motion we are talking not about Section 40, but about Leveson 2.

On the point made by the noble Lord, Lord Rosser, about the Government already deciding to abandon part 2, as I hope I have explained, we have not made a decision on this; we want to take a view on it as part of the ongoing consultation. It is five years since the inquiry was established and since the scope of part 2 was set. We think a consultation is needed before a decision is made on whether proceeding with part 2 of the inquiry, on either its original or its amended terms of reference, is still in the public interest. In response to the point from the noble Lord, Lord Pannick, as I said, we will consult with Sir Brian Leveson formally in his role as the inquiry chair before any decision is taken.

Baroness O'Neill of Bengarve: My Lords, I thank the Minister for her reply and other noble Lords who have helped illuminate the issue we recur to. The noble Lord, Lord Lester, is perhaps a little optimistic in imagining that IPSO is a model of self-regulation. Perhaps he meant to say a model of self-interested regulation. The point is that Leveson provides not regulation, but an audit of the standard of self-regulation. As we all know, IPSO has refused to have its process audited. Its so-called independent review of what it did was to terms of reference that it provided and funded by itself. Just as we think a free market requires companies that are—

Lord Lester of Herne Hill: I am sorry for interrupting the noble Baroness, but is she aware that the independent review was conducted by a very senior former Permanent Secretary?

Baroness O'Neill of Bengarve: I am aware of that and know him. I admire him and what he did in Northern Ireland. He is an admirable person. I comment just on the terms of reference.

Self-regulation is something anybody would concede can reasonably be subject to audit. We allow companies in a free market to proceed as they wish, but they have to have their accounts audited. It is no different when we say that a free press should also be willing to subject itself to proper standards of audit. That, in a sense, is the area of debate. We should be very careful to keep self-regulation distinct from audit.

Quality matters, as does Leveson 2. We will return to this terrain and I do not think this is the end of the story, but I will withdraw the Motion because it has one or two deficiencies we need to deal with. It is not at all adequate to imagine that we can deal with these matters by having a consultation after a parliamentary decision. That is essentially the reason why I feel strongly that this is not the way to go; however, I beg leave to withdraw the Motion.

Motion A1 withdrawn.

Motion A agreed.

Motion B

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendments 96 and 302, to which the Commons have disagreed for their Reason 96A.

96A: *Because Lords Amendment 96 would involve a charge on public funds and Lords Amendment 302 is consequential on that Amendment; and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

Baroness Williams of Trafford: My Lords, when we last debated what is now Amendment 96 on Report in December, I pointed to its potentially significant financial implications. The House of Commons has disagreed with the amendment on the basis of financial privilege. Given the normal conventions of your Lordships' House, I trust that noble Lords will not insist on it.

However, let me assure noble Lords that this is by no means the end of the matter. While, in the usual way, the House of Commons has cited financial privilege as the only reason for disagreeing with the amendment, it has never been our contention that this is the sole ground for our believing that the new clause should not be added to the Bill. The Government's view remains that the amendment is premature in that it pre-empts the outcome of the review by Bishop James Jones into the experience of the Hillsborough families and the Government's subsequent consideration of Bishop Jones's findings.

The noble Lord, Lord Rosser, and others have argued that the issue goes wider than Hillsborough. We do not dispute that, but the experience of the Hillsborough families, which will include the issue of legal representation at the original and subsequent inquests, is highly relevant to the broader question and it is right therefore that we take Bishop Jones's current review into account in deciding this question.

As noble Lords may have seen, the review's terms of reference were published earlier today. They state:

"The Review and Report will cover the history of the Hillsborough families' experiences throughout the whole period, ranging from the conduct of past police investigations, through their engagement with public authorities, to the current investigations".

The report will therefore cover a wide range of issues, including, as I have said, the families' experiences of the various legal proceedings. Bishop James Jones will

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present his final report to the Home Secretary, including any points of learning that he may choose to highlight for the Home Secretary's consideration.

It is envisaged that Bishop Jones will complete his review and produce his report in the spring of this year. I can assure the House that the Government will then give very careful consideration to his conclusions and any points of learning contained in his report.

In the knowledge that this issue remains firmly on the Government's agenda and that there will, I am sure, be opportunities to debate it further in the light of the report, I invite the House to agree to Motion B. I beg to move.

Lord Rosser: I accept that the Commons Speaker has also certified the Lords amendment on this issue of parity of funding as engaging financial privilege and that the Commons reason for disagreeing with the amendment is that it would involve a charge on public funds. I want nevertheless to raise one or two points with the Government in light of what the Minister has said.

During consideration of the amendment in the Commons last week, the Minister there referred to the report by Bishop James Jones and said:

"Our view remains that we should await the report, expected this spring, from Bishop James Jones on the experiences of the Hillsborough families. The Opposition have argued that this issue goes beyond Hillsborough. I do not dispute that, but the experiences of the Hillsborough families will have significant relevance for other families facing different tragic circumstances, and the issue of legal representation at inquests will undoubtedly be one aspect of those experiences. Bishop James's report will provide learning that could be of general application, so it is entirely right that we do not now seek to pre-empt his review, but instead consider this issue in the light of his conclusions".—[*Official Report*, Commons, 10/1/17; col. 249.]

Those words make it pretty clear that Bishop James Jones has not been asked to look at the general issue of representation and funding at inquests where the police are represented, which was the subject of the Lords amendment. He has been asked to look at the experiences of the Hillsborough families. The Minister in the Commons stated that the report would provide learning that could be of general application.

Will the Minister say quite clearly one way or the other whether the Government consider that the terms of reference which Bishop James Jones has been given require him also to look at the issue of representation and funding at inquests generally where the police are represented? Alternatively, if the Government consider the terms of reference to be ambiguous on this point, has Bishop James Jones now been asked by the Government to address in his review the issue of representation and funding for families generally and not confine himself to the experiences of the Hillsborough families? Bearing in mind the way the Government have used the existence of the Bishop James Jones review and the forthcoming report as an argument for not going down the road of the amendment that was passed in this House, which deals with the position at inquests generally, I think there will be some concern if, when the report comes out, it is clear that it relates only to the experiences of the Hillsborough families and that the issue of whether it should or could have wider implications for representation and funding for families at inquests generally has not been considered. I would be grateful for some very clear and specific answers from the Government to all the questions I have just asked.

4.15 pm

Viscount Hailsham (Con): My Lords, I will make some brief observations. When the Government come to consider the recommendations concerning funding at inquests, I hope they will agree to the concept of parity of funding, for all the reasons that have been ventilated on previous occasions. But I repeat what I have said to your Lordships' House before about the triggering mechanism: I do not believe that the police and crime commissioner should be the trigger for that. The coroner should be the trigger for it. There are three very brief reasons for saying that.

First, the coroner is much better placed to form a view as to the relevance and importance of the representation in question. I do not see that the police and crime commissioner would necessarily have access to the relevant information. Secondly and differently, in some inquests, where the conduct of the police or, indeed, the police and crime commissioner could itself be in question, there is a danger of a conflict of interests. Thirdly, sometimes the integrity of the decision of the commissioner will be in question. What happens when the commissioner is facing an election in short order? He or she may well make a decision influenced by the electoral consequences of that decision. All these things seem to suggest very powerfully that the trigger should be the decision of the coroner, not of the police and crime commissioner.

Lord Faulks (Con): My Lords, the noble Lord, Lord Rosser, seemed to suggest that the Government are using the Bishop Jones report as some sort of excuse to not respond to what is suggested by the amendment. Of course, I will hear what my noble friend has to say, but as I understand the position, the question is being considered very seriously by the Government but it would be rather strange not to consider a report of this magnitude dealing with the best-known example of a series of inquests with improved legal representation before coming to the conclusion, to which they may or may not come, that a response to the amendment is appropriate.

Baroness Williams of Trafford: I thank noble Lords who have made points on this Motion. My noble friend Lord Faulks is absolutely right that the whole point of establishing an inquiry or a review—one of such magnitude on an event that will be ever seared on people's minds; that is, the horrors of Hillsborough—is to learn the lessons of that event so that they can be applied to similar cases in the future. The noble Lord, Lord Laming, is not in the Chamber, but I was reflecting on the lessons that local authorities learned from the terrible death of Victoria Climbié at the hands of her relatives. These reviews always have that wider learning that can be applied in the future. The terms of reference do not require Bishop Jones to look wider but the learning from the review will have wider application.

I understand the point made by my noble friend Lord Hailsham about the coroner. We talked at length both in Committee and on Report about an independent assessment of these matters. Of course, for me to respond about whether or not that is the right way would pre-empt the review so I will not go there. But I hope that noble Lords find those comments helpful.

Motion agreed.

Motion C

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendments 134 and 305, and do agree with the Commons in their Amendments 134A and 305A in lieu.

134A: After Clause 143, page 164, line 9, at end insert—

"Sentences for offences of putting people in fear of violence etc

(1) In the Protection from Harassment Act 1997 —

(a) in section 4 (putting people in fear of violence), in subsection (4)(a), for "five years" substitute "ten years";

(b) in section 4A (stalking involving fear of violence or serious alarm or distress), in subsection (5)(a), for "five years" substitute "ten years".

(2) In the Crime and Disorder Act 1998, in section 32 (racially or religiously aggravated harassment etc), in subsection (4)(b) (which specifies the penalty on conviction on indictment for an offence under that section which consists of a racially or religiously aggravated offence under section 4 or 4A of the Protection from Harassment Act 1997), for "seven years" substitute "14 years".

(3) The amendments made by this section apply only in relation to an offence committed on or after the day on which this section comes into force.

(4) Where the course of conduct constituting an offence is found to have occurred over a period of 2 or more days, or at some time during a period of 2 or more days, the offence must be taken for the purposes of subsection (3) to have been committed on the last of those days."

305A: In the Title, line 29, after "marriage;" insert "to increase the maximum sentences of imprisonment for certain offences of putting people in fear of violence etc;"

Baroness Williams of Trafford: My Lords, the House will recall that Amendment 134 sought to increase the maximum penalty for the more serious stalking offence, where the behaviour of the offender puts a person in fear of violence, from the current five years to 10 years. The amendment would also increase the maximum penalty for the racially or religiously aggravated version of the offence from the current 10 years to 14 years. I would like to thank the noble Baroness, Lady Royall, but she is not in her place so I thank her in her absence, for introducing that amendment and explaining her concerns about the current maximum penalties during the debate on this amendment on Report.

The Government have reflected carefully on that debate and wish to ensure that the criminal justice system deals with these offences properly. The Government continue to keep maximum penalties under review and are ready to increase them where there is evidence that they are not sufficient to protect victims. Current sentencing practice suggests that, in the majority of cases, the maximum penalty of five years is sufficient to deal with serious stalking. In a small number of the most serious cases, however, courts have sentenced near to the current maximum. For those most serious cases, we are persuaded that judges should be able to pass a higher sentence than the current five-year maximum. This would afford greater protection to victims and be commensurate with the serious harm caused by these cases. The Government therefore tabled Amendment 134A, to which the Commons agreed, which replicates with some fine tuning the provisions of the noble Baroness's amendment.

However, we are going further. As I said during debate on Report, we are keen to retain consistency between penalties for related offences. The Commons amendment in lieu will also therefore increase the maximum penalty for the related Section 4 harassment offence of putting a person in fear of violence. In line with standard practice, Amendment 134A also provides that the increase in maximum penalties for these offences will apply only to crimes committed on or after the date of commencement. As the Commons amendment in lieu builds on Lords Amendment 134, I trust that in the absence of the noble Baroness, Lady Royall, the whole House will be content with the substitution. I therefore beg to move.

Viscount Hailsham: My Lords, I am sorry to say that I really disagree with my noble friend on this matter. There is absolutely no justification for increasing the maximum sentence, and I have two reasons for saying that. First, I do not believe that the increase will provide an additional deterrent. Either the person in question is rational, in which case a maximum sentence of five years is a sufficient deterrent, or they are not rational, in which case it will make precious little difference. I note my noble friend's point that the judges have rarely sentenced at the higher end of the existing maximum. My other point is a general one. I am very concerned about overcrowding in prisons. There has been a tendency to increase the sentences imposed by the courts. The newspapers and Parliament are responsible for that in part, and I do not wish to see Parliament increasing the pressure on our prisons. This is a small contribution to that, and I am bound to say I am against it.

Lord Pearson of Rannoch (UKIP): My Lords, I notice that in Amendment 134A the proposal is to increase the penalty from seven to 14 years for what is described as an offence,

"which consists of a racially or religiously aggravated offence under section 4 … of the Protection from Harassment Act 1997".

Before we agree to this increase in the penalty, will the Minister enlighten us about what, particularly, a religiously motivated offence might be? Specifically—and I have asked this before in Written Questions and had unsatisfactory Answers from the Government—could such an offence be caused by a Christian preaching the supreme divinity of Christ and therefore denying the supremacy of Muhammad? Would various assembled Muslims be free to regard that as a religiously aggravated offence under this section?

Lord Rosser: I shall be very brief and say that, unlike, apparently, some noble Lords, we welcome the Commons Amendment.

Baroness Afshar (CB): My Lords, I shall make a clarification. Muslims accept all religions that preceded Islam and accept all the texts that preceded it. Therefore, there would be no likelihood of such an event occurring.

Baroness Williams of Trafford: My Lords, to address the point made by my noble friend Lord Hailsham about the maximum penalties and overcrowding in prisons, the prison population has remained relatively stable since 2010. The Justice Secretary is clear that she wants to see more early intervention and a reduction in reoffending. To that end, we have launched a White Paper outlining our plans to make prisons places of safety and reform, and we have announced a comprehensive review of our probation system.

On the point that the noble Lord, Lord Pearson of Rannoch, made, I fear I will disappoint him again. It is a matter for the court and the CPS to determine the points that he makes.

Motion agreed.

Motion D

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendments 136 to 142 and 307, to which the Commons have disagreed for their Reason 136A.

136A: *Because legislation already makes provision for victims of crime and it would not be appropriate to alter that provision without further analysis of the benefits and costs involved.*

Baroness Williams of Trafford: My Lords, the elected House has disagreed with these Lords amendments by a substantial majority of 100. In inviting this House not to insist on these amendments, the Government recognise that there are legitimate concerns about the operation of the victims' code—I stress that—and that there is scope for improvement, but I put it to noble Lords that seeking to shoehorn these new clauses into the Bill when they have not had the benefit of detailed scrutiny either in this House or in the other place is not an appropriate way forward. This House rightly prides itself on its effective scrutiny of legislation. In the case of these amendments, however, we have had what amounts to, at best, a short Second Reading-style debate on the case for strengthening victims' rights.

While the underlying objective of these amendments—namely, improving the experience of victims and witnesses in the criminal justice system—is one we can all wholeheartedly support, the Government continue to have serious concerns regarding their substance. I welcome the fact that the noble Baroness, Lady Brinton, now wishes to focus on just two amendments rather than on all seven new clauses added to the Bill on Report but, as with the others, we foresee a number of problems with Amendments 137 and 138. I thank her for meeting me yesterday, together with the noble Lords, Lord Paddick, Lord Rosser and Lord Tunnicliffe, but, as we discussed in relation to Amendment 137, the victims' code—a statutory code of practice—includes a wide range of entitlements for victims of crime, including being entitled to receive information on their case. For example, under the code, victims should be informed about: the police investigation, such as if a suspect is arrested and charged and any bail conditions imposed; if a suspect is to be prosecuted or given an out-of-court disposal; the time, date, location and outcome of any court hearings; and any appeal by an offender against his or her conviction or sentence.

4.30 pm

In addition, if an offender has committed a violent or sexual crime and has been sentenced to 12 months or more in prison, victims can access the victim contact scheme to be provided with updates on important changes in offenders' sentences—for example, if they have moved to an open prison, and how and when they will be released. Victims are entitled make a complaint if they do not receive the information and services they are entitled to, and to receive a full response from the relevant service provider. If dissatisfied with the response, they can refer their complaints to the Parliamentary and Health Service Ombudsman.

Amendment 137 also includes provision for children and vulnerable adults to give evidence in court via a live video link or from behind a screen. However, this is unnecessary as the Youth Justice and Criminal Evidence Act 1999 already provides a statutory framework for such measures and more.

The amendment would also require the police to inform victims of a suspect's previous convictions which resulted in a custodial sentence and certain previous offences committed outside the United Kingdom. Currently, under the domestic violence disclosure scheme, police officers already have the power in the course of their duties to disclose previous convictions where it is necessary to prevent crime. Any disclosure must be proportionate to that end. However, the routine blanket disclosure provided for by Amendment 137 would be disproportionate and would not take account of the protections in the Rehabilitation of Offenders Act 1974 and the Data Protection Act 1998. It is not clear what the amendment would add to the police's current powers to disclose information where it is necessary to prevent crime.

Nor is it clear what the effect of the amendments would be. For example, Amendment 137 would enable a victim to refuse a compensation order made by the court but nothing is said about what the outcome of the refusal would be. If a compensation order has been made by the court, it should be enforced unless revoked. It is appropriate that offenders should compensate victims for the harm that they have done, and compensation orders provide a means for the criminal courts to include this in sentencing. However, sentencing is a matter for the judiciary, which makes decisions within the sentencing framework and based on relevant information about the offence and offender, including, in the case of compensation orders, the offender's means. It would not be appropriate for resentencing to occur based on a victim's ability to refuse a compensation order.

Similarly, victims would have a right to attend and make representations to a "pre-court hearing" to determine the nature of court proceedings. What hearings and the representations would concern is not explained. No definition is provided for the "adequate notice" that victims should be given of any court proceedings. Furthermore, Amendment 137 would impose obligations on the criminal justice agencies in respect of matters that are beyond their control—for example, delays caused by the defence.

Amendment 138, which concerns training, is also unnecessary. The training of all staff in the criminal justice system is already taken very seriously. General and specialist training is provided to the police, prosecutors,

the judiciary and others depending on the type of work the individual undertakes. This includes training on the treatment of victims, as my noble friend Lady Chisholm outlined on Report.

Although the House of Commons has not sought to disagree with these amendments on the basis that they would involve a charge on public funds, they would undoubtedly impose additional demands on the taxpayer. Amendment 137 would significantly expand the existing criminal injuries compensation scheme so that it would apply to all victims of crime and not just eligible victims of a crime of violence as defined under that scheme. Indeed, it would go further by requiring compensation to be paid not just for a criminal injury, but also for "any detriment" caused by a criminal case.

Amendment 137 would also require the provision of full transcripts on request and free of charge to victims, which would be prohibitively costly. Additionally, the amendment would allow victims to receive legal advice where a judge considered it necessary, presumably with legal aid. The aforementioned pre-court hearings would be a likely candidate. We have been given no indication by the proponents of these amendments of the additional financial burdens that they would impose on criminal justice agencies or the implications for legal aid funding.

As I have said, we recognise there are concerns regarding the victims' code. We know, for instance, that there are concerns about a lack of awareness among victims of their rights under the code, and we are considering how we might address that. Also, as part of the work looking at what is required to strengthen further the rights of victims of crime, we are considering how compliance with the code might be improved and monitored, and exploring how those responsible for the delivery of rights and entitlements might be held accountable for failings. We want to ensure that any future reform proposals are evidence-based, fully costed, effective and proportionate. While the amendments are well intended, those are qualities that they do not possess.

There is already an established legislative framework providing for the rights of victims of crime. As I have indicated, there is scope for improvement in strengthening the rights of victims, ensuring that agencies are fulfilling their duty and are appropriately trained to deliver those rights, and considering how delivery is monitored. Given the difficulties with the amendments, I put it to the House that it would be inappropriate to legislate further in advance of the Government setting out our strategy for victims, which we intend to do within 12 months. I further assure the House that we will take the appropriate action to give effect to the strategy, including bringing forward any appropriate primary legislation. I ask that the House await the outcome of this work rather than rushing ahead with this untested and uncosted package of measures. I beg to move.

Motion D1 (as an amendment to Motion D)

Moved by ***Baroness Brinton***

Leave out from "136" to end and insert "and 139 to 142, and do insist on its Amendments 137, 138 and 307."

Baroness Brinton (LD): My Lords, I thank the Minister and her predecessor, the noble Baroness, Lady Chisholm of Owlpen, for being available for meetings and discussions during the passage of the Bill. I am very grateful for their assistance.

I can think of no better way to start the debate on the victims' code and support for victims than to pay tribute to Jill Saward, who died two weeks ago. I extend my sympathy to her husband Gavin and her family on her untimely death at the age of 51. Jill was the first person to waive her anonymity having been the victim of a brutal rape and sexual assault in 1986, and her photograph was all over the *Sun* newspaper just days after the incident, something that is perhaps pertinent to our debate earlier about Leveson 2. The judge in the case sought to justify giving the defendant who did not take part in the rape a longer sentence than those who did by saying that Jill's trauma,

"had not been so great".

Two years later she led the campaign for anonymity for victims from the moment of assault, but chose to waive her own right to anonymity and published her account, *Rape: My Story,* an incredible, hard-hitting and moving book.

She was a brilliant and dedicated campaigner as well as a wise counsellor. Until she died, most people never knew how many victims of assault, rape, stalking or domestic violence were contacted by her privately, and she supported them through their experience. I know that Jill provided considerable support for Claire Waxman, a survivor of repeated stalking and the founder of Voice4Victims, in her campaign to inform Ministers and parliamentarians of failings in the current system, which has resulted in the amendments that have been put before your Lordships' House and another place.

In the Commons consideration of Lords amendments last week, the Minister said:

"These amendments ignore the extensive reforms and modernisation we are undertaking to transform our justice system … The amendments would result in an unstructured framework of rights and entitlements that is not founded on evidence of gaps or deficiencies … Some amendments are unnecessary because they duplicate existing provisions and practices, or are being acted on by the Government already … We are looking at the available information about compliance with the victims code and considering how it might be improved and monitored.".—[*Official Report*, Commons, 10/1/17; cols. 249-50.]

The reason I raise this is that we feel very strongly because the Conservative manifesto 2015 said:

"We have already introduced a new Victims' Code and taken steps to protect vulnerable witnesses and victims. Now we will strengthen victims' rights further, with a new Victims' Law that will enshrine key rights for victims".

That is what the amendments we have set before your Lordships' House today are intended to do. Apart from the fact that the Minister seemed to contradict himself somewhat during that debate, we are clear that, although the victims' code gives victims entitlement to support, it does not ensure that that support is provided by the agencies. It is the lack of statutory duty for the agencies and the criminal justice system that is the problem.

The Code of Practice for Victims of Crime uses the words "should" and "may" repeatedly when talking about the services while, when it is talking about

[Baroness Brinton]
victims, it talks about entitlement. It is that gap that the amendments are intended to resolve. The results of that gap are all too evident. Do not take my word for it. The criminal justice joint inspection report, *Meeting the Needs of Victims in the Criminal Justice System*, states that,

"there were some excellent individual examples of good practice across criminal justice sectors",

but that,

"there were unacceptable inconsistencies in the service provided to victims—depending on the type of offence, where they lived or the degree to which local policy support and reinforce service provision. Given that the Code of Practice for Victims of Crime … provides a standard which should transcend all these variables, there is clearly more work to do".

Last year, the Public Accounts Committee published a report on the needs of victims and a victims' law, stating:

"The … system is bedevilled by long standing poor performance including delays and inefficiencies, and costs are being shunted from one part of the system to another … The … system is not good enough at supporting victims and witnesses … Timely access to justice is too dependent on where victims and witnesses live … There is insufficient focus on victims, who face a postcode lottery in their access to justice due to the significant variations in performance".

The Victims' Commissioner, the noble Baroness, Lady Newlove, in her report of January 2015, said that almost 75% of respondents to her survey of victims consulted during the review were unhappy with the response they received, and over 50% found the relevant agency's complaints process difficult to use.

I am very grateful for the Minister's statement that there is work to do on the victims' code. Since the amendments started their passage through Parliament, Voice4Victims has been flooded with new issues raised by victims on the process failing them, not just the reason why those families and individuals were victims. Ivy, who was 45, was encouraged to report to the police ongoing sexual violence by her partner. She did so, but the officer said that he did not believe her. A second officer dismissed her claims and said that she was overreacting. Later, she was further violently assaulted by her partner, including suffering broken ribs and severe bruising. At the following multiagency meeting, she was told by the police that she was now assessed as being at high risk of being murdered. To cut a long story short, she had to move 170 miles away from her home. The victim had to move because the police could not guarantee her safety. Victims are being let down by the system.

I thank the Minister for the statement she made earlier. The key points to satisfy me not to call for a vote on my amendment are that we need to undertake a review within a timescale. I am grateful for the review that is to report back within 12 months. As important, I am grateful to the Minister for saying that she will ensure that any review will make sure that there is a statutory responsibility for the fulfilling of duties by the agencies and that appropriate training and services delivered are monitored. Victims—from Jill Saward, 30 years ago, who started the movement for victim support, right through to Ivy and the many others around her today—deserve better, and they deserve action soon. I beg to move.

4.45 pm

Lord Paddick: My Lords, I rise to support my noble friend Lady Brinton and associate those on our Benches with her remarks on Jill Saward. The Minister acknowledged in her remarks that there are legitimate concerns about the victims' code, and that is why there was a Conservative Party manifesto commitment for a new victims' law to ensure that the victims' code is given effect. That is what my noble friend is trying to achieve through the amendment. We trust that the Government's review will result in more effective protection for victims and more compliance by the police and the other agencies with the victims' code. If the Minister can give that commitment, we will be prepared to accept the Government's intention to ensure that the victims' code is not simply a matter of words but will have some effect and that victims will be better cared for by those agencies in the criminal justice system.

Lord Rosser: My Lords, we, too, support the objectives behind the amendment that was moved so eloquently by the noble Baroness, Lady Brinton, for the reasons that she herself set out. We also associate ourselves with the comments made by the noble Baroness about Jill Saward.

The issue is that the current victims' code is not legally enforceable and there is clear evidence that it is not being applied and acted on by the relevant agencies to the extent that was clearly intended—to the detriment of the victims it was intended to help. The amendment provides for victims' rights to be placed on a statutory footing and for the Secretary of State to address the issue of training for all relevant professionals and agencies on the impact of crime on victims.

I share the view that the Government, in the statement made by the Minister today, have been considerably more helpful and constructive in their response than they were during consideration of the Lords amendment in the Commons last week.

Finally, I, too, express my thanks to the Minister for her willingness to meet us. I hope that we have reached a stage at which there will be some accord on this issue.

Baroness Williams of Trafford: My Lords, I do not think that there was a lack of accord. In fact the whole way through these discussions I felt that we were seeking the same ends; it was just a matter of how we got there. I add my tribute to that of the noble Baroness to Jill Saward. I read about her the other day, and what she went through was absolutely heart-breaking as well as devastating while her father and then fiancé were downstairs. How she gathered the strength to not only waive her right to anonymity but help so many other people is quite inspiring and not something that everybody would feel able to do.

Following discussions today, yesterday and previously, we have reached a consensus on this and I hope that the words that I read out have given noble Lords confidence as we move forward to publishing this strategy within the next 12 months. I thank all noble Lords for their part in this debate.

Baroness Brinton: I thank all noble Lords who have spoken in this debate, and thank again the Minister for the words that she said from the Dispatch Box,

which meet my concerns at the moment. I shall be interested to see the result of the review and consultation. If we feel that there is not strong enough legislation coming through afterwards, I suspect that more amendments will appear in further course. In the meantime, I beg leave to withdraw the Motion.

Motion D1, as an amendment to Motion D, withdrawn.

Motion D agreed.

Wales Bill

Third Reading

4.50 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Wales Bill, has consented to place her interest and prerogative, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Clause 4: Devolved Welsh authorities

Amendment 1

Moved by ***Baroness Randerson***

1: Clause 4, page 3, line 33, at end insert "(with the exception of the Open University)"

Baroness Randerson (LD): My Lords, my amendment seeks to make crystal clear the constitutional position of the Open University. The OU itself still has a shadow of doubt, despite the welcome amendments from the Minister, which seek to clarify that the Open University is a cross-UK institution that belongs to no one country but to all countries of the UK. One intention of the amendment, which is simple and straightforward, is to ensure that it is clear that the Open University is not a devolved Welsh body, as referred to in Clause 4, on page 3 of the Bill. That clause relates to devolved Welsh authorities and refers to higher education institutions; the intention is that the Open University be excepted from that.

I am grateful to the Minister for looking again at how the Open University should sit within the Bill, because it is a unique institution in how it has opened up access to higher education for adults. It is nearly 50 years old, was way ahead of the time in how it delivered distance learning and so on, and remains unique in the way it delivers part-time distance education. It is also unique in being the only university in the United Kingdom to receive public funding from, and therefore have formal obligations to, the four nations of the UK. It is a UK university. I know that, as a hugely successful university attracting adult learners from some of our most disadvantaged communities and working with employers across Wales and the rest of the UK, it is very familiar to noble Lords across the House. But it is important to emphasise that it should not be seen as an English institution just because its headquarters are in England, any more than it should be seen as a Welsh, Scottish or Northern Irish institution because it has a base in each of those countries. It is a UK institution and belongs to all of those countries—a category all of its own. The amendment serves to clarify this aspect of its status; I am grateful to the Minister for seeking to do so. I make it absolutely clear at this point that this amendment will not pushed to a vote. I am hoping that the Minister will take the opportunity to make it clear that the structure, activities and status of the OU within the Higher Education (Wales) Act 2015, where it is treated as a distinct and special case, is consistent with this Bill.

Lord Puttnam (Lab): My Lords, very briefly, I support what the noble Baroness has just said. I am a former chancellor of the Open University and officiated at a number of graduation ceremonies in Cardiff, and there is no question but that the people of Wales consider the Open University to be a thoroughly national institution and not an English institution.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I am grateful for those two contributions. Before I speak to the government amendments, I begin by welcoming yesterday's vote in the National Assembly to approve the legislative consent Motion for the Bill. In particular, I thank Assembly Members, the First Minister and the Welsh Government for their support for the Motion. It stands as testament to how far we have come. Noble Lords' careful and thorough scrutiny has served to strengthen the Bill greatly and I thank them for their participation as the Bill has moved through this House.

The Government have listened carefully to the issues that have been raised throughout these debates and have brought forward amendments to address many of them. I thank my officials, led by Geth Williams, Peter Newbitt-Jones and Victoria Miles-Keay, and their team for their hard work on the Bill and for working closely with the Welsh Government and the Assembly Commission to resolve outstanding areas of concern. I have brought forward some amendments to address issues that have arisen from these discussions as well.

The Bill we have before us now is a better Bill as a result of the scrutiny of the House and the vast experience of noble Lords across the House. I place on record my personal appreciation for the diligent and constructive way in which noble Lords have approached the debates at each stage. In particular, I am very grateful for the engagement and constructive approach of the noble Baroness, Lady Morgan of Ely. Nearly 20 years ago, we served together on the National Assembly Advisory Group; I do not think we could have expected that we would be here today—nearly 20 years on —discussing this Bill.

As we have also discussed, the historic agreement of a fiscal framework last month was also key to the Assembly's consideration of the legislative consent Motion. I pay tribute to my right honourable friend Alun Cairns, the Secretary of State; my right honourable friend David Gauke, the Chief Secretary to the Treasury; and the Welsh Government Cabinet Secretary for

[Lord Bourne of Aberystwyth]
Finance and Local Government, Mark Drakeford, for their work on that fiscal framework. I also pay tribute to the considerable work undertaken by my right honourable friend Stephen Crabb, who did much of the heavy lifting before Alun Cairns became Secretary of State. Taken together, this Bill and the fiscal framework deliver the clearer, stronger and fairer settlement we set out to deliver.

The government amendments before noble Lords today are largely minor and clarify a small number of outstanding issues. Clause 29(6) provides a signpost to related provisions later on in the Bill, including those requiring consultation between Welsh Ministers and the Secretary of State before certain harbour functions are exercised. Government Amendment 3 adds a new provision to that clause to signpost the consultation requirements in the new Clause 36, which was added at Lords Report stage. It concerns the exercise of functions by the Secretary of State in relation to two or more harbours, at least one of which is devolved to Welsh Ministers.

Government Amendment 2 is a drafting amendment that aligns the wording of Clause 29(6)(a) with the new paragraph added by government Amendment 3.

Clause 62(7) inserts new Part 2A into the Welsh Language (Wales) Measure 2011 in relation to the cross-deployment of tribunal members. Government Amendment 4 would insert the equivalent Welsh language text into that Measure. Government Amendments 5, 6 and 7 update references to "public" authorities in Schedule 1 to reflect the revised title of "devolved Welsh authorities".

5 pm

Government Amendments 8 and 9 concern the status of the Open University and have been touched on. This issue, which I felt needed attention, was raised by noble Lords and noble Baronesses, particularly the noble Baroness, Lady Randerson, in Committee and on the first day of Report. Noble Lords argued that the Assembly should be able to legislate to modify the functions of the Open University in devolved areas without the consent of a United Kingdom government Minister. The Wales Office has discussed this issue with the Department for Education, the Department for Business, Enterprise and Industrial Strategy, and with the Open University itself. On the second day of Report, I confirmed my intention to bring forward these amendments today. They provide that, while the Open University will remain a reserved authority, it will share the same status in the new settlement as other bodies listed in paragraphs 9(2) and 10(2) of new Schedule 7B to the Government of Wales Act, which include the Electoral Commission, the Food Standards Agency and Ofwat. The Assembly will therefore be able to amend its functions in devolved areas without the need for ministerial consent. I confirm that this is a national UK institution which is rightly valued in all parts of the United Kingdom.

Amendment 1, in the name of the noble Baroness, Lady Randerson, seeks to ensure that the Open University will not be a "devolved Welsh authority". I reassure the noble Baroness that this amendment is totally unnecessary. The Open University does not meet the definition of a "devolved Welsh authority" as set out in Clause 4 because its activities are not carried on, or principally carried on, in Wales. In terms of statutory interpretation, the qualification of "not carried on" by the words "or principally carried on" means that "carried on" in the first context must mean exclusively carried on. I underline that point to confirm that it is not a Welsh institution. I hope that noble Lords and noble Baronesses will welcome these amendments, and that the noble Baroness, Lady Randerson, will feel able to withdraw her amendment.

Turning to the remaining government amendments, Amendment 10 makes a minor and technical change to the Bill's transitional provisions simply to clarify that Welsh Ministers' duty to fulfil obligations under Schedule 9 to the Electricity Act 1989 will not begin until the Bill provisions devolving further electricity generation consenting powers to Wales come into force. It is clearly right that whoever is responsible for consenting these infrastructure projects ought to have regard to their potential impact on the natural and built environment but that, in terms of timing, the obligation ought to mirror the related powers. Finally, Amendment 11 makes a minor change to the Title to recognise that the Bill also amends the Wales Act 2014.

I say once more that the Bill before us meets the Government's ambition for a lasting devolution settlement for Wales. In our opinion, the clearer, fairer and stronger settlement for Wales delivered by this Bill, and supported by the National Assembly, will bring about a new era of mature devolved governance in Wales. I once again thank noble Lords and noble Baronesses for the constructive manner in which they have scrutinised the Bill. It returns to the other place for consideration of our amendments in finer fettle as a result.

Lord Wigley (PC): My Lords, I wish to say a few words as we reach the end of the Bill's passage through the House. Before I do, I have one question for the Minister on the amendments to which he has just spoken with regard to electricity. Will the changes that he has made have any effect whatever on the Swansea Bay project that is going forward? I hope that he will respond to that point.

We have given the Bill considerable scrutiny over recent weeks, which has led to some welcome adjustments but has also focused attention on many issues that we regard as missed opportunities. We feel that the opportunity to enact the carefully balanced Silk package as a whole has been partly lost because of the way it has been approached. The Bill is consequently a bit of a parson's egg and, as the Minister knows, the reaction in the National Assembly reflects that.

Lord Elis-Thomas (Non-Afl): I think that it is a curate's egg. I am a Welsh Anglican; I know these things.

Baroness Warwick of Undercliffe (Lab): It is a parson's nose.

Lord Wigley: My noble friend is of course far better versed than I am in these matters. It may well be, as the noble Baroness suggests, that the parson's nose is

coming to the fore in my consideration of some of the more controversial aspects of the Bill.

As the Minister knows, the Plaid Cymru group in the Assembly voted against the legislative consent Motion yesterday, for the simple reason that the Assembly is losing some powers, as we noted in a number of debates in the Chamber in Committee and on Report. Some of those powers may well have been assumed or unclear, but none the less they were used, some for substantive pieces of legislation. The existing legislative powers of the Assembly were endorsed by a 2:1 majority in a referendum in Wales in 2011 and some of the powers implicit in that vote are now being retracted. Some of the legislation enacted by the Assembly since that referendum was made using powers that will no longer be available to the National Assembly when the Bill becomes law. That is a perfectly valid basis on which to register a protest vote, as the Plaid Cymru group did in the Assembly yesterday. None the less, I hope that the Government of Wales will make full use of the powers now available to them under the Bill.

Sadly, the Bill does not provide the long-term settlement to which the Minister referred. No doubt in the fullness of time another Wales Bill will clear the uncertainties left by this Bill and address the issues, many covered by the Silk report, that were avoided in this Bill. Undoubtedly, for example, the devolution of police, prisons and justice will drive that demand, as well as more coherent powers over energy. By the way, I noted something that did not come to the fore during our early debates: the Home Office, which was then under Theresa May as Home Secretary, failed to give evidence to the Silk commission on these matters. I am sure that the Minister will recall that from his work on that committee. A whole new debate will arise, post-Brexit, on financial levers and further tax-varying powers.

Finally, I will say a word of tribute to the noble Lord, Lord Bourne, for the way in which he has conducted the passage of the Bill. His has been a stalwart performance—single-handed most of the time—and we admire the way in which he has kept on top of his brief throughout, although at times we disagreed with that brief. His experience, both as a key member of the Silk commission and a former party leader in the National Assembly, undoubtedly stood him in good stead in this matter. Many of us feel that there were times when he had to defend a government line when, in a previous incarnation, he may well have taken a different line. None the less, I hope that he will be recognised by his colleagues for the work that he has done and I hope that they will take note in future of the advice that he gives on matters relating to Wales. I hope that the Bill will help to the extent that that is possible within its limitations. I therefore wish well those who will live within the framework that is now being enacted.

Lord Hain (Lab): My Lords, I echo the remarks of the noble Lord in thanking the Minister for the way in which he has handled the Bill. Its passage would have been a lot bumpier without his conciliatory approach. I also echo what he said about his officials, including the excellent Geth Williams, who once had the dubious privilege of working for me. I am glad that he survived to serve on the Bill, although what he makes of the dog's breakfast that it serves up we will never know, his being a professional civil servant.

Finally, I appeal to the Minister. In the light of the Division on the question of employment and industrial relations last week, on which there was a tied vote, I have said to him privately and I repeat publicly that there is a way in which the Government could, even at this late stage, when the Bill goes back to the Commons, bring forward an amendment to tweak the amendment that was moved. As I said, there was a tied vote in the Lords last week. He could do that in a way in which the Government could overcome their reservations and satisfy everybody concerned. He will know that the Assembly has since voted on a Bill in this area. The issue is on its way to the Supreme Court. He can avoid that. It is not too late.

Lord Crickhowell (Con): My Lords, I do not intend to speculate about what might be done in another place as we debate this issue at Third Reading here. Nor do I think that I will follow the noble Lord, Lord Wigley, in looking far into events that may or may not happen in the future. I very much welcome the amendments moved by my noble friend.

Before I pay some very well-deserved tributes, perhaps I might be allowed to voice just one regret about the way in which we legislate these days. If practical and possible, it would be much better if, instead of having a Bill that amends previous Bills so that we finish up with something almost unbelievably complex and difficult to interpret, we produced an entirely fresh Bill that everyone would be able to follow and understand without a degree of expertise that might be difficult to find even among those who guide the Welsh Assembly and this Parliament. I think that that would be a much better way of legislating.

I think that it was during Report that the noble Lord, Lord Kinnock, who is not here today, commented that he had once taken a different view about devolution, and I acknowledge that I had, too. When the final decision was taken by the narrowest of margins to go ahead, I said that I believed that when one crossed the Rubicon one should go on and make a success of it. I subsequently thought about that remark and realised that it was not very wise, because when Caesar crossed the Rubicon we had conflict, murder, civil war and the end of the empire. I am glad to say that that has not been the history of devolution in Wales or of the creation of the Welsh Government.

On this occasion it is right to pay considerable tribute to two Secretaries of State for Wales—the previous and the present ones—for their strong initiative in taking things further forward and producing a settlement that I believe will last for some considerable time. I believe that they and the Government deserve credit for the role that they have played in carrying devolution forward.

I pay a special and particular tribute to my noble friend Lord Bourne of Aberystwyth, whose performance on the Front Bench has been simply heroic and which he has combined with his responsibilities in other departments. I simply do not know how he manages to do it—and do it so well. However, I thank him.

[Lord Crickhowell]
I believe that all those who have taken part in the debates on the Bill will at least share in that tribute. His role has been totally outstanding.

Lord Berkeley of Knighton (CB): My Lords, having observed the passage of this Bill from the Welsh Marches, as it were, I, too, thank the noble Lord, Lord Bourne, for the way in which he has led his team through. I want to make one small plea—that he might be enticed to taste the menu put forward by the noble Lord, Lord Hain, regarding that tied vote. I know that it has come at a late stage in the day, but I feel that it has much to commend it.

Lord Morgan (Lab): My Lords, I am, I think, the only historian of Wales present, and I think that this has been a historic event and process, for which the Minister and our Front Bench deserve great credit. I am perhaps among the last of the generation of Welsh children who was brought up to regard the House of Lords—to quote the *Daily Mail*—as the enemy of the people, hostile to the aspirations of the people of Wales on devolution, land, education, church matters and many other issues. It is historic because in this case, of course, the House of Lords has been enormously positive. Many of us were asked by political figures in Wales to be helpful and to try to resolve some of the needless quandaries in the Bill, which purported to extend devolution but in some respects seemed to restrict it, and clear things up. I think that we have succeeded to a considerable extent in so doing. Very important principles have been enunciated, which, again, are historic; particularly those that elevate the status, if not always the powers, of the Welsh Assembly, making them more comparable—although still not comparable—to those of Scotland.

I will not labour the point but, as has been said, we owe thanks to the Minister, who has been extraordinarily helpful and considerate. He has handled this matter in a model way and I conclude by suggesting a new role for him. I believe that one thing we need in all these measures—I recall that this point was made by the noble Lords, Lord Crickhowell and Lord Hunt, as well as by me—is some kind of statement of how they relate to the overarching vision of the union. Just as in the higher education Bill we put in some important points of general principle the other day, I feel that that would be valuable here. We have an unwritten constitution, and so perhaps the best way of achieving this kind of insertion would be to have a constitutional supremo to take it over. I can think of no Member of the Government more qualified to act in that, at the moment, untested role than the Minister. I thank him very much.

5.15 pm

Lord Elis-Thomas: My Lords, I add my thanks to the Minister, who is an old colleague of mine—sorry, not an old colleague but a former colleague—in the National Assembly. His great achievement then, which I have alluded to before, even in this place perhaps, was converting the Welsh Conservative Party into a Welsh Conservative Party and a pro-devolution Conservative Party, as we saw most firmly yesterday in the National Assembly vote. He has excelled that contribution in the way that he has taken this legislation through this House. If I may, I want to link him to what is a very important memory for many of us. He ranks up there with the late, great Gareth Williams QC, who took us through the very early stages of devolution in this House. I cannot pay him a higher compliment than that.

The Minister kindly referred to our debate yesterday. I am not going to rise to the bait and have a spat with my noble friend about the way that the parties voted. However, it did strike me as interesting that the United Kingdom Independence Party and the party of Wales ended up in electronic harmony—we do not have Lobbies in the National Assembly—voting against a measure of Welsh devolution, even if it was for different reasons. The debate we had there was reasonable and reasoned. It was necessary to have that debate and that vote because, as the Minister has told this House before, we could not have proceeded to complete our stages without that legislative consent Motion.

That leads me to another conclusion that we can, I hope, take from our proceedings on this legislation, both in the National Assembly and in this House. Last week, I ventured to mention that we had perhaps finished a chapter of doing things in a certain way in relation to Welsh devolution. I believe we have now, potentially, reached a level of consensus, certainly between the main parties of devolution, as we saw in yesterday's debate in the Assembly.

Perhaps we can now move, in the spirit of the agreement for legislative consent and the agreement that this House has achieved through reasoned discussion with the Welsh Government and the Constitutional Affairs Committee of the National Assembly, towards a form of co-legislating. Certainly we should look for early drafts of any proposed future developments in devolution, rather than this hand-me-down form of Westminster legislating on behalf of Wales. I put that suggestion forward not in a spirit of controversy but because I believe it is the way to achieve the consolidation championed by one of the most distinguished former Secretaries of State for Wales.

On that point, the noble Lord neglected to include himself in the list of the promoters of devolution. Although he tries now to present himself as an anti-devolutionist, during his period as Secretary of State he achieved more Executive devolution than did any other Secretary of State. It is important that we remember those days because, without the Executive devolution led by the Conservative Party in Wales, we would never have had the basis for the powers now devolved further in this Bill. I am afraid I include him as well in the pantheon of devolutionists, where he likes it or not.

I add my own thanks to Geth Williams. I remember working with him and my right honourable friend the Secretary of State in a previous Government. I recognise the quality that he and the officers and lawyers of the Wales Office bring. I also thank the lawyers of the Welsh Government who participated in these discussions and the lawyers of the National Assembly Commission, particularly those advising the Constitutional Affairs Committee of the Assembly, of which I am proud to have served as a member in two Assemblies—although not for the whole time, for reasons which I will not go into tonight.

I pay tribute to the present Constitutional Affairs Committee in the Assembly for its rapid turnaround in producing those "critical friend" reports on the Bill; to its current chair, a former Member of the House of Commons, Huw Irranca-Davies; and to its previous chair, David Melding, who has been such a distinguished Member of the Assembly, and among the deep, caring, great Conservative constitutionalists of Wales. I thank the First Minister for his constant support on these matters and the Counsel General. In addition, I pay tribute to my noble friend Lady Morgan. It is not an easy job to work both sides of the railway line but we had the happy experience of sharing the same train this morning, so were able to congratulate each other, and the Minister in his absence, on the progress we have made together on this Bill. I link with that my friend the noble Lord, Lord Wigley, and the noble Lord, Lord Elystan-Morgan, whose contributions have always been philosophical and sometimes prophetic—a great Welsh tradition.

We thank all noble Lords for their contributions. We know that through the progress of this Bill we have achieved a further significant milestone in the progress of devolution. I am not here to speculate as to what will happen next but, whatever does happen, will be on the firm basis of the reserved powers model, which is constitutionally congruent even if not as extensive as what happens in the rest of the United Kingdom, and for that I thank the Minister and this Government deeply.

Lord Thomas of Gresford (LD): My Lords, some 3,000 years ago, Homer wrote in the *Iliad* that after the battle men like to reminisce about their prowess in the fight. Some 10 or 15 years ago the tributes and thanks were getting so extensive that the decision was taken that such tributes would no longer be heard at Third Reading. However, just as referring to people at the Bar is now commonplace—any Member of Parliament or Minister who comes to the Bar tends to get a mention these days—so that tradition, in which I firmly stand, has been eroded. Therefore, I confine myself to thanking the noble Lord, Lord Bourne of Aberystwyth, who has done a brilliant job in listening to all the complaints, some of which were completely without foundation. He has reacted very well. Lastly, I thank my noble friend Lady Randerson, who was part of the team in the coalition Government when the Bill was in its infancy. She played an important part in framing the way it progressed.

Lord Elystan-Morgan (CB): My Lords, I strike a concordant note in joining with all others who have expressed so genuinely their appreciation of the Minister's efforts in this matter. He has been a model of courtesy and accommodation in so far as it has been humanly possible for him to be so. Had he been invited to draft the Bill we would have had a very different piece of legislation before us, but that was not to be.

Although the Welsh Assembly yesterday gave its seal of approval to the Bill, although a reserved constitution has placed Wales technically in the same field as Scotland and Northern Ireland—a matter of constitutional significance—and although this is the third occasion when there has been a very thorough examination of the Welsh constitutional position in the short space of 19 years, nevertheless the Bill cannot be regarded as a great leap forward in the field of devolution at all. I say that because it seems to me that, compared with the situation Wales found itself in two and a half years ago after the agricultural workers' wages case was decided by the Supreme Court, we are far behind where we were on that occasion in so far as the sum total of legislative and devolutionary authority is concerned.

When the Scottish referendum concluded and the Prime Minister, in the grey dawn of that morning, walked to a microphone in Downing Street, he uttered the words that Wales will be at the very heart of devolution. I was stirred and cheered by those words, but had they been followed with the prophecy, "But bear in mind that 27 months from now the range of devolution will have been very severely cabined, cribbed and confined by a Bill called the Wales Bill", I am not sure my attitude would have been exactly the same.

There is no doubt that there has been a faint tinge of old colonialism relating to this situation—something I have referred to ad nauseam. I make no apology for that. It is the attitude somewhere or another that small, insignificant powers that are wholly classically local in their character must somewhere or another be withheld from Wales. I hope that will change. I hope future Governments will accept that we are no longer in a colonial era—that:

"The old order changeth, yielding place to new".

It may well be that the Government think they have thrown away many of the difficulties relating to devolution in Wales, but not all things thrown away stay thrown away. There is a tale that David Lloyd George used to tell of one of his erstwhile colleagues, a person who had changed his attitude very considerably to former policies. Somewhere or another they came back to him again and again. Lloyd George likened it to the position of an old Aboriginal chief who was utterly fed up with his boomerang and threw it away. It did not matter whether he threw it in a sharp curve or in wide curve; back it came again and again. I end with the admonition to government: never forget the boomerang.

5.30 pm

Baroness Morgan of Ely (Lab): My Lords, I thank the Minister for presenting the amendments and for taking on board and dealing with these extra issues in the Bill, in particular that of the Open University. He has been generous in the way he has listened to us during the passage of the Bill.

Yesterday, like the noble Lord, Lord Elis-Thomas, I participated in my capacity as an Assembly Member for Mid and West Wales in the vote on the legislative consent Motion in the National Assembly for Wales on whether to accept the Wales Bill. The Minister had made it clear on a number of occasions that the will of the Assembly would be respected in relation to the Bill.

I and many others in the Chamber in Cardiff yesterday made it clear that we were still deeply unhappy about aspects of the Bill and believe that it remains complex and flawed in many ways. We had hoped that there would be a clear delineation of where responsibility lies in the move to the reserved model, but this has not been delivered in the way we had hoped. Many warned that this could lead to constitutional conflict between the two institutions in future.

[Baroness Morgan of Ely]

Nevertheless, I encouraged my colleagues in the Senedd to support the Bill, partly because I believe that we need to batten down the constitutional hatches before we are battered around in the political flux that is about to engulf us with Brexit. I also believe that we have made substantial progress in the course of scrutiny of the Bill in the House of Lords.

The amendments that we have before us are additional to the areas where we have already seen movement in the Bill. It is worth noting and setting on record the areas where we have seen concessions: a clearer definition of Welsh law; a redrafting of the concept of Wales public authorities; an ability of the Assembly to change the limit on the number of Ministers; an increase in the Welsh Government's borrowing powers; a narrowing of the power to amend transfer of function orders; the removal of the Secretary of State's intervention powers in respect of water and sewerage and an extension of the Assembly's legislative competence in respect of water to the national boundary; the devolution of powers relating to fixed-odds betting terminals; the right of the Welsh Ministers to be consulted on the strategies of the Maritime and Coastguard Agency; a narrowing of the reservation in respect of anti-social behaviour; an extension of powers in respect of Welsh boats fishing outside the Welsh zone; a narrowing of the reservation on heating and cooling; a narrowing of the reservation on planning for railway developments; the removal from the reservation of the community infrastructure levy; the narrowing of compulsory purchase orders; the narrowing of the building standards regulations; and an assurance that the Welsh Government will be involved in a commission to assess the impact of new Welsh laws on the single jurisdiction. That is quite a list and we should be proud of ourselves.

I am delighted that a clear majority of my colleagues in the Assembly agreed with the decision to pass the legislative consent Motion and that the next phase of devolution can now begin. However, I endorse the point made by my noble friend Lord Elis-Thomas that Bills should in future be discussed and negotiated with the Assembly prior to their being presented to the Houses of Parliament.

I want to pay tribute to the Bill team, in particular to Gethin but also to a number of people who have been helpful in the Assembly. I thank Kirsty Keenan, Gareth Ball, Jane Runeckles and Gareth in the legal team. I want also to give a special mention to a man who has been involved in every Wales Bill since the establishment of the Assembly, who was the principal adviser to the National Assembly advisory group on which both the noble Lord, Lord Bourne, and I sat, and who will soon be retiring having given years of dedicated service to the Civil Service in Wales. He has become one of the foremost experts on the Welsh constitution and he will be missed: I thank Hugh Rawlings for all the work that he has done on behalf of Wales over the past few decades.

I also thank Peers from all parties for their co-operation on the Bill. I particularly thank my noble friend Lady Gale, who has proved so patient with me, not just on this Bill but throughout my political life. She has been a mentor to me since I was first elected, practically as a child, to the European Parliament back in 1994. She will go down in history as an unsung hero of the establishment of the Welsh Assembly when she was general secretary of the Labour Party in Wales, particularly for ensuring a revolution in the gender balance of politics in Wales.

Finally, I thank the Minister. On several occasions during the passage of the Bill he has been commended for his commitment to the cause of devolution in Wales. Above all, he has changed the Conservative Party's attitude towards Wales. I thank him for responding so positively to our many concerns and for being willing to co-operate with us on so many occasions. The Bill is another small step on the devolution road for Wales.

It is my intention now to focus on my responsibilities in the National Assembly. I thank noble Lords for their co-operation, not just on this Bill but throughout my time here over the past few years.

Baroness Randerson: My Lords, I thank the Minister for the clarity he has provided on my amendment. I echo others in thanking him and the Secretary of State for their courtesy and helpfulness. I thank their officials—Geth Williams and his team—because they have been truly exceptional in the amount of assistance they have been prepared to give. They have all been unstinting with their time for discussions, and have been willing to amend the Bill on a number of matters to deal with issues raised here.

Many noble Lords will know that the Minister, the Secretary of State and I served together in the National Assembly for very many years. We can be confident that they both fully understand how devolution works. The Minister has long been a stalwart supporter of greater devolution. As others have said, he has been responsible for the journey that the Conservative Party has taken. He has led that journey in Wales to making it a devolutionist party. That being so, and as a member of the Silk commission, he must be a little disappointed with the Bill, as I am. There is no need for him to respond to this—I do not expect him to admit it in this Chamber—but in his heart of hearts I dare say he is disappointed.

Although the Bill brings us the reserve powers model, it is not the clear-cut devolution settlement that the Silk commission called for; nor is it quite the bold vision outlined in the St David's Day agreement in 2015, when Stephen Crabb was Secretary of State. Although it brings welcome additional powers—for example, over elections, energy, the way in which the Assembly can manage its own affairs, and so on—they are not the radical step forward I envisaged as a Wales Office Minister when this plan was hatched. I believe that the Government will come to regret the lack of a sharp edge defining the separate powers of the Welsh and UK Governments. That will probably come to haunt them in the corridors of the Supreme Court in months and years to come.

I do not want to imply that the Wales Office has not tried—far from it. I am sure that the Wales Office has tried as hard as possible on the Bill. As I recall clearly, Welsh Ministers going round Whitehall asking for more powers for Wales are not always greeted with open arms. That was even the case in the coalition days, where devolution was the name of the game.

However, I am a pragmatist and I accept that under the new regime this is as good as it gets. It is definitely a step forward because it includes particularly important key powers over income tax and because it is twinned with the fiscal framework, which is hugely important. I am very disappointed that Plaid Cymru voted against this yesterday because, personally, I could not vote against additional powers for Wales, whatever the downsides to the settlement. We particularly welcome the constructive approach of both Governments in coming together on the Bill. It is part of a package which should make a big change to the political rhetoric of Wales and a real step forwards.

Only two years ago, I took a Wales Bill through this House; that, too, was just a modest step forward but we are going in a particular direction. I welcome that direction and I am sure that the Minister will forgive me for saying that I just wish we could walk a bit faster. I am happy to withdraw my amendment.

Amendment 1 withdrawn.

Clause 29: Welsh harbours

Amendments 2 and 3

Moved by ***Lord Bourne of Aberystwyth***

2: Clause 29, page 26, line 37, leave out from "exercise" to "in" in line 38 and insert ", by a Minister of the Crown, of certain functions"

3: Clause 29, page 26, line 41, at end insert—

"( ) the exercise, by a Minister of the Crown, of certain functions in relation to two or more harbours where at least one of those harbours is wholly in Wales and is not a reserved trust port."

Amendments 2 and 3 agreed.

Clause 62: Cross-deployment of members of the Welsh tribunals

Amendment 4

Moved by ***Lord Bourne of Aberystwyth***

4: Clause 62, page 49, line 2, leave out "Tribunal), after" and insert "Tribunal)—

(a) in the Welsh text, after Rhan 2 insert—

"RHAN 2A

TRAWS-LEOLI AELODAU'R TRIBIWNLYS

9A_ Ar gais y Llywydd a chyda chymeradwyaeth Llywydd Tribiwnlysoedd Cymru, caiff aelod o dribiwnlys sydd wedi'i restru yn adran 59 o Ddeddf Cymru 2017 (Tribiwnlysoedd Cymru), ac nad yw'n aelod o'r Tribiwnlys, weithredu fel aelod o'r Tribiwnlys.";

(b) in the English text, after"

Amendment 4 agreed.

Schedule 1: New Schedule 7A to the Government of Wales Act 2006

Amendments 5 to 7

Moved by ***Lord Bourne of Aberystwyth***

5: Schedule 1, page 89, line 38, leave out "a public" and insert "an"

6: Schedule 1, page 89, line 44, leave out "public"

7: Schedule 1, page 90, line 2, leave out "a public" and insert "an"

Amendments 5 to 7 agreed.

Schedule 2: New Schedule 7B to the Government of Wales Act 2006

Amendments 8 and 9

Moved by ***Lord Bourne of Aberystwyth***

8: Schedule 2, page 97, line 8, at end insert—

"( ) the Open University."

9: Schedule 2, page 98, line 8, at end insert—

"( ) the Open University."

Amendments 8 and 9 agreed.

Schedule 7: Transitional provisions

Amendment 10

Moved by ***Lord Bourne of Aberystwyth***

10: Schedule 7, page 144, line 2, leave out "and 50" and insert ", 50 and 51"

Amendment 10 agreed.

In the Title

Amendment 11

Moved by ***Lord Bourne of Aberystwyth***

11: In the Title, line 1, after "and" insert "the Wales Act 2014 and to"

Amendment 11 agreed.

Lord Bourne of Aberystwyth: My Lords, I wonder if I may answer one or two points that were made in relation to that group of amendments before formally moving—

Noble Lords: No.

Lord Bourne of Aberystwyth: There were issues raised that I would like to address, if that is permissible.

Noble Lords: Too late.

Lord Bourne of Aberystwyth: I will write to noble Lords in relation to the points made.

Bill passed and returned to the Commons with amendments.

Higher Education and Research Bill

Committee (4th Day)

5.42 pm

Relevant document: 10th Report from the Delegated Powers Committee

Clause 10: Mandatory fee limit condition for certain providers

Amendment 122

Moved by ***Lord Watson of Invergowrie***

122: Clause 10, page 7, line 15, leave out from beginning to "limit";"

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, before I call the noble Lord, Lord Stevenson, I must point out to the Committee that there is a mistake on the Marshalled List. It should read: "page 7, line 15, leave out from beginning to 'see'", not "limit".

Lord Watson of Invergowrie (Lab): My Lords, I am speaking to the various amendments in this group in the name of my noble friend Lord Stevenson, including Schedule 2 stand part.

Schedule 2 is about linking the case for a fees increase to the teaching excellence framework. It provides a mechanism for the setting of fee limits, permitting providers to charge fees up to an inflation-linked cap according to their ratings for teaching quality established through the teaching excellence framework, which is referred to—though not, of course, by name—in Clause 25. The Explanatory Notes reveal the name of the TEF, which is supposed to enable the impartial assessment of different aspects of teaching, including student experience and the job prospects of graduates.

We believe it is important to break the proposed connection between measuring teaching quality and the level of fees that can be charged. Increasing fee limits in line with inflation is of course nothing new. It was introduced in Labour's Higher Education Act 2004 and was routinely applied between 2007 and 2012, until ended by the coalition Government. What is new is linking fee limits to teaching performance, and that is what has alarmed so many people and institutions in the higher education sector.

The framework is described in Clause 25 as a system for providing,

"ratings … to English higher education providers".

Schedule 2 sets out the meaning of a high-level quality rating, which will be determined by the Secretary of State. Our Amendment 122B seeks to ensure that the high-level rating is established by regulation so that it can be subject to proper scrutiny by Parliament. That rating will be the gold standard, irrespective of whether we have a traffic-light system, and, as such, will be of crucial importance in the future of higher education in England—too important, we would argue, to be left to the Secretary of State alone to decide.

Universities are rightly concerned about the use of proxy metrics, including statistics on graduate earnings, in a framework that is supposed to be about teaching quality. Also of concern is the fact that a gold, silver and bronze rating system is proposed to differentiate the sector based on those metrics. This will undermine the sector's reputation both within the UK and overseas because universities deemed to be bronze will have been independently quality assured and have met all expectations of a good provider, but that is not how it will appear to those outside, whether in the UK or, indeed, further afield. That is why we have submitted Amendment 195, which seeks to ensure that the scheme has only two ratings: meets expectations and fails to meet expectations. That has the benefit of being simple to operate and, perhaps as important, simple to understand for those considering whether to apply to a particular institution. It also sends a clear message beyond these shores and enables comparisons to be made with providers in other countries without the confusion of a bizarre system of three categories.

Where metrics are used, they have to be much more securely evidence-based than those suggested. Our Amendments 196 and 198 contain proposals that would oblige the OfS to make an assessment of the evidence that any proposed metric for assessing teaching quality is actually correlated to teaching quality and would ensure that, prior to making that assessment, the OfS consult those who know first-hand what is needed to measure teaching quality namely, academic staff and students. Having carried out those requirements in the interests of full transparency, the OfS should publish the assessments. Surely any inconvenience that the Minister may point to in terms of administrative burdens on the OfS would be more than counterbalanced by the benefits accruing in terms of the much more robust nature of the metrics produced.

We also believe it is necessary for the OfS to demonstrate the number of international students applying to and enrolled at higher education providers that have applied for a rating. It is important to protect the number of international students that providers are permitted to recruit; and to ensure transparency on that, the OfS should be obliged to lay a report before Parliament each year. My noble friend Lord Stevenson has added his name to that of the noble Baroness, Lady Wolf, on Amendment 200 to emphasise that we believe it is essential that the TEF must not be used as a determinant when providers seek to enrol international students, and I look to the Minister to confirm that, even if he is unable to accept the amendment itself.

Those faced with a wide range of institutions from which to choose when considering their course of study have a right to the fullest possible information on which to base that choice. That is why our Amendment 176 seeks to alter the wording of Clause 25, in much the same way as is proposed by the noble Lord, Lord Norton, in his amendment, to ensure that all the relevant information is made easily accessible to staff, students and parents and that the information is made available in a consistent form in order to facilitate meaningful comparisons between providers.

Noble Lords on all sides of the House made clear at Second Reading their opposition to statutory links between teaching quality and the level of fees being

charged for that teaching. Since tuition fees were increased from £3,000 to £9,000 in 2012, there is no evidence to suggest that there has been a consequential improvement in teaching quality. Indeed, the National Union of Students has said that there has been no change in student satisfaction with the teaching on their course, while institutions have, in some cases, been shown to spend additional income from the fees rise on increased marketing materials rather than on efforts to improve course quality.

Why do the Government now believe that there is a link between fees and teaching excellence? Indeed, which should come first or be expected to come first? This is a clear example of the Government's view that the Bill is as much a question of consumerism as it is about education. As I said at Second Reading, we on these Benches reject the concept of students as customers or consumers in higher education. Many universities have said in their response to the Bill that there is no evidence to point to fee increases improving the quality of teaching. The University of Cambridge stated in its written evidence that the link between the TEF and fees is,

"bound to affect student decision-making adversely and in particular it may deter students from low income families from applying to the best universities".

Another point of concern in relation to the fees link is that in further stages of the TEF, the Government are moving to subject-based assessment. We do not take issue with that, because universities are large institutions within which there are a huge range of subjects and a great diversity of teaching quality, but linking a fee with an institutional assessment cannot do other than mask that range of teaching quality. People studying in a department where the teaching quality is not as good as in others will also pay higher fees. This flawed proposal does not enhance the Government's objective, and we believe it should be rejected.

What Schedule 2 would do is introduce the provision that only those providers that can demonstrate high-quality provision can maintain their fees in line with inflation. The specious reasoning behind this proposal, based on metrics that are widely seen as an inappropriate method in which to take such decisions, would lead to a skewed outcome because, as we heard at Second Reading, several high-performing institutions would lose out on a high-level rating through no fault of the actual quality of their teaching.

We of course welcome any means of improving teaching quality in higher education, and we do not oppose a mechanism to measure such improvement if a reliable one can be found. But the TEF as proposed is not that mechanism, for reasons that I have touched on already and shall expand on when we come to debate what is currently group 17. Schedule 2 introduces the whole area of the fee limit and fee regime, a link which we believe is without merit. As such, Schedule 2 is not fit for purpose, and that is why we believe it should not stand part of the Bill. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I have two amendments in this group, which complement those that the noble Lord, Lord Watson, has already spoken to. The Government's current policy is for fees, even for those having achieved the top rate of the TEF, to increase only by inflation. However, paragraph 4(2)(b) of Schedule 2—on page 78, line 3—enables an increase by more than inflation if a resolution to that effect is passed in Parliament. Amendment 125 would remove this provision, thus requiring new primary legislation for any Government wishing to go further.

Amendment 199, which mirrors the amendment which the noble Lord, Lord Watson, has already spoken to, is somewhat of a pre-emptive amendment. No matter what your view of the TEF, it is clear that it is an attempt, albeit ham-fisted in our view, to give students more information and more security when choosing a course and to lift the standard of teaching in our university sector across the board. Both of these are noble aims. We agree with the aims, but challenge the methods proposed. We particularly deplore the categorisation of gold, silver and bronze, which seems to us to be extraordinarily damaging.

We do not have faith that the TEF will not be used for ulterior purposes in the future, in particular as part of the Government's continued, blinkered action towards student immigration. This fear is not unfounded. Nick Timothy, the Prime Minister's most senior adviser, is one of the biggest advocates of further crack-downs on student immigration. In a piece in the *Telegraph* in June 2015, he made clear his views that students should be,

"expected to leave the country at the end of their course, while only the very best of them should be allowed to work in the UK".

In the piece, he states that these students are not, in fact, the best and the brightest and key contributors to our future prosperity, as,

"the number of foreign students at Oxford and Cambridge is a little more than 4,000, while there are about 66,000 at the remaining Russell Group universities".

This attitude displays a staggering lack of understanding about the diversity and value of our higher education institutions and their graduates.

This amendment would prevent the TEF from being used in determining eligibility for a visa for students on leaving university. It would ensure that such a change would require primary legislation and not be possible through a simple change in Immigration Rules. If the Government were to seek to pursue such an approach, they should rightly have to make their case in Parliament. Can the Minister also clarify that the Government do not agree with the approach Nick Timothy has previously advocated? There are very many of the brightest and best students at universities outside the Russell group, and such discrimination can only be damaging.

Lord Kerslake (CB): My Lords, I speak in favour of Clause 10 being removed from the Bill. In doing so, I declare my interest as chair of the board of governors of Sheffield Hallam University. I should also note that the vice-chancellor of the university, Professor Chris Husbands, is leading work on behalf of the Government on the development of the teaching excellence framework.

The effect of the deletion of Clause 10 would be to remove the power of the Office for Students to set the fee limit by reference to a provider's rating under the teaching excellence framework. It is important to say first that I strongly support the Government's desire to

[Lord Kerslake]
improve the focus of universities on teaching quality. That is absolutely the right thing to do. I am also not opposed to the introduction of the TEF per se. I do, however, have some significant concerns about the approach that the Government are taking to the TEF and, in particular, the link being made between fee levels and the TEF. My three main concerns are as follows.

First, there is not a straight read-across between teaching and research. At a very basic level, publicly funded research has a small number of very informed funders, which make their decisions with a long-standing knowledge of the providers. In this context, the REF provides an effective framework to drive research excellence. In the case of teaching, the decisions are made by millions of individual learners. They will base their decisions on a range of factors: the reputation of the university itself, the place it is located in and their likelihood of securing the necessary grades, but, most importantly, their views of the course of study itself. In this context, the TEF rating of the university will be of interest but it is unlikely to add a great deal to their decision. The value of the TEF is more to the institution than to the student. Having a rating itself, combined with changing demographics, will provide a powerful enough incentive for institutions to improve, just as the NSS scores are now. There is no benefit, and indeed significant perverse consequences, from adding in a link to fees. For example, those institutions most in need of resources to improve their teaching will be deprived of the means to do so.

My second objection is that the TEF is still in development. I have to say that I cannot think of anyone better than Chris Husbands to lead the work on it, but he is inevitably working within parameters set by the Government. The higher education sector is a very differentiated sector, and not all universities are the same. Reducing that wide variation down to a rating of gold, silver or bronze is for me, and I think for many, a gross simplification. A bronze rating risks being seen as failing or poor, even though in athletics, from which this was derived, securing a bronze would be seen, by me at least, as a considerable success.

There remains a very significant debate about the metrics for the TEF, but also about the distribution of the ratings—how many institutions will score the highest rating and therefore increase their fees. I currently understand that the plan is for it to be 15% bronze, 70% silver and 15% gold, but that may well change. Moreover, the TEF rating, as has already been said, is in the first instance about the institution and not the course. Yet the proposals will allow the institutions to raise fees regardless of individual course quality. All of these are symptoms of a system that is still in development and unproven. Until we are really confident about these issues, it seems to be completely wrong to link the TEF to fees.

My third and final concern is that, even if these issues can be resolved satisfactorily, it seems wrong in principle to approach increases in fees in this way. The reason that the vast majority of universities raised fees to the level of the £9,000 cap in 2012 was that they needed to offset the loss of other government support. Universities have been spared the brunt of the austerity measures experienced in local government and other sectors, but at the price of increased fees for students and, arguably, for future generations for those students who are unable to repay their loans.

There is an important debate to be had about the future resources that universities need, the level of student fees and indeed the amount of government funding provided to support them. No doubt vice-chancellors, faced with the prospect of this being the only way to increase fees, will go along with it. Fundamentally, though, it sidesteps what should be a public debate. If there is a case to be made for increasing fees in future then it should be made, but this is making that policy by the back door.

I recognise that the Government have dug in on this, but there is still time to think again. The proposal is understandably deeply unpopular with students and the NUS. In my view, it is also the product of some deeply flawed thinking.

6 pm

Lord Jopling (Con): My Lords, I have a great deal of sympathy with the comments of the noble Lord who has just spoken. On the second day in Committee I drew attention to my long connection with the Court of the University of York. I have been struck by the views that it has expressed, and in particular that,

"the ratings of gold, silver and bronze risk damaging the reputation of UK HE internationally",

through the impact of the teaching excellence framework. Of course failing institutions should be identified and dealt with, but it is very difficult to follow why the gold, silver and bronze ratings would achieve that. Instead, it would be damaging to the reputation of British higher education internationally, potentially putting off international students from coming to study in the UK. In an already challenging market for international students, this would put UK higher education at a disadvantage and have a significant economic impact.

On the second day in Committee I expressed my regret that I was not able to be present at Second Reading; I was abroad on parliamentary business. On reading that day's debate I was struck by the very strong views that were expressed to the Government with regard to these matters. The right reverend Prelate the Bishop of Winchester said:

"Given its potential impact it is crucial that the TEF does not misrepresent university quality and create a PR nightmare".—[*Official Report*, 6/12/16; col. 621.]

I am sorry to read these out but they are a reflection of the very strong feelings in the House. The noble Baroness, Lady Blackstone, said:

"Can the Minister confirm that the crude ratings of gold, silver and bronze, to which others have referred, will not be used by the Home Office in deciding on the student visa system and how it is implemented?".—[*Official Report*, 6/12/16; col. 628.]

The noble Lord, Lord Giddens, said:

"Standardised metrics for teaching assessment simply will not work across the whole range of universities".—[*Official Report*, 6/12/16; col. 633.]

My noble friend Lord Norton of Louth, from whom no doubt we shall be hearing in a few minutes, said:

"The likelihood is that, as with the REF, universities will engage in gaming the system and devote considerable resources to the task … the danger is that the TEF will be even more problematic. It may well serve to drive up costs rather than teaching quality".—[*Official Report*, 6/12/16; col. 658.]

That, from him, with all his experience of academia, was very clear. The noble Baroness, Lady Royall, whom I see in her place, said:

"In practical terms, would a university judged to be gold one year have to reduce its fees in future years if it were then deemed bronze or silver—or, perhaps, vice versa?".—[*Official Report*, 6/12/16; col. 697.]

I could go on. There is a major flaw in the Bill and the Government's thinking on this. The noble Lord who preceded me pleaded with them to think again. I, too, say to the Minister that this will not do as it is. I hope that he will tell us that the Government will take this away and think about it again.

Viscount Hanworth (Lab): My Lords, I should like to testify that there is something utterly perverse in the current system of rating the quality of the provisions of individual departments within universities and of universities as a whole. The system depends on the National Student Survey, which aims to determine the degree of customer satisfaction. Because the ratings of the NSS are determined within these organisations, and because they can make no reference to what is happening elsewhere, they cannot possibly serve as a valid standard for comparison across the sector.

The NSS is subject to the social dynamics of small groups of students, and it can produce highly variable results from year to year. It is well known that it can be strongly influenced by the interaction of staff with students. There is a strong temptation for academics to appeal to their students, in ways that may be more or less subtle, to give ratings that will be beneficial both to themselves and to their students. This has often swayed the outcomes. Quite apart from these difficulties in assessing the true degree of customer satisfaction, it is questionable whether customer satisfaction should be the principle to guide the provision of teaching. It is now a principle that also guides many other aspects of the provision to students. The quality of sports facilities, catering, entertainment and much else besides has been influenced by the need to increase student satisfaction.

However, the effects on teaching of an adherence to this principle can be dire. It has been a common experience that, the more difficult a course and the more vigorously it is taught, the lower is its NSS rating. University administrators, who nowadays control the activities of academic staff, have requested the removal of courses that have scored badly. Among such courses have been some of the essential STEM courses, which often form the backbones of academic disciplines. I propose that we cease to use the NSS as a basis for assessing the qualities of universities. We should cease to make such assessments, or to use them, until we can be sure of their validity.

Lord Lipsey (Lab): My Lords, I chair the Trinity Laban Conservatoire of Music and Dance, which I think is a very effective conservatoire. On Monday night I was closeted with my board, making one of the most difficult decisions that as chairman I have faced: should we go in to the TEF, which I think is supposed to close in about a week's time, or not? The situation was simple. None of us thinks anything of it, particularly because of the presence within it of the metric of the National Student Survey, on which I will say a bit more in a minute and a lot more in our next debate.

But if we did not go in for it, we would have £250 less per student to spend on teaching, on instruments and on bringing them up to our very high standard. The board decided to go ahead. I very much hope that, before we finish with the Bill, they will be shown to have been right for a different reason—because the Government have backed off from these really very ill-considered decisions.

Incidentally, I endorse what the noble Lord, Lord Kerslake, said about Chris Husbands: if there is a man who can sort out TEF, it is Chris, and we should wish him every power and a fair wind from Ministers at his back.

I am a bit of a statistician; I chair the All-Party Group on Statistics. I will go into this in more detail on a subsequent occasion, as I said, but the NSS seems to be a statistic that makes the statement on the side of the Leave buses an exemplar of statistical validity. It is just frightful. In particular, for a small institution such as mine, the sample sizes are tiny. It has had the most coruscating reviews from the Royal Statistical Society. The Office for National Statistics put it more cautiously but nevertheless said the same thing: you cannot use it to compare institutions—which is exactly what the gold, silver and bronze ratings do.

This is the first time that a piece of legislation for the post-fact era, where facts no longer matter, has made it to the statute book. It must be changed. Fortunately, it can relatively easily be changed, because I think we are all after the same thing: we are after a true measure of teaching effectiveness. I do not mean just whether students like it. At one stage, I joked to my board that I was thinking of withdrawing all music teaching at Trinity Laban and instead providing free beer in the bar every night. They would be jolly satisfied with the quality of their courses if they had free beer every night, but they would not be learning to play their instruments—which is bloody hard work, I can tell noble Lords who have not tried it. For that reason, this metric is dotty.

I have one or two other points to make. Information is very important in the new era. It is difficult enough to choose an institution now and, if the Government get their way and there is a proliferation of institutions, it will be more difficult in future for students to choose institutions. One thing that does not help is misinformation. We did not do terribly well in the National Student Survey this year. It was fine for me because I was able to say, as I had pointed out every year to the board, that the previous year had been completely different, because this number fluctuates almost completely randomly. But I had members of staff who were reduced to tears and considering resignation because we had a bad NSS score. Think how much more that will be so if it is incorporated into the midst of the TEF. Managers would then say, "You have a very bad NSS score, so we will do badly in the TEF, so we will have less grant". The pressure will be enormous, crushing and based on wholly false information. We need proper information and a proper TEF based on the kind of assessment that Chris, with his team, is well capable of undertaking. New metrics are being developed that would help with this, although whether they will be available under the Government's timetable is not yet clear.

[LORD LIPSEY]

We can get a TEF that works, which I would welcome. There are institutions that have not been as successful in their teaching as they have in other aspects of their work. If it fulfilled the Conservative election manifesto in the process, that is the sort of thing that we have to put up with in life. But please do not let us take this false step of a phony TEF that will reward only those who are good at gaming these things, not those who are doing what we really want: teaching well.

Lord Desai (Lab): My Lords, I was present at Second Reading, when I did not speak, and I was not going to speak on the amendment, but I would like to make some contrary observations to what has been said so far. The first time I saw students rating teachers was in 1961, when I was at the University of Pennsylvania. The anger of teachers then was more or less the same as the anger being expressed now: "How dare anybody judge us, especially our students? They are so stupid that they will not like difficult courses. They are so stupid that they will always go for the soft option". I do not want to comment on the quality of the National Student Survey, but we ought to reflect on whether we are not respecting our students enough if we think that they are stupid and likely to hurt themselves by grading soft courses higher than hard ones.

Several problems are getting mixed up here. First, can teaching be evaluated at all? Some people think it cannot. I was involved in the first round of the research assessment exercise, and virtually the same arguments were made by academics: "You cannot grade research or compare it; it is very difficult", and so on. This was being evaluated by their peer group but, by and large, we academics are rather conservative people when it comes to being judged by others. Ultimately, I think that the research assessment exercise performed a very good function. It mattered that some universities were five star and others were three or two: if they were three star or two star, they had to get their act together and improve. There is no reason to believe that something as important as teaching cannot be judged and therefore that there can be no competition because it is such a pure product that it is impossible to find a methodology to judge it.

6.15 pm

First, let us see whether there is a better methodology for ranking teaching, because I think it can be ranked like anything else; there is no mystery about it. Of course people will game it, but I have great confidence in students. Applicants look at the websites of different universities and know who is gaming. They are not stupid. If they are going to pay £9,000, or whatever, they will not be stupid about this. So let us have a bit more faith in our students and less protectiveness for ourselves as academics. Let us say that if we are going to improve the quality of teaching, somebody will have to find a way of judging it.

The second question, which I do not want to comment on, is whether the ranking—gold, silver or bronze, one to 10, or whatever—should be connected to the fees being charged. Perhaps, as someone said, those who are ranked lower should be allowed to charge higher fees—and let us see the consumer reaction.

I was an academic for 38 years. Luckily, I am not a vice-chancellor or a chancellor or anywhere, so I do not have to defend my university, but we cannot go on thinking that universities are beyond judgment and should be left alone to do whatever they do. Those days are gone.

Baroness Lister of Burtersett (Lab): My Lords, I do not think anybody is suggesting that universities should just be left to get on with it. I preface my remarks by saying how important I believe teaching to be. I went into higher education halfway through my working life. I had never taught, and I was shocked to discover there was nothing to train me how to teach: it was just assumed that an academic could relay their subject and teach it. That is completely different now. All universities have very good support to ensure that their staff teach well.

That said, I accept that it is important that there is some kind of assessment of teaching to balance the research assessment—the REF, as it is now called—to which my noble friend Lord Desai referred. REF is based on a direct assessment of the quality of the research; as I understand it, TEF will not be. I will not repeat the good critique that has been made by colleagues both now and at Second Reading of the metrics currently proposed, and I am not sure what the answer is. I can remember—I cannot remember in which year it was now—something called the TQA, or teaching quality assessment. I can remember quaking in my boots as some independent assessor came in to observe my lectures and tutorials. I am not sure what happened to it. It was a huge bureaucratic burden on the universities, so I am not saying that that is necessarily the answer. I am not sure what the answer is, but it is quite clear from what is being said in the sector, by students and people around the Committee that, as proposed, those metrics are not.

In his summing up, will the Minister explain exactly how he thinks the proposed metrics will tell us anything about actual teaching quality? What will be fed back to individual lecturers about their teaching? At Second Reading he said that,

"The TEF is designed to improve teaching".—[*Official Report*, 6/12/16; col. 721]

How will it improve teaching? Will he explain that to us? If I were still lecturing, how would I know how to improve my teaching on the basis of the TEF and these metrics? It is not clear to me at all how that will happen.

Given the widespread disquiet and difficulties of doing this, will the Minister reflect on the likely adverse implications of this traffic light system, which the noble Lord, Lord Lucas, on Second Reading called a "ranking system for turkeys"? Perhaps that is appropriate in the consumer culture we are talking about, but it is not appropriate for education.

Lord Willetts (Con): My Lords, I shall comment briefly on some of the remarks about the NSS and perhaps try to address some of the concerns and offer noble Lords on both sides of the Committee a bit of assurance about what is happening here.

I should begin by drawing attention to the fact that I am a visiting professor at King's College London, which sadly scores rather low on the NSS. I will not

detain the Committee with a special pleading of why I think that is a completely misleading picture of the excellent work done at King's. I also chair the advisory board of the *Times Higher*, which itself produces university rankings.

Surely what we are trying to do is embark on a journey towards what should be reliable metrics of teaching quality and learning gain. Of course, we do not have those yet. The question is whether we do anything now or wait until we have these superior and trusted metrics. The dilemma that one faces is that, back in 2010, there really was only the NSS, and it has been caricatured as simply a question of a student's kind of, "What's it like for you?". We have already seen changes in the NSS and, if I may get into the technical language, it is becoming much more like the National Survey of Student Engagement which does try to get closer to the academic experience of the student.

The measure that will be used in formulating the TEF is not the generic question, "How was it for you?". My understanding is that that is not what will appear in the TEF. There will be the earlier questions in the NSS. The NSS has more than 20 questions, and incidentally is completed by hundreds of thousands of students. It is the earlier questions that are closest to engagement that will be the ones used in the TEF. They are particularly questions about teaching on their course and on assessment and feedback.

The noble Lord who spoke for the Opposition when he opened said there had been no evidence that anything had been getting better. I can tell him that the fact that many universities have done disappointingly badly on assessment and feedback has led universities to change their practice and give students much more prompt reactions on their essays or other forms of work than they used to receive. I would argue that assessment and feedback are regarded as having genuine value and significance in the world of universities. Those measures are the measures extracted from the NSS which will be part of the overall metric for the TEF. The others which I think will have higher weight are the learning environment and student outcomes.

These are not perfect measures. We are on a journey, and I look forward to these metrics being revised and replaced by superior metrics in the future. They are not as bad as we have heard in some of the caricatures of them, and in my experience, if we wait until we have a perfect indicator and then start using it, we will have a very long wait. If we use the indicators that we have, however imperfect, people then work hard to improve them. That is the spirit with which we should approach the TEF today.

Lord Lipsey: Before the noble Lord sits down, will he explain what consolation he will offer to those institutions which are put out of business, at worst, while we perfect the metric that is being used in this case?

Lord Willetts: There are genuine questions, including the impact on overseas students, and I understand that issue. But I think that it would not be possible to envisage fees increasing without some kind of measures of the teaching performance in universities.

Given the difficulty of getting any measures, my view is that the measures we have are the best ones currently available. I think that the message that should go out from your Lordships' House is surely that we would see them improved, changed and reviewed—and improved rapidly. It would be particularly regrettable—I know that I am turning to a later stage in our debate—if we bring in measures, if we amend the legislation, to make future changes in the metrics harder rather than easier by requiring a more elaborate process for them to be changed in the future. I am absolutely not saying that we now have a reliable and authoritative measure of teaching quality.

Baroness Royall of Blaisdon (Lab): My Lords, the noble Lord, Lord Willetts, said that we are embarking on a journey, which indeed we are, but I feel that the car in which we will travel does not yet have all the component parts. I therefore wonder if, when we have concluded all our debates, rather than going full speed ahead into a TEF for everybody who wants to participate, we should have some pilots. In that way the metrics could be amended quite properly before everybody else embarks on the journey with us.

I speak to the amendments in this grouping, many of which I support and I remind the House of my interest as a pro-chancellor at Bath University. Like all other noble Lords, I celebrate quality and excellence, and students should and must expect to receive high-quality teaching in their higher education. This should always have been the case, but is especially important now when students leave university with a debt of perhaps £50,000.

How the quality is measured and the metrics used are of the utmost importance, and it is clear from everything that has been said that the Government have not solved the conundrum yet. However, it is very good news that Chris Husbands is assisting the Government in this task. I have to say that Bath has one of the highest levels of student satisfaction, of which I am very proud. Much of that is down to good teaching. In 11 departments we have 100% satisfaction rates, which is great, but I also have to wonder that there must be some instances in some universities where students are completing the student satisfaction surveys in their rooms and possibly they have never even been to a lecture. That metric is slightly questionable.

I would be grateful if the Minister can say who will make the judgment in respect of what the metrics will be and who will judge each university that is part of the system? Those people are incredibly important.

While I support the TEF in general, whatever system is introduced must not be the traffic light system currently under consideration and it should not be linked to fees. The real problem is when the quality of teaching in a university is measured across the board. As the noble Lord, Lord Kerslake, said, excellence in some departments will be eclipsed by poor teaching in other departments and vice versa. Creating a system that assesses the quality of a whole institution and allows that whole institution to raise the fees of every course based on that assessment, when the quality of teaching will vary—potentially drastically—for every student at that institution, is therefore fundamentally unworkable. It risks creating the potential that students undertake courses that are not of high quality but at an institution that was deemed by the TEF to provide general high quality, and are therefore unfairly charged higher fees

[Baroness Royall of Blaisdon]
for poor-quality degrees. As has been said on all sides of the House, the bronze, silver and gold proposals are entirely inappropriate and fraught with difficulties, not least the potential for jeopardising the excellent international reputation of our universities. Why would a foreign student paying hefty fees wish to study at a bronze university, and why should our own students go to British universities that are deemed inadequate? Students who begin their degrees at a gold university that is judged to be silver or bronze at the end of the course would feel disillusioned and, literally, short-changed. Amendments 176, 177 and 195 are particularly interesting, and I hope that the Government will give them favourable consideration.

6.30 pm

While I realise that the Government are sadly not giving an inch in Committee, I think it inconceivable that they would not agree to Amendment 196 on Report. Surely arrangements for the scheme to give ratings must be made through affirmative ratings. In answer to many concerns expressed at Second Reading following the Home Secretary's speech to the Conservative Party conference suggesting a two-tier visa system for international students based on tougher rules for lower courses or less prestigious universities, the Minister said:

"There is nothing in this Bill that links the TEF to any limits on international student recruitment".—[*Official Report*, 6/12/17; cols. 724-25.]

While that may be literally true, like other noble Lords I am fearful that the system of ratings will be used by the Home Office as an immigration tool. We will discuss in depth the issue of immigration when we reach the amendments tabled by the noble Lord, Lord Hannay, to which I have added my name, and there was an excellent debate last Wednesday. However, I warmly welcome Amendments 199 and 200 on this issue.

Quality ratings must absolutely not be used to determine whether a provider may enrol non-EU international students. The purpose of the TEF should be to ensure quality, not to restrict the number of tier 4 visas authorised by the Home Office. Our higher education sector is flourishing, much of it due to the contribution of overseas students and staff, and the benefits to our country are enormous. The Government are deeply exercised by immigration numbers, but their concerns must not be allowed to contaminate higher education policy and practice.

Baroness O'Neill of Bengarve (CB): My Lords, as a long-term university teacher, often rated by my students, both in this country and overseas, I have a sense of some metrics that are less gameable than others. That is surely what any attempt to measure things must look like. Student satisfaction about the beer is, obviously, not the best place to look. There are some well-known ways of looking at teaching which, if one can get the measurements, are quite useful. One might be how much a student has actually attended the required instruction. Statistics have been collected on this by the Higher Education Policy Institute, but if it was known that they were a metric I fear that they would be gamed. It is remarkable—and I think that I mentioned this at Second Reading—that the average for UK students a few years ago, when I last looked, was 13 hours per week of non-required work, above lecture and lab hours. That is not huge, but it varied from a number that I dare not even state to 51 hours of private study a week. That was for medics at some of our leading universities. That is one metric that cannot be gamed, but there are a few others. The number of pages written in a term or semester is quite instructive, and the number of those pages that receive feedback or commentary is another instructive metric. All those things are unglamorous—but you have to take extreme care in using them. Simple online tests of mastery of first language, second language and relevant mathematics might be worth looking at, but I do not think that student satisfaction is going to give us an accurate view of what is really going on.

Lord Norton of Louth (Con): My Lords, I have two amendments in this grouping, and I declare my interest as a serving academic. I share the views of the noble Lord, Lord Desai, who I gather is a fellow graduate of the University of Pennsylvania, on the NSS, and to some extent those of my noble friend Lord Willetts. The survey provides valuable feedback and is a useful form of intelligence, but I am not sure that it can bear the weight that it has been given in this proposal for the TEF.

I commend the Government for recognising the importance of teaching and their acknowledgement of the complementarity of teaching and research. I commend them also for seeking to enhance teaching excellence. Ensuring that more information, and comparable information, is made available to prospective students, and encouraging the dissemination of best practice within HE, are wholly commendable goals. My amendments would protect the provision of information. I have no problem with introducing incentives to HE institutions to enhance teaching quality, but where we need to stress test this part of the Bill is in creating a statutory link between teaching quality and the level of fees being charged for that teaching.

There are three problems with the link stipulated in the Bill. The first is defining what is meant by teaching excellence. The proposed metrics for the TEF are too blunt to meet the assessment criteria and, in some respects, too narrow. The Explanatory Notes to the Bill state:

"The Teaching Excellence Framework is intended to provide clear, understandable information to students about where teaching quality is outstanding and to establish a robust"—

I always worry the moment I see the word "robust"—

"framework for gathering information to measure teaching in its broadest sense".

I have no problem with the first part of the statement. It is the second part that is problematic. What is meant by teaching "in its broadest sense"? For me, it encompasses the capacity to develop not only intellectual but also personal skills that will enable students to fulfil their full potential as individuals in wider society. This may not be confined to career goals but may extend to being worthwhile members of society—in effect, good citizens. How does one measure that added value? It goes beyond the assessment criteria. I have serious concern with some of the metrics, because I fear that they may privilege status rather than teaching excellence.

The second concern is that, in so far as one can assess teaching excellence, quality is at department or course level, as the noble Lord, Lord Kerslake, and others have stressed. One has only to look at the National Student Survey to see variations between the aggregate at institutional level and the performance at subject and course levels. Yet the intention is to enable an institution to charge a higher fee level, which may apply to all courses, even those which deliver less quality than courses at other institutions which are not able to increase their fees.

The third concern, as we have heard already from the noble Lord, Lord Watson, is that there is no clear link between fees and teaching excellence. Higher fees will not necessarily serve to drive up teaching quality, but rather enable HE providers to spend more on marketing and ensuring brand recognition. More money may be spent on providing services to students, but not necessarily on their teaching.

In short, the proposal before us is based on a concept that is not clearly defined, cannot fairly be applied at institutional level and asserts a link that has not been proven. I look forward to my noble friend the Minister assuaging my concerns.

Baroness Deech (CB): I declare an interest as former principal of St Anne's, Oxford, and former independent adjudicator of higher education. I am speaking in support of Amendment 122. I have three very brief points to make.

First, it has been alleged that the whole purpose of the Bill is to enable universities to raise fees, and that all the contortions that we are going through in relation to the Bill is centred on this one element—that one will be able to raise fees if the teaching is good. That seems to me not a healthy way to approach it.

Secondly, there is profound disagreement about what is good teaching. One metric is likely to be the prevention of drop-outs and helping students from non-traditional or underprivileged backgrounds to get through the course without failing. This must tempt tutors and lecturers to spoon-feed and it is simply not clear in higher education whether the temptation for spoon-feeding—a brief term but I think all noble Lords understand what I mean—will be enhanced by some of the metrics, as I understand them.

My third point is related to the question of teaching students from less-privileged backgrounds. What will this link do to social mobility? The better universities, however they are judged, are quite likely to be Oxbridge and the Russell group, are they not? They will be able to charge higher fees. Some other universities, which will be taking more of those from underprivileged and less-traditional backgrounds, and may be doing more spoon-feeding, may well find that their teaching is not rated so highly, for reasons that all of us who have ever taught such students very well understand. They will charge lower fees. It will become a reinforcing division: the so-called "best" universities charging the higher fees will attract those students who can afford them and the not so good under this scale—the bronze—will likely get the not-so-good students who cannot afford the fees. This will really damage social mobility and parity of esteem, not to mention the fact that this is coupled with the abolition of maintenance grants, meaning that more students will be forced to go to their local university. So my question to the Minister is: what effect do the Government think the linking of fees to teaching quality will have on social mobility?

Baroness Warwick of Undercliffe (Lab): My Lords, I declare an interest as a member of the council of two universities. Like others, I am in something of a quandary on this part of the Bill; I have several concerns about the TEF, but I support enthusiastically any attempt to improve the status and excellence of teaching in universities. As chief executive of Universities UK, way back in the 1990s, I was instrumental in helping to develop the Quality Assurance Agency, which has gone on to do such a great job of encouraging institutions to take teaching much more seriously. It has developed the extensive framework for assurance and quality enhancement that characterises the HE sector today and which is admired around the world.

Despite the fact that there is an enormous amount of good teaching in universities, producing excellent learning outcomes, it has long been a dilemma that—at least in certain institutions—research and not teaching has become the means of individual advancement and the basis for institutional reputation, reinforced by league tables. That is not to say that researchers do not make good teachers—many do—but it is research that garners the accolades. Not enough weight is given to the support of students through good teaching, although I am heartened to learn that there has been much more emphasis recently on showing students how research and scholarship links with undergraduate learning.

The HE system is changing rapidly. It is already a diverse system and is becoming ever more diverse as new providers enter the sector. I was astonished to learn in a recent report that, on one count, there are 700 alternative providers; I gather that the more reliable figure is 400, but that is still more than double the number of established universities and clearly offers students a great deal more choice than was available, say, five or 10 years ago. Inevitably, though, there is a greater risk of poor-quality provision if these providers are not subject to the same extensive quality assurance process or regulatory regime as existing providers. So it is wise, in this new and changing environment, to review the way in which the quality assurance system deals with this much more complex world. Talking to people in the sector, and from what I read, I believe that the teaching excellence framework—the TEF—has the potential to provide more encouragement and support for teaching, to produce useful information for students, and, hopefully, to raise the status of teaching in all HE providers. But some of its provisions worry me—those worries have been reflected by other noble Lords.

We have been given a very useful briefing from the department on this part of the Bill and I thank the civil servants, some of whom I recognise in the Box, for the careful, helpful and comprehensive way that they have guided us through this Bill before each of our sessions. However, the recent briefing highlighted some of my concerns. The range of metrics described in the briefing, while voluminous, do not seem related to good teaching. They seemed much broader than a framework for teaching excellence would suggest. The metrics on employability and equality of opportunity—while perfectly

[Baroness Warwick of Undercliffe]
good—suggest, for example, that the TEF is really about the student experience, or indeed about any provision that is not evaluated by the research excellence framework—the REF.

6.45 pm

Like others, I was reassured that Professor Chris Husbands will be the chair of the TEF, since his background at the Institute of Education certainly inspires my confidence. It is good that he is coming to brief us next week, as that will be a real help. However, I would appreciate it if the Minister could reassure the House that the metrics, and indeed the further information that will be added in the provider submission, have been thoroughly assessed by teachers and that there is general and genuine buy-in, rather than just a sense of having to go along with this because something else is at stake.

Another concern for me, like for so many others around the House, is the scoring method and the use of the Olympics terminology. Using gold, silver and bronze as a means of differentiating between institutions seems to me to be absolutely meaningless and certainly not helpful. What is a student or parent supposed to read into them? How do they identify the nuances of what is good or what is in need of improvement across an HEI? The quality assurance process is not a race with only one winner. The first outcome judgments proposed were "excellent" and "outstanding", but these were rejected because they were difficult to distinguish. Is it clear what the difference is between gold and silver? It seems obvious that it could well be best and second best. How quickly will second best come to mean mediocre? I understand that the expected distribution will be 20% bronze, 50% to 60% silver, and 20% to 30% gold—so it is already anticipated that well over half of provision will not be regarded as excellent anyway.

For a sector with an excellent reputation across what the late principal of Green College, Oxford, Sir David Watson, characterised as, "a controlled reputational range", and for a sector that attracts and satisfies thousands of international students each year and is so highly regarded internationally, this seems like shooting ourselves in the foot. I am really concerned that categorising institutions in this simplistic way of bronze, silver and gold will have our competitors rubbing their hands in glee as these judgments are translated into league tables and used to downgrade our place in the marketplace. In a post-Brexit world, anything that undermines our core asset of quality and reputation should be avoided.

It therefore will not be any surprise to your Lordships that my doubts about the process mean that I am seriously concerned that these judgments are being linked to fee increases—very modest fee increases, I must say. I am delighted that the Government have recognised the danger of linking them to the recruitment of international students and do not intend to pursue that, but I urge the Government to reconsider linking these, as yet untested, judgments to the ability of universities to increase fees. It makes no sense at all from a student's perspective. Students are already told that a fee of £9,000 gives them access to "high-quality education". Are they to assume that this is only really true in 20% to 30% of institutions? And what about the impact on access, as the noble Baroness, Lady Deech, mentioned? A large number of students, often from disadvantaged backgrounds, need or choose to study at their local university. They do not have a choice of moving elsewhere. Are they to be told that, because of their circumstances, they must possibly reconcile themselves to attending an inferior institution? Surely we should be focusing on encouraging excellence in teaching in every part of every institution, while certainly encouraging excellence and acknowledging the best, so that students can be reassured that, whatever they study, they can indeed expect a high-quality education.

I make one final point, which links to the point made by my noble friend Lady Lister. I am really surprised that there is no mention of a requirement for qualified teacher status. Although a substantial proportion of university teachers have obtained such a qualification, many students and parents are surprised to find that it is not compulsory to train to teach at higher education level. Given the huge changes that are taking place in relation to digitisation in particular—which will affect life chances, jobs and many aspects of graduate work—the training and retraining of teachers would seem to be a fundamental element of continuous improvement of the quality of teaching.

I do not want to labour these points. I am very conscious of the advice of the chief executive of the QAA that universities should focus on putting the metrics into context, and,

"highlight and exemplify excellent practice across the institution",

to help the assessors and panel members,

"see beyond the metrics and make … rounded judgements".

I am sure that is wise.

This is TEF's second year yet there remain serious doubts about the metrics and the grading, as well as fears about the reputational risk of getting this wrong and the financial consequences if the system deters students rather than highlighting areas for further improvement. There must be a more imaginative and less risky way of achieving the Government's admirable objective of recognising the highest teaching quality, so would it not be equally wise for the Government to establish confidence in the system, evaluate it and see whether it is achieving its objective before deciding that reputations established with such commitment, effort and undoubted excellence over the last 10, 20, 30 years can be destroyed by a broad-brush, rather simplistic judgment?

Lord Lucas (Con): My Lords, I agree with a great deal of what the noble Baroness, Lady Warwick, said. I am a thoroughgoing supporter of getting more information out there to enable students to evaluate the quality of teaching that they will experience at university. We have allowed things to drift a long way in the wrong direction. However, the idea that by waving a wand we should decide that 80% of British university education is sub-standard and promulgate that across the world on the basis of a collection of experimental and rather hard-to-understand metrics just seems to me daft. It is not really helpful to anyone. All we are doing is "dissing" these universities. We are not enabling anyone to choose them. If someone is choosing a university, they will

look at what is going on on a course. They will not experience the university quality of teaching; they will experience what is going on on a course. That is the level at which they need data. Nor do they need the Government to say, "This is a bronze-level course". They need the data to make their own judgment because different things matter to different students. Some students want strict, hard teachers who will push them to do well, others want someone who will get them excited about a subject and will be a source of inspiration—I imagine the noble Lord, Lord Desai, is like this—and will drive students to work extremely hard in their own time. Different students need different things. What we need is a lot of information so that students and those who advise them can make up their own minds. In that context, the amendment of my noble friend Lord Norton is a great deal better than any of mine. My noble friend's Amendment 177 seems to me the right way to go.

I support what my noble friend Lord Willetts said: this is experimental. We need to go on down this road and have the courage to continue. However, we should recognise that this process is experimental and that we have not yet got to a point where we know that we are defining quality in the right way. It is a very difficult area to assess. On the basis of students' experience of only one course at one university, how do you compare whether the teaching on the engineering course at Loughborough is better or worse than the teaching on the engineering course at Oxford? They are different kinds of students with different predilections on two excellent courses, but how do you compare them on a single measure? It is very difficult to understand how we get to that point or what we should be doing with that information. None the less, we want to drive up the quality of teaching and make progress in that direction.

There seems to be a wish on the Government's part to incorporate some measure of teaching quality in their decision whether to allow a university to raise its fees. That seems to me fair enough. However, if there is to be a collection of metrics for that purpose, they should be used for that purpose. We should not try to use a set of metrics for that purpose and at the same time say that they reflect the quality of the student experience or decisions that students should make. In its dialogue with universities the department should use its own process in arriving at a decision; it should not publish its decision as if something that was good for setting fees was good for telling students what decisions they should take.

The noble Baroness, Lady O'Neill, says that there are metrics we could use. Yes, absolutely, there are things with which to experiment. If I think back to my own university days, attendance at courses rather depended on the timing of boat club dinners and whether I was supposed to go to something the following morning. I am not sure that that should reflect on the mark given to my teachers, whoever they were. So let us aim at something that encourages the creation of metrics and their publication. Let us make sure that these metrics cannot be summarised by the Government at the level of course, let alone university. It should not be the Government's purpose to arrive at verdicts based on difficult-to-interpret information; it should be something they allow other people to do and make the best of. We certainly should not allow the Government to use these metrics for anything to do with immigration. I still remain entirely in the dark as regards the Home Office's intentions. Let us see what response we get from the Government and be firm in our resolution not to let this measure through as it is.

Baroness Cohen of Pimlico (Lab): My Lords, I remind the Committee that I am chancellor of the biggest private for-profit university in the country. We gain high marks in student surveys and in terms of employability. However, we regard both these things as at best very partial measures—student surveys, for all the reasons adduced by other Members of the House, and employability because we teach subjects, mostly law, accountancy and nursing, in which employability is slightly easier to expect. However, as part of getting degree-awarding powers, which took us four long years, we were assessed by the QAA. One of the things that was assessed was teaching quality. People who knew what they were talking about in terms of teaching quality, including from the Law Society and the Bar Council, sat in on lessons to see how we taught. When our licence was renewed in 2013, the whole thing happened again: people sat in on lessons and lectures to decide how well we were teaching. We passed with a very high standard. That might be the ideal supplementary measure because it is objective and is done by people who know what they are looking for. With the best will in the world, I do not think one can suggest that students, with their somewhat partial attendance, know what they are looking for. We need people with experience of teaching who know what they are looking for.

That leads me to the observation that the figure of 400 new entrants strikes me as amazingly high. The QAA says that it has passed through somewhere between 60 and 70 of us for degree-awarding powers since 2005, not more than that. Some of us have the title of university, some do not. These figures suggest to me that a much smaller number of higher education providers are outside the university sector than I thought. I wonder whether teaching quality assessment might not turn up as part of the duties of the new quality assessment committee, which appears later in the Bill. Might that not be part of its task, so that you have one expert assessment as opposed to the various useful consumer-type assessments which come from students liking and understanding what they are doing and getting jobs? I do not suggest that we should avoid those elements—they are excellent measures—but we need something objective as well to be sure that we are being fair to all institutions and that teaching quality is assured. I would like to come back to this later in the Bill.

The Earl of Listowel (CB): My Lords, I support what the noble Baroness, Lady Lister, said, which was echoed by the noble Baroness, Lady Warwick. These measures should not be used as a means to punish academics but should rather be used to support them in developing their game. As a trustee of a mental health charity that works with schools, I am well aware of the morale among teachers and head teachers and regret to say that it is very often extremely poor. They

[The Earl of Listowel]
are of course at the opposite extreme. As a former Chief Inspector of Schools has said, we have the most measured pupils in the world, and we probably have the most measured teachers in the world. So many of them are worrying, "When is an Ofsted report going to come along to tell me how badly I'm doing?".

7 pm

Lucy Crehan, a former teacher and an academic, recently published a book, *Cleverlands*, which looks at the best-performing schools in the world. She visited Finland, and what she found there was a complete contrast. When teachers were struggling, they would receive support. When they continued to struggle, they would receive more support. In contrast, in this country and the United States, when a teacher or a school is struggling, we attack them and punish them. That is going a bit overboard—there is good work in getting schools to support other schools. Predominantly, however, there is a far more punitive approach here. I would hate to see that coming into the higher education system. I look forward to the Minister's response.

Lord Storey (LD): My Lords, of course we need as much information as possible about universities so that parents and young people can make the right decisions about which university they choose. I am delighted that we are now focusing on the quality of teaching. The noble Baroness, Lady Royall, was right to say that it must be about high quality. That means high quality throughout the university sector, in teaching, provision, and simple things, such as the ability to make sure that essays and dissertations are properly marked, and to make sure that there is high quality with regard to the size of tutorial and lecture groups. A whole host of issues will ensure high quality.

We sometimes forget that choosing a university is a huge decision for a young person and their parents. They do not pick one at random but do the research, looking very carefully. Again, not only do they choose carefully but they visit those universities. I know from my own experience that students and their parents will have put two or three universities down and will have one in mind as where they want to go to, because of the course they want to do. However, noble Lords will be surprised at how often they get there and do not like it. They do not get a sense of there being the right ethos about the place or they do not like the staff they meet. One of my friends, who is doing creative writing, had two universities at the top of her list. She went to visit them and they gave her sample lectures. Guess what—she went to the third one, because she found that the response and the quality of the lectures were not good enough for her. Let us not kid ourselves: when parents and students come to choose the university they will go to, they are already in the driving seat.

I have grave reservations about the notion of getting this matrix together, putting in things such as employability, and then, suddenly, there is a mark. Currently it is proposed that it be gold, silver or bronze. As I said at Second Reading, I cannot see many universities boasting that they have a bronze award—they will not do that. But you can bet your bottom dollar that those rated as gold will display that for everybody to see. That will be damaging to the university sector as a whole and, as we have heard many noble Lords say, it will be damaging for students coming to our universities from overseas. We therefore have to tread very carefully. The Minister told us on Monday that he was very much in listening mode. Speaker after speaker, right across the House, has raised considerable concerns about this issue. If the Minister is in listening mode, I am sure that he will want to ensure that when we come to Report he will take our points on board.

I do not have any interests to declare regarding universities but I have interests in mainstream education. We have been down this road of labelling schools. In my wildest imagination I never thought that we would see a maintained school system in which schools advertise their success on the backs of buses and on banners hung outside their schools. Parents are caught in this trap, wondering, "Do I send my child to an outstanding school or a good school?". Of course, if a school needs improvement, while it is improving it has the problem of parents saying, "I'm not sending them to that school". We have been there before in higher education. We can remember the days of universities and polytechnics. Polytechnics—higher education providers—were regarded as the poor relation. People would say, "I'm not sure I want my son or daughter to go to a polytechnic", although in many cases the provision was as good and, in some areas, better than at universities. Thank goodness we decided to ensure that higher education institutions as a whole were labelled universities.

I hope that the Minister gets the message and that we provide as much information as possible and look at the quality of teaching. A noble Lord said that of course in the mainstream sector, your teaching is observed, and if you are not up to the mark, you will not teach. If we want to improve the quality of teaching in universities, maybe there has to be some sort of requirement to teach students. Teaching is not just about knowledge but also about how you relate to young people. The most knowledgeable and gifted professor may be unable to relate to a young person, and therefore cannot teach the subject. I therefore welcome the notion of improving teaching.

I know that it will be a small part of the matrix, but I have reservations about the concept of a student survey, or students marking teaching. Students should give their views; that is good and right. But students will rate highly teachers, lecturers and professors who give it to them on a plate: "Here is what you need to know—take it away". Lecturers who are challenging, who want to push the students and make them think for themselves, are quite often marked down. I therefore have reservations about how we develop this idea of student feedback. That is not to say that student voices should not be heard, but that they should be a very small part of the whole. I hope the Minister will take that on board as well.

Viscount Younger of Leckie (Con): My Lords, I have today sent a letter setting out some further detail following Monday's debates, and attached a briefing note on the teaching excellence framework which I hope noble Lords have found helpful.

I am grateful for the thoughtful comments made in this prolonged debate on the teaching excellence framework, which is in the manifesto commitment. These comments

go to the heart of what we are trying to achieve in incentivising high-quality teaching. I am pleased that there is no disagreement on the importance of high-quality teaching, and the importance of incentivising this. Many Peers have acknowledged this, and Governments from all sides have wanted it for many years. This is an important element of these reforms and this has been a key debate, so I hope that noble Lords will forgive me and that the House will bear with me if I speak at a reasonable length on the points raised.

A number of Peers raised a point on whether the TEF should be tested more and, in effect, go more slowly. This was raised by the noble Baroness, Lady Royall, the noble Lord, Lord Watson, and other noble Lords. In effect, the question related to a pilot scheme. I reassure noble Lords that the TEF has been, and will continue to be, developed iteratively. We have consulted more than once, and year 2, which we are currently in, is a trial year. Working groups, including those in the sector, are under way on the subject-level TEF. That was raised by the noble Viscount, Lord Hanworth, and I will say a little more about that later. Therefore, the sector has recognised this trialling aspect, and Maddalaine Ansell, the chief executive of University Alliance, has said:

"We remain confident that we can work with government to shape the TEF so it works well as it develops".

The noble Baroness, Lady O'Neill, commented on the detailed metrics. She also spoke about iterating and reviewing the metrics, and made some constructive comments. The TEF metrics will continue to evolve. I stress again that, where there is a good case to do so, we will add new metrics to future rounds. I have no doubt that I will also be saying a bit more about this later.

I want to respond quickly to the amendments on the TEF and immigration. This picks up a theme raised by the noble Baroness, Lady Garden, my noble friend Lord Jopling and the noble Baroness, Lady Royall. Following our useful debate last week, and as I set out in my subsequent letter, I confirm again that we have no plans to cap the number of genuine students who can come to the UK to study, nor to limit an institution's ability to recruit genuine international students based on its TEF rating or any other basis. This applies to all institutions, not just to members of the Russell group.

The noble Lord, Lord Watson, raised the issue of international students, and I move on to the proposal to publish the number of international students. The TEF will be a world-leading assessment of the quality of teaching and student outcomes achieved by higher education providers. Students should have a better idea of what to expect from their studies here—better than anywhere else in the world. However, a dataset that simply links the TEF to international student numbers fails to recognise the much broader international student recruitment market place. I should add that all the relevant information requested by the noble Lord, Lord Stevenson, is in the public domain.

Moving on, I remind the Committee that the ability to raise fees according to inflation is not new. As the noble Lord, Lord Watson, said, it has been provided for since 2004. Indeed, as I think he said, the process was established under the then Labour Government and was routinely applied from 2007 to 2012. I reassure noble Lords that, as the Government set out in the White Paper, our expectation is that the value of fee limits accessible to those participating in the TEF will, at most, be in line with inflation.

As the Liberal Democrats will recall, the coalition Government used the legislation that had been put in place in 2004 by the Labour Government to increase tuition fees above inflation in 2012. We have no such plans to increase the value of fee limits above inflation. Increasing the upper or lower limits by more than inflation would, under the Bill as currently drafted, require regulations subject to the affirmative procedure, which requires the approval of Parliament. In the case of the higher amount, it would also require a special resolution. That is in line with the current legislative approach to raising fee caps.

I now turn to the link between the TEF and fees. Schedule 2 builds on well-established procedures in setting fee caps. Under the schedule, different fee limits will apply depending on whether a provider has an access and participation plan, and what TEF rating they have been awarded. Crucially therefore, this schedule will, for the very first time, link fees to the quality of teaching and thus increase value for students. This will recognise and reward excellence, and will drive up quality in the system. It will mean that only providers who demonstrate high-quality teaching will be able to access tuition fees up to an inflation-linked maximum fee.

The noble Lord, Lord Watson, said that since the increase in fees in 2012 there has been no increase in teaching quality. Therefore, this Government are, for the first time, putting in place real incentives, both reputational and financial, to drive up teaching quality. My noble friend Lord Willetts picked up on this theme. We believe that this is the right way forward. I have already mentioned the iterative aspect of this process.

The principle of linking funding to quality is familiar from the research excellence framework, which was introduced in the mid-1980s, and it has been an effective incentive. The REF has driven up the quality of our research, ensuring that we continue to be world leaders in global science. Tuition fees have been frozen since 2012 at £9,000 per year. This means that the fee has already fallen in value to £8,500 in real terms and, without the changes we propose, it will be worth only £8,000 by the end of this Parliament. Therefore, these changes are important if we want providers to continue to deliver high-quality teaching year after year.

As far back as 2009 the noble Lord, Lord Mandelson, said:

"We … need to look in my view for ways of incentivising excellence in academic teaching".

He went on:

"We have to face up to the challenge of paying for excellence".

I believe that the measures in Schedule 2 finally deliver that. The schedule allows a direct link between fees and the quality of teaching, with differentiated fees for different TEF ratings—a principle supported by the then BIS Select Committee and the wider sector—along with a clear framework of control for Parliament. This will ensure that well-performing providers are rewarded so that they can continue to invest in excellent teaching.

7.15 pm

The noble Lord, Lord Kerslake, and the noble Viscount, Lord Hanworth, raised concerns about the idea of the TEF being operated at subject level. We agree that the TEF could work well at subject level and are committed to that. We have pilots planned for the end of this year, with the full rollout at subject level in two years' time. However, this is an evolution from the institutional-level TEF. The rating at institutional level allows us, the sector and assessors to develop the complexity of the scheme over time. I hope that that provides some reassurance.

My noble friend Lord Jopling, the noble Lord, Lord Lipsey, and my noble friend Lord Lucas went a little further and said that the NSS is flawed and should not be used. I disagree and can only quote two vice-chancellors—one of the University of Essex and the other of the University of East Anglia—who said:

> "As one of the key objectives of the TEF is to provide prospective students with information that will allow them to make informed choices about where to study, it would be perverse to exclude use of the only cross-sector, reliable source of student's views about the quality of their educational provision".

However, we recognise the limitations of the NSS and have directed assessors not to overweight the NSS-based metrics. We have set an expectation that these metrics will be triangulated against other metrics and the additional evidence given by the provider. The rating is absolutely not just about the NSS.

My noble friend Lord Jopling quoted the right reverend Prelate the Bishop of Winchester, who spoke at Second Reading about ensuring that the TEF does not misinterpret teaching quality. I think that the noble Lord, Lord Lipsey, stated that it needs to measure teaching effectiveness, and of course he is correct. I hope that I can reassure the Committee on that. Excellent teaching can occur in many forms, as I am sure is recognised. There is no one-size-fits-all definition of teaching excellence. However, great-quality teaching, defined broadly, increases the likelihood of good outcomes.

We have chosen to begin the TEF using metrics that are already widely established in the sector. We will continue to review the metrics in use and, where there is a strong case to do so, we will add new metrics to future TEF rounds. The metrics that we have chosen allow differentiation across providers. For example, on retention and student outcomes, many providers are well above or below the current sector-accepted benchmark. So clearly quality teaching makes a difference.

I should now like to address a number of concerns raised at Second Reading and in this group of amendments about the way we intend to communicate the outcomes of the TEF. The TEF is designed to provide clear information to students about where the best provision can be found, as well as clear incentives for providers to strive for teaching excellence. It delivers on our manifesto commitment to recognise universities offering the highest-teaching quality, driving value and transparency for students. To answer a point raised by my noble friend Lord Lucas, the TEF data will be published, not summarised, including the detail.

A fundamental purpose of the TEF is to differentiate excellence above the high-quality baseline in a way that is communicated clearly to students. We consulted the sector, which made it clear that it wanted neither a ranked league table nor confusing descriptors. The sector was also not keen on the four different levels that we originally proposed. In response to the feedback, we chose to have just three levels, which have been much spoken about today—gold, silver and bronze, using terms suggested by a consultation respondent.

The noble Lord, Lord Kerslake, asked what our assessment is of who will get what in the TEF and the anticipated distribution. In the technical consultation, we indicated a likely distribution where approximately 20% of participating providers would receive the lowest rating, approximately 20% to 30% would receive the highest rating and the remaining 50% to 60% would receive the intermediate rating. However, this distribution is not a quota; that is, the panel will not be expected to force an allocation of providers to categories based on these proportions. Rather, its assessment will be based on evidence, including the provider's submission. The decision of the TEF panel will be the final determinant of a provider's rating. The panel will be under no obligation to comply with a quota or guided distribution when determining ratings.

The noble Baroness, Lady Royall, asked who will make the judgment in respect of what the rating should be, which is a fair question. The TEF ratings will be decided by a highly respected and experienced group of TEF assessors, including academics, students and employers. It might interest the Committee to know that more than 1,200 people applied for these roles, which means that this is an extremely experienced group. The group, as was recognised by many Peers, is chaired by the excellent Chris Husbands, whose name was mentioned earlier. The ratings given by the group are made independently of government, which I am sure the Committee will realise.

I have heard concerns that bronze might be considered a negative award, but this is not the case in other areas. For example, for the Athena SWAN awards, recognising the advancement of gender equality, or for Investors in People, a bronze award is clearly seen as a badge of high quality, just as it will be in the TEF. We are not, however, complacent about this, and are working with the British Council and others to ensure that TEF ratings are communicated effectively internationally, emphasising the overall high quality of UK provision. We will have a joint communication plan with them in place by the time the TEF ratings are published. I believe this demonstrates the quality above the high baseline that we expect in the UK.

Baroness Lister of Burtersett: I am sorry to interrupt, but can the Minister tell us whether there will there be a sub-bronze level, because otherwise, if bronze is the bottom, it is very difficult to see how it will be seen as representing quality?

Viscount Younger of Leckie: As I mentioned, there has been a full consultation on this. It came down to the best way forward, which we believe is to have three ratings. I should stress, and hope that I have stressed, that bronze is a good level and is highly respected. I want to make that quite clear to the Committee, and I hope that noble Lords will accept what I have said.

Lord Desai: My Lords, the question is: is anybody going to fail the exam? You cannot just have first, second and third, with nobody failing. If nobody fails, the third rating will be counted as failure.

Viscount Younger of Leckie: As I have said, the consultation has led us to believe that this rating system is the best that we have come up with. I have explained already that various other systems have been looked at and we believe that this is the right way forward. I understand that there is some passion around what methods should be used, but we believe that this is the right way forward.

I will continue on the same theme. My noble friend Lord Jopling and the noble Lord, Lord Lipsey, suggested that the TEF metrics will be gamed. We expect the assessment panels to take a holistic approach in assessing all the evidence, not just the metrics, and therefore it will not be easy to game the system. In addition, the role of the external examiners, a robust quality assessment system and the ONS review of the data sources we use are all important in tackling this issue.

The noble Baroness, Lady Warwick, suggested that the TEF will mean that some students will be forced to study at bronze institutions due to their circumstances. However, as I said just now, a bronze provider is still one that has passed a high bar on the quality we expect it to offer. The TEF assesses excellence above that baseline and will, we expect, incentivise and encourage that bronze provider to offer a better quality of teaching to that student than they do at present.

Then noble Baroness, Lady Lister, asked how lecturers and teachers will know how to improve their teaching on the basis of the TEF ratings. The TEF provides clear reputational and financial incentives for providers to improve teaching quality, but it is not for us to tell universities how to teach. However, all TEF provider submissions will be published and we would expect those in the sector to learn from one another and to continue to feed back to us as the TEF develops.

The noble Baroness, Lady Deech, raised the issue of the impact of the TEF on social mobility, which is a very fair point. She asked what effect the Government think that the linking of fees and teaching quality will have on social mobility. Fears about only the Russell group providers doing well in the metrics are, we believe, misplaced. The metrics have benchmarks that recognise the student body characteristics of each provider, and a number of other safeguards are in place to ensure that the TEF should actually enhance the quality of teaching for disadvantaged groups. I know that Les Ebdon has made some comments on that, which will be very much known by the Committee.

In conclusion, while I recognise the concern that has been expressed around the ratings of gold, silver and bronze, we should not deceive ourselves. Both home and international students already make judgments as to the relative merits of different universities, based on all sorts of unreliable measures. The TEF will allow those judgments to be better informed, based on evidence rather than prejudice. These amendments would undermine the TEF's ability to provide clear ratings and clear incentives to the sector to drive up teaching quality.

As the noble Lord, Lord Stevenson, has requested this stand part debate, I remind noble Lords that removing this schedule in its entirety would remove any link between quality and the fees that a provider was able to charge. It would also mean that the sector would not receive the additional £16 billion of income by 2025 that we expect the TEF to deliver. I do not think that this is what we, or the noble Lord, want.

Lord Stevenson of Balmacara (Lab): I am sorry to intervene on the Minister, but I really must challenge that. The situation, as he has already described it, is that fees have risen, substantially and then gradually, over the past period. That has been achieved perfectly straightforwardly by bringing forward statutory instruments that allow for an increase in fees relative to inflation. Although we have questioned some of the issues behind it, we have supported that. We are about to engage in a discussion in your Lordships' House on the fee increases that are to apply from next session. Those fee increases are detached from any considerations of quality, are entirely related to inflation and are done on the basis that the House will consider and approve them. What exactly is the difference between that and what he is proposing? I do not get it.

Viscount Younger of Leckie: I reiterate that the main way forward is that we want to link the issues of fees and performance. The TEF is a manifesto commitment, and I know that we are all agreed on the importance of recognising excellent teaching. As I have said very clearly to the Committee today, the Government have consulted extensively on the form of the TEF, and we will continue to listen to and engage with the sector as the TEF evolves. I say again that it is an iterative process, and that is why we do not need in primary legislation the detailed provisions that we have been discussing, as we believe they would hinder the constructive development that is already taking place. Therefore, I hope that the noble Lord, Lord Watson, will agree to withdraw his amendment.

The Earl of Listowel: My Lords, is there a risk with the direction the Government are taking that, in supporting the thriving, successful and very good teaching universities and, some might say, putting in a bad light the less well-performing universities, we will move to a culture of universities that is less rich and diverse, with fewer local universities and specialisms, and just a few thoroughbred universities that everyone will want to go to and a diaspora of rather struggling universities? Is the Minister prepared to go away and think about whether that is a consequence that might result from this and whether that would be helpful?

Viscount Younger of Leckie: I thank the noble Earl for his point. However, I think it is right that we should be bold and look ahead to bring in the performance-related measures that we have been talking about—the sector has been waiting 20 years for this. We are bringing it in carefully, with some consideration, and I hope the Committee today recognises that there have been a lot of checks and controls in this. I do not think we should stick to the status quo, in which there

[Viscount Younger of Leckie]
is no consideration of assessing the performance of universities or teaching. It is very important to be sure that we raise the quality of teaching in this country.

Lord Liddle (Lab): My Lords, I declare an interest as pro-chancellor of Lancaster University, where we support strongly the principle of the teaching excellence framework. However, what I have found in this debate is that the Minister appears very reluctant to admit that, in any of the excellent speeches that we have heard tonight, good points have been made that are worth him thinking about and coming back to the House on at Report stage. This is disappointing. Does the Minister acknowledge that this might be the reaction of Members all around the Committee, and will he reflect on that?

Viscount Younger of Leckie: I will reflect on that. I may not have said it, but I have appreciated the contributions from all noble Lords this afternoon. There have been a number of different angles to this and we had an interesting contribution from the noble Lord, Lord Desai. There is not a conclusive way forward—this is an iterative process—but I must say that, yes, I am listening. We believe that this is the right way forward. Although I have been listening, I will say again that this is a manifesto commitment and we are very keen to take it forward.

7.30 pm

Baroness Warwick of Undercliffe: My Lords, several noble Lords around the Chamber—probably all of us, actually—are anxious about the risks associated with this process; that is what we have been trying to describe. We are not resisting the way forward but trying to assess the extent of the risk. Can the Minister tell us whether there has there been a risk assessment and whether he can publish it if there has?

Viscount Younger of Leckie: I will reflect on what the noble Baroness has said. It may give her some comfort if I say that we are not rushing this in. The proposals that we have are not all in the Bill; that is why this is an iterative process. I will continue to engage, as will the team and my honourable friend in the other place, on rolling out the TEF.

Baroness Royall of Blaisdon: My Lords, we do not question the fact that this is a manifesto commitment. We support the fact that it is a manifesto commitment. We want to ensure that the system which comes out of the noble Lord's manifesto commitment works for all universities in this country and ensures their excellence in the future.

Viscount Younger of Leckie: My Lords, we all want that. I hope that in my considered response I have given my views as to how we see the way forward. I will say again that I have listened to all the views and will reflect carefully, when I read *Hansard*, on what noble Lords have said. I am sure that that will be read widely. I am listening but I do not wish to go any further from my views on how we go forward.

Lord Lucas: My Lords, my noble friend made a statement of the Government's policy regarding overseas students which was fuller and stronger than I have heard from anyone else—on which I congratulate him. Can he confirm therefore—it would be consistent with what he said—that the Home Secretary has now taken a step back from the remarks she made in her speech to the Conservative Party conference, and in particular the ones that implied she would reduce the number of students by refusing lower-quality courses, as she described them, the right to take overseas students?

On gold, silver and bronze, my noble friend is somewhat confused as to the effect of these things. As the noble Lord, Lord Desai, and others pointed out, bronze is only valuable because so many people get worse. Under the old Ofsted rating system of outstanding, good and satisfactory, it was quite clear that "satisfactory" meant "avoid at all costs". It was the lowest rating you could get above absolute disaster. That is the way it was perceived.

Although we in this country may manage to give things time, see them in perspective and understand why it is worth sending our children to a bronze institution, it would be extremely hard for agents overseas to do so. We will be competing with other countries which will not hesitate to ask, "Why are you thinking of sending this child to a bronze institution when we in Canada"—or Australia or wherever else—"can offer them a top-quality institution doing the same course in the same subject?". It would be really damaging.

It is also unnecessary, because it is not valuable information for a student. It is the Government's conclusion, but what is important is the students' and their advisers' conclusion. The way in which the Government choose to balance particular elements of their assessment of quality do not bear on the decision that an individual student may take. That must be a matter for individual decision. We should publish the information—absolutely—but not some arbitrary percentage. Someone in the Civil Service or in some committee may decide that only 20% of our universities are excellent. At least with Ofsted there are criteria that can be relied on. This will be damaging and will hurt one of our great industries. It is not based on anything useful or on fact, but it will be treated as if it is.

Lord Watson of Invergowrie: My Lords, the noble Lord, Lord Lucas, mentioned, as have many other noble Lords, gold, silver and bronze. At last year's Olympic Games an event at which many British athletes and Paralympic athletes won medals was swimming—we won many gold medals, many silver and many bronze. The Minister must be in line for a gold medal at swimming because he has been facing a torrent against him throughout the debate. He has been swimming manfully but has not made very much progress.

By my calculation, some 13 noble Lords have spoken in the last hour and 52 minutes. Of those, all were in favour of improving teaching quality, as you might expect, and of having a teaching excellence framework in some form. As all noble Lords have said, we welcome the role of Chris Husbands in developing it. However, with the exception of the noble Lord, Lord Willetts, we all believe that it cannot be delivered in the form

that is proposed—and even the noble Lord, Lord Willetts, could muster no more enthusiasm for the TEF than to say that the current metrics are not as bad as claimed. That qualifies as faint praise.

Many noble Lords also spoke against the link between teaching quality and fees in principle, and more spoke in favour of rating on a basis other than the gold, silver and bronze. The noble Lord, Lord Lucas, quoted someone in Canada, looking at British institutions and spotting a bronze and thinking, "Why would I advise my son or daughter to go there rather than an institution in Canada because it is only a bronze?" The point is that the bronze institution in the UK could well be better than the institution in Canada, but the perception will not be that. Perception consistently outranks fact, and that is the big danger in the three-tier system being advanced by the Government.

I wish to make a serious point about two of the contributions in the debate—those of the noble Baroness, Lady Deech, and my noble friend Lady Warwick. Both highlighted and made powerful points on social mobility and the effects that the Government's proposals not only could but almost certainly will have. I quoted Cambridge University in my opening remarks; that has the same fear. The Government claim to be committed to improving social mobility although some of us are unconvinced. That view is reinforced by the fact that the Minister, very disappointingly, failed even to mention social mobility in his reply. In his own terminology, he needs to reflect on that matter before Report.

In his response, the Minister referred to linking fees to quality of teaching but did not say how that would be achieved. That is the main reason for noble Lords' opposition to the link. My noble friend Lady Cohen said that objectivity is the key here. That is what is required, and it is a quality that is lacking in the metrics as they stand at the moment.

The problem of rating on the basis of institutions has also been highlighted. The Minister said that, at the moment, the Bill allows for the scheme to be developed at institutional level and then at departmental level at some point in the future. The question mark is how. If the ratings are to be made on a departmental or faculty basis, how can you avoid, ultimately, differential fees being charged within institutions if the Government truly believe in that link? That certainly is not a road we would wish to go down. The bottom line here is that the Government need to build confidence within the sector that the path they are going down is one that will improve the sector's quality and sustainability, particularly with so many new operators arriving.

My noble friend Lord Desai asked whether anyone would fail the exam. The Minister could not bring himself to admit it, but unless he believes that all institutions will be capable of being rated gold, the answer can only be yes. That is why our Amendment 195 recognised that fact and advocated a simple pass/fail rating. That way, every institution knows where it stands—as does everyone outside it when making their decisions. That is something that those looking at a course at a university have the right to have available when they make their choice.

I suggest that the Minister will need to come to terms with the fact he is not carrying noble Lords with him. I suggest he will need to change his position substantially before we come back to this matter, which we undoubtedly will when we next discuss it on Report. On the basis of an invigorating and very useful debate, I beg leave to withdraw my amendment.

Amendment 122 withdrawn.

House resumed. Committee to begin again not before 8.41 pm.

Parliamentary Proceedings: Statistics

Question for Short Debate

7.41 pm

Asked by ***Lord Butler of Brockwell***

To ask Her Majesty's Government what steps they are planning to take to include statistics on the time spent on parliamentary proceedings on each Part of an Act in the Explanatory Notes on Acts of Parliament.

Lord Butler of Brockwell (CB): My Lords, I start by confessing that behind this dry request to the Government for statistics lies an ulterior motive. However, it is one that should commend itself to all true parliamentarians. The suggestion in the Question is one I owe to Daniel Greenberg, a former parliamentary counsel and a campaigner for high legislative standards. I declare a personal interest as a member of the executive committee of the Better Government Initiative. I am very grateful to the most distinguished galère of participants for giving up their dinner to take part in this short debate, which I attribute to the general issue of the importance of our parliamentary legislative processes—particularly relevant as we approach the challenges of Brexit.

Making law is central to our job as parliamentarians, but it is not a job that the Executive always helps Parliament to do well, although I think we all feel that the House of Lords does it more thoroughly than the House of Commons. Even so, the results are not reassuring. There is a widespread feeling that, under pressure from the Executive, Parliament makes too much law. To give one illustration, in 2010, legislation covering 2,700 pages was added to the statute book. This was more than three times the amount of legislation passed 50 years before. That takes no account of all the guidance and other notes issued to specify the application of such legislation.

So much of this legislation is unsatisfactory. Some time ago I asked a Question about how many Acts passed by Parliament between 2005 and 2010 had never been brought into effect. The answer was that part or all of 77 Acts passed by 15 departments had never been brought into effect, despite being passed by Parliament. They had been found to be impracticable or had been overtaken by second thoughts.

It should be the job of Parliament to prevent or improve such defective legislation, but in truth Parliament is overwhelmed. Your Lordships' House does its best, but one sometimes feels that, with the introduction of programme orders and family friendly hours, the House of Commons has virtually given up. To take one

[Lord Butler of Brockwell]
particularly flagrant example, the Finance Act 2005 contains 106 sections and 11 schedules, covering 202 pages of legislation relating to income and corporation tax, trusts, film relief, stamp duty and various anti-avoidance measures. It was passed by the House of Commons in four hours and two minutes of one day and by the House of Lords in 40 minutes on the following day. Admittedly, this was in the rush before a Dissolution, but that is surely no excuse for allowing complicated legislation, affecting the lives of citizens, to pass with such blithe lack of detailed scrutiny.

To take another more recent example, the Immigration Bill in the last Session started in the Commons with 56 clauses, eight schedules and 107 pages. It left the Commons with 65 clauses, 12 schedules and 168 pages. When the guillotine fell at the end of Report, eight new clauses, one new schedule and 10 amendments were added to the Bill with no debate whatever.

There are honourable exceptions. I have spoken in this House of my admiration of the process to which the then Investigatory Powers Bill was subjected. This included three reports by independent bodies, pre-legislative scrutiny of a draft Bill, and many hours of detailed scrutiny in the Lords and Commons. But that was the exception.

This Question asks whether the Government, when publishing—as they do—Explanatory Notes on Acts of Parliament after they are passed, will include the parliamentary time spent by each House of Parliament on each part of the Bill. These post Royal Assent notes already include a schedule of *Hansard* references for the different stages of the Bill, and, as we know, *Hansard* shows the times at which debates start and conclude. This information is readily available. The House of Commons already publishes such information for each Bill in its sessional returns, but that information is lost in a plethora of other information. The House of Lords' statistics on business and membership include time spent on the various stages of Bills, but in aggregate, not for individual Bills.

The Cabinet Office recently introduced a new format for these Explanatory Notes, intended to be simpler and easier to navigate, but that format does not include the time spent on each stage of parliamentary proceedings. It can be easily added. I should also like the information to include new provisions added during each Bill's process without debate.

I repeat that this is purely factual information, already gathered and easily available. The purpose of publishing it is, of course, to bring to light where parliamentary scrutiny has been inadequate and, by doing so, to encourage more effective procedures. I believe that neither government nor Parliament would want it to be shown that legislation had been passed by Parliament with ineffective scrutiny. If the result was that more parliamentary time was given to a smaller volume of legislation, that would be no bad thing.

This is only one small contribution to improving parliamentary scrutiny of legislation, on which I am delighted that the Constitution Committee of your Lordships' House is currently conducting a major inquiry. It is practicable and a virtually costless change simply in the method of publication of material already collected.

I find it difficult to envisage how the Government could refuse a request to publish this readily available information in this more convenient form. I suppose that I could always get it by putting down a Parliamentary Question after every Act received Royal Assent, but that would give everybody more trouble and I hope that I will not have to.

7.50 pm

Lord Mackay of Clashfern (Con): My Lords, I confess to having put down my name for this debate for the ulterior motive that the noble Lord who introduced it has explained. I think it important from the point of view of this House to compare the situation here with that in the House of Commons.

Over the years, Members of the House of Commons have become ever more burdened by the questions and cases that constituents raise with them in order that they should deal with them in such a way as to alleviate their constituents' problems. That applies in all sorts of cases. You have only to send an email to a Member of Parliament to find out exactly what happens in that respect. The number of requests for help they receive over a parliamentary Session is huge. They cannot be expected to have available more than the 24 hours per day that we have allotted to us. It therefore stands to reason that the amount of time that individual Members have available to study Bills before the House becomes more limited.

In that situation, the role of this House as a revising Chamber is made even more important than it would otherwise have been. It is extremely important that we concentrate on that aspect of our business because of the need to make sure that legislation when passed is workable. As the noble Lord, Lord Butler, said, we make laws that apply very generally. He mentioned tax law—that applies to a lot of people. It is very important that it should be workable. The consequences of bad legislation are so significant that we must do everything we can to avoid it.

As has been said, the volume of Bills presented has gone up, which increases the problem. This situation needs to be highlighted. Publishing the statistics which the noble Lord has asked for would be a considerable improvement in that connection.

The obligation on this House to scrutinise legislation is extremely important. It is not altogether easy, because Bills when they come here are not the most readable pieces of literature one has ever seen. Very often, a good deal of work is required to see what is being modified. My four minutes is up. That concludes what I have to say.

7.54 pm

Baroness Taylor of Bolton (Lab): My Lords, I agree with the noble and learned Lord, Lord Mackay, that the pressures on Members of Parliament these days in terms of constituency work, emails and so forth are quite astonishing. That is part of the problem and I do not think that family-friendly hours have helped.

I congratulate the noble Lord, Lord Butler, on initiating this debate and go along fully with what he suggests regarding transparency and information. The figures he gave about the number of Bills and the fact that the amount of time has not expanded in the same way are significant. I am sure that the nature of the legislation is also important—not just the number of Bills but the number of pages and clauses in them—but I know he would not suggest that we look just at the amount of time spent, because you can spend your time well or not very well.

I want to defend the concept of programming legislation—timetabling by another name. I remember the days when, as an opposition spokesperson, I would spend hour after hour on Clause 1 in Committee to force the Government to have a guillotine. I would gain some political kudos, but we would not make any progress in terms of getting every bit of that Bill debated. However, it was an important political ploy and a method of putting pressure on the Government. I admit culpability for our having programming, because when I was Leader of the House of Commons I chaired the Modernisation Committee and we came up with the idea that, as an alternative to the incentive of dragging out the first clauses of Bills, we should have a system whereby the Government and the Opposition—the usual channels—sat down together and decided which were the major issues and which required the most detailed scrutiny. The Opposition were given priority as to the debates they wanted, in exchange for the Government knowing when a Bill would come out of Committee.

That system is in principle a good one, but it has been quite significantly abused over the years and probably needs revisiting. But however good the system of scrutiny, if we do not assure the basic quality of legislation coming to us, Members of Parliament in either House are faced with an impossible task. I do not want to say too much about what should be done on the quality of legislation, because as a member of the Constitution Committee with the noble Lord, Lord Norton, I know that is something we are looking at.

The pressures on Parliament today are intense. The pressures on Members of Parliament are desperately intense and people expect quick solutions to complex problems—I fear we will see that on Brexit as well. We all have a responsibility to do what we can to scrutinise where we can, but government has a responsibility to look again at the quality and readiness of the legislation it brings forward in both Houses.

7.58 pm

Lord Hope of Craighead (CB): My Lords, I too congratulate the noble Lord, Lord Butler of Brockwell, on securing this debate and on the masterly way in which he has revealed what it is really about. I have to confess that I was attracted to it for reasons that have very little to do with the issue to which he addressed his remarks. My reasons go back to the time which I spent here when preparing judgments as a Lord of Appeal in Ordinary. One of our tasks was to interpret the legislation which emerged from both Houses. From time to time, appeals would come before us which required a close examination of the words used in order to find out what they really meant when they were applied to the facts of the case before us. That was not always easy, as one might imagine. It is the product of the difficulty that I think confronts every legislator, which is that it is difficult to predict every situation to which the words may have to be applied when the legislation takes effect. The words chosen may matter a great deal, and the words used will always deserve careful scrutiny.

One of the tricks of the trade that we who were engaged in this exercise learned from the noble and learned Lord, Lord Steyn, was to look to the Explanatory Notes for assistance. We as Law Lords had the advantage over the justices in the Supreme Court in that all we had to do was to go downstairs to the Printed Paper Office, where they were readily available. Today the preamble to the notes says:

> "They do not form part of the Bill and have not been endorsed by Parliament".

I cannot recall whether those words were there when we were looking at them 10 or more years ago. But we thought it was proper to look at them for such assistance as they might give, on the view that they were part of the travaux préparatoires, as the Europeans would say, to the Bill. We were accustomed to using the travaux when construing international conventions so it did not seem a very big step to look at the Explanatory Notes, and it was information that was readily available. So I take this opportunity to assure those who prepare these documents that they are read and that there are occasions, although perhaps not all that many, when they are particularly helpful.

As for the question that lies at the heart of this debate, it follows from what I have been saying that there is a real value in line-by-line scrutiny. As I have said, we all find it hard to predict the future, and it is hard for even the most experienced and skilful drafter to examine the effect of a clause from every possible angle. The benefit that comes from line-by-line scrutiny is that it offers the opportunity for these angles to be explored in debates to which people from all sides can contribute. The policy objective, the practical effect and the meaning of the words used all need to be examined. But parliamentarians need to be given the time and opportunity to do this. This is not really a serious problem in this House, given the way that we organise our business. I am sure that the Minister knows very well how much value the Government attach to the work that is done here because of the way we work, and how essential our contribution is to the quality of our legislation.

However, there are grounds for concern about what happens in the other place. The best example that comes to my mind relates to what happened last year on the then Scotland Bill. It was exacerbated by the fact that the SNP, which played an active part in the debates in the House of Commons, has for reasons of principle no Members in this House. Coming as I do from north of the border, I tried to trace what its position had been on the various clauses that we were examining here, just in case there were points that it was seeking to make which we might overlook. I found this very hard to do, as it seemed that many of the amendments that it had tabled were not reached. The consequence was that some of the provisions in the Bill were not debated at all in the other place, and

[Lord Hope of Craighead]
I fear that on a number of points of importance that party's voice was not heard at all in either House. That is an example of the kind of problem to which the noble Lord referred, and I support everything he said in his opening remarks.

8.02 pm

Lord Norton of Louth (Con): My Lords, I too congratulate the noble Lord, Lord Butler, on raising this important Question. I appreciate that the Question addresses quantity, in terms of the time devoted to consideration of a Bill, rather than the quality of debate, but without adequate time it is difficult if not impossible to subject a Bill to adequate scrutiny.

It is important to acknowledge that there have been improvements in the legislative process in each House. The use of pre-legislative scrutiny is a notable advance, albeit limited in terms of the number of Bills subject to such scrutiny. The use of Public Bill Committees in the Commons is an improvement on what existed before. In this House, the main advance has been in the use of ad hoc committees for post-legislative scrutiny. We should recognise that there is more we could do to improve the quality of our legislative scrutiny, not least employing evidence-taking committees.

Providing the data recommended by the noble Lord, Lord Butler, would be helpful, for the reasons he has given. As he said, they are not difficult to provide. For the Commons, the Sessional Diary provides the timings for each stage of a Bill, so it is a fairly straightforward task to reproduce the data for each Bill once it has completed its passage. I want to add to what the noble Lord, Lord Butler, has recommended. There is a case not only for publishing in the Explanatory Notes on an Act the time taken to consider the stages of the Bill, but for publishing in the Explanatory Notes to regulations the time taken for debate on those regulations.

Of course, the key point is not how much time is devoted to discussing regulations but rather the fact that most statutory instruments are not accorded any parliamentary time. In terms of consideration, as opposed to debate, the contrast between the two Chambers is notable, given that we have the Delegated Powers Committee and the Secondary Legislation Scrutiny Committee to examine the input and output side of statutory instruments, and the other place has no equivalent bodies.

On the rare occasions that SIs are debated, little time is taken. In the other place in the previous Session, just over seven hours were devoted in the Chamber to the consideration of statutory instruments subject to the affirmative resolution procedure and a grand total of 22 minutes to statutory instruments subject to the negative resolution procedure. The normal practice is to refer SIs to a Delegated Legislation Committee, but it is rare for a Committee to sit for more than 30 minutes. I noticed that one in the previous Session sat for a grand total of 11 minutes. Ruth Fox of the Hansard Society has drawn attention to the fact that prayers against SIs tabled by the leader of the Opposition or a Front-Bencher are not automatically debated in the House; in the previous Session only five out of 19 were debated. In this House we spent a total of 67 hours on secondary legislation, either in the Chamber or in Grand Committee, but that figure is notably lower than in preceding Sessions.

The Question of the noble Lord, Lord Butler, provides a useful nudge, emphasising the lack of attention given to ensuring full and adequate scrutiny. It highlights a problem rather than tackling it, but it reminds us of the need to tackle it.

8.06 pm

Lord Lisvane (CB): My Lords, my noble friend's excellent Question is narrow, but its implications are wide. The rule of law is central to any civilised society. The quality of law is a determining factor in the respect in which the law is held, so it is central to the rule of law. The other side of the equation is just as important: how well does the legislature scrutinise the legislative proposals of the Executive?

One of my learned predecessors as Clerk of the House of Commons, Sir Thomas Erskine May, said in the first edition of the great work which still bears his name that there are no limits to the legislative authority of Parliament other than,

"the willingness of the people to obey, or their power to resist".

So that legislative authority should be exercised with great care. Alas, I do not think we can make the claim that it is. The legislative process may not quite be broken, but it is certainly not working very well. The approach of Brexit legislation makes the need for improvement ever more urgent.

Despite words of comfort from the Government, too much of significance is still put into delegated legislation, with no firm and observed principles as to where the boundaries should be set. There is extensive quasi-legislation, such as codes and guidance, which have the force of law but are largely left to Ministers to make up their minds about after the event. Powers delegated to Ministers, including Henry VIII powers, are often much more extensive than they need to be, and generally with insufficient parliamentary scrutiny; for example, in the previous Session there were 14 government Bills, containing a total of 41 Henry VIII provisions.

When I was invited by the Statute Law Society to give its annual lecture in a few weeks' time, I had no difficulty in choosing the title of my lecture. If noble Lords will forgive a moment of advertisement, it is: Why is there so much bad law? "Bad", of course, refers both to the end product and the way in which it gets on to the statute book. In my previous life, I used to say to audiences outside Westminster, "Don't for a moment run away with the idea that a Bill is draft legislation; it is not. It is, word for word, what the Government of the day want to see on the statute book". The corollary of that, of course, is that Ministers, of whatever party, have a collective allergy to amendments. In a way, that is understandable. If a department has been thrashing out the contents of a Bill, clearing it with other departments and the devolved Administrations, dealing with potential difficulties within the party of government, getting it through the business managers and PBL, there may be a feeling, when the Bill is finally ready for introduction, that the job is done.

But of course that is when the real job has to start, and that is where both Parliament and Government need to up their game.

My noble friend referred to draft Bills. I realise that Her Majesty's Ministers have quite a lot on their plate for the foreseeable future, but I have been very disappointed that draft Bills appear to have become an endangered species. In this Session, only the ombudsman Bill was published in draft. In the Queen's Speech, another was promised but it has so far failed to appear. Draft Bills can of course be heavy on drafting resources, because parliamentary counsel are involved with both the draft Bill and then the Bill as it is to be introduced. But they offer a real increase in the quality of legislative scrutiny, with a consensual approach, evidentially based amendment and public access to the legislative process—much greater access, and much more effective, than the evidence-taking phase of Commons Public Bill Committees.

Draft Bills should commend themselves to business managers because consideration by a Joint Committee should avoid double handling in the two Houses and make the passage of the Bill as introduced much smoother. If only the Higher Education and Research Bill had started life as a draft Bill. I remember from our enjoyable association in the House of Commons that the Minister used to think that draft Bills were really quite a good idea. I hope that he still does so and that he will be able to offer us some comfort and cause for hope this evening.

8.10 pm

Lord Ryder of Wensum (Con): My Lords, I too thank the noble Lord, Lord Butler, for initiating this important debate. Our constitution has emerged over centuries without plans or planners, yet checks and balances to it have evolved all the while. The noble Lord has proposed a modest constitutional balance tonight and I wholeheartedly support it.

My support stems partly from the decision taken at the turn of the century by the then Administration of Mr Tony Blair to impose House of Commons guillotine Motions, euphemistically known as programme Motions, on government Bills. This has led to vast segments of Bills receiving no scrutiny at all in the other place. Even those parts of Bills examined by elected Members often confirm a lack of rigour and attention to the detail on their behalf. Here I disagree with the noble Baroness, Lady Taylor, for whom I have great respect. I was the Chief Whip in the other place for six years before automatic guillotines came about and it simply was not the case that a huge number of Bills were guillotined. In my six years, very few Bills ever were, and had I been subjected, as I often was, to the attitude of stopping on Clause 1 and forcing the Government to guillotine a Bill, I rejected that attitude. Once it was clear that I rejected it, you did not have to try again.

I come to the point—I was unaware of it—raised by the noble Lord, Lord Butler, about four and a half hours being allocated to a Finance Bill. This House, of course, is not allowed to go line by line through a Finance Bill. Again, if I may use some personal experience, 30 years ago when I was a Treasury Minister speaking on Finance Bills, I received the most difficult time that I have ever had as a politician in answering detailed questions for 60, 70 or 80 hours—line by line—on those Bills. I did not realise which example the noble Lord would raise, and I feel that it is deeply regrettable.

The Conservative Opposition promised to abolish the automatic guillotining of Bills before the 2010 general election, but they reneged on the pledge by caving into elected Members who confused, and still confuse, an efficient House of Commons with an effective House of Commons. Efficient it may be, effective it is not. I fear that the other place is becoming an arena assembly, and arguably only a part-time one at that, and that it no longer functions as an effective, transformative legislature.

Another consequence of the absence of rigorous scrutiny in the other place is an increase in the number of judicial reviews, leaving aside the implications of Pepper v Hart in 1993. The resurgence of judicial reviews has irritated Ministers and officials and it is small wonder that the Cabinet Office has published, and republished, a pamphlet for use by civil servants entitled *The Judge over Your Shoulder*. That pamphlet could also be distributed to Ministers and Members of Parliament and I think it would help them, too.

I also want to emphasise, as other noble Lords have, the importance of ensuring that statistics on hours spent in parliamentary proceedings on each part of what becomes an Act should include the time taken on Bills in their draft form as well as in pre-legislative scrutiny. In my experience, the procedure of pre-legislative scrutiny has enhanced the quality of Acts of Parliament. In particular, I recall in your Lordships' House the Communications Bill of 2003 and the Civil Contingencies Bill of 2004, which were prime examples of the success of this procedure. In contrast, I also recollect the chaos caused by the Public Bodies Bill of 2010, which was not subjected to pre-legislative scrutiny and was deficient on almost every count.

I am pleased that my noble friend Lord Young is answering this debate from the Front Bench. Few people in either House have as much knowledge as he does about the subject under consideration and I share the hope of the noble Lord, Lord Butler, that he may answer this debate in a very positive fashion.

8.16 pm

Lord Judge (CB): My Lords, when I saw what the noble Lord, Lord Butler, was asking the House to consider in the Question I realised that there must be some ulterior motive. I share his ulterior motive, which is why I wish to say a little.

Although we constantly assert that we are carrying out our scrutinising responsibilities, it is very rare that Parliament is scrutinising the legislation. We have heard about having 2,700 pages of primary legislation in every year for the last however many years—it is certainly four or five—for which the statistics are available. We have also allowed 11,000 to 12,000 pages of statutory instruments to go through and out into the public, telling them how they must live their lives. In the Digital Economy Bill, we have 46 clauses which include no fewer than 12 Henry VIII clauses. They will all come into force as statutory instruments. They will go through a process of not being really much scrutinised.

[LORD JUDGE]
When they come here, if in our scrutiny we say anything about any provision in it, the whole instrument goes. We then have a Strathclyde review telling us that we have interfered with the scrutinising process carried out in the other place and are somehow acting unconstitutionally.

I want all your Lordships to try to imagine my noble and learned friend Lord Hope of Craighead wondering what a statute meant. Is it a few words in a statute; a few words which appear in a number of places in the same statute and are nearly the same; or a few words that are nearly the same appearing in two, three, four or five statutes? He may put a wet towel around his head and wonder, "What on earth does this mean?". He does not of course think, as I always did when I had a wet towel around my head, "What did Parliament think it meant?", with the follow-up question, "Did Parliament think about it at all?". Of course you cannot say that as a judge, because you are bound by the Bill of Rights and cannot question anything that has happened in the process of the parliamentary proceedings, so you struggle to find the answer.

This issue has to be addressed. If I may say so to the noble Lord, Lord Butler, I take the view that this is a tiny step forward to consideration of how we legislate—how we in both Houses seek to control the Executive. That is what we are here for.

8.19 pm

Baroness Smith of Basildon (Lab): My Lords, this has been a very interesting debate—I am sure that the Minister will say the same. I certainly welcome the confession by the noble Lord, Lord Butler, that the title of the debate requesting statistics was in fact a ruse to raise a broader and wider issue of some significance. After his many years at the highest levels of the Civil Service, perhaps we should ask whether the noble Lord, Lord Butler, has picked up some political tricks in your Lordships' House or has imported some clever "'Yes Minister" tricks to your Lordships' House from the Civil Service. Either way, we are grateful to him as this is a welcome opportunity to debate our core functions, role and work and how we could perhaps do it better.

I want to raise three points. The first is about the value of parliamentary scrutiny. The noble Lord, Lord Lisvane, commented that Bills are seen as being absolute when they leave the department rather than when they leave Parliament. Noble Lords who were present for the Minister's response in the previous debate will unfortunately have seen that in practice.

This House takes its responsibilities as a scrutinising and revising Chamber very seriously. We act within the conventions that guide and inform the role of a second Chamber, although that role of scrutiny and revision is not always welcomed by Governments. The work we undertake is at the heart of a functioning democracy; it is the process of scrutiny, challenge and holding the Government to account. Again looking at the previous debate, scrutiny is not just a tool to provide Governments with a fig leaf of legitimacy for legislation, but neither should it be a Trojan horse for political challenge.

Other noble Lords may disagree or agree on this, but there is a disappointing political trend that some take the view that any challenge from your Lordships' House is some kind of constitutional outrage. The noble and learned Lord, Lord Judge, referred to this on the tax credits SI and Strathclyde. We have seen sabre-rattling around the tax credits issue and on Brexit. We have heard that the Lords should be abolished or suspended and there have been bizarre calls for 1,000 new Peers. I have to admit that I have found this dialogue very frustrating. Debate on serious issues needs perspective and adult consideration, not threats. Let us put on record again, in order to be absolutely clear, that we will always continue to act within the conventions of this House. We value and respect our role as a scrutinising and revising Chamber. We fulfil our responsibilities with diligence. We will not exceed our responsibilities, but neither will we be bullied into abdicating them. We will do our job: no more and no less than that.

We have also looked at who has responsibility for scrutiny. Obviously it is a matter for Parliament. Perhaps we have been little hard on the other place tonight, because this House has a special responsibility in that, unlike the other place, scrutiny is our sole focus without the competing demands of constituency representation. But, as the noble Lord, Lord Butler, and my noble friend Lady Taylor said, the Government also have a responsibility. Too often we have seen badly drafted legislation on which the Minister responsible has been unable to provide adequate information to allow for proper consideration. When we had the Trade Union Bill, there was no impact assessment until after Second Reading in your Lordships' House, yet it had been through all its stages in the House of Commons. That was clearly against Cabinet Office guidelines. However, we can scrutinise well. The noble Lord, Lord Butler, used the then Investigatory Powers Bill as an example in terms of the scrutiny it received. The parallel Select Committee set up by your Lordships' House to look at the then Trade Union Bill brought cross-party forensic examination to the most vexatious and politically controversial parts of that Bill.

Can we do better? Yes, of course. In tonight's debate we have heard that we want to do better within our remit. A number of suggestions have been made. I shall concentrate on a couple in the time available. The noble Lord, Lord Butler, suggested, slightly tongue-in-cheek, I think, stating the time for debate in the Explanatory Notes. As the noble Lord, Lord Norton, and my noble friend Lady Taylor indicated, time alone is not an accurate indicator of the quality of scrutiny that a Bill receives. We can all think of examples, some fairly recent, where debate has been long but wisdom short—and 10 people making a similar point is not 10 times the scrutiny of only one noble Lord making that point.

There are other examples where a short, focused speech has raised a new perspective or issue. The noble Lord, Lord Ryder, shared his personal experiences in Committee. I was a member on the government side on the National Minimum Wage Bill. The Conservative Opposition tried to prevent the minimum wage coming in and kept us up not just late into the night but through the night into the next day for the longest ever sitting of a House of Commons committee.

The substantive point made by the noble Lord, Lord Butler, was about being able to assess whether a Bill has been properly examined. I think he is on to something here. One of the things I would find really useful—the then Housing and Planning Bill is a really good example of this—is that when a Bill comes from the other place to your Lordships' House, it would be nice to know easily, at a glance, what parts of the Bill have been added on without being debated. A number of clauses were added to the Housing and Planning Bill on Report in the House of Commons which were never debated. Had we had that information easily available, we could have focused our attention and energies on the parts of the Bill that had had no consideration.

I shall make one other very brief point about the consideration of secondary legislation. This is going to be particularly important as we move forward on Brexit. Our committees on SIs are invaluable, and if we are going to have an avalanche of thousands of SIs to give effect to EU legislation, we need to consider how best to do this. If we fail, Parliament could stand accused of being little better than a sausage machine where all the ingredients are tipped in at one end and emerge from the other end wrapped up without any thought or modification.

This has been a useful debate. I hope the Minister will be able to respond positively. We value what we do, we know we can do it better and we would like to do it better.

8.26 pm

Lord Young of Cookham (Con): My Lords, I thank the noble Lord, Lord Butler of Brockwell, for this debate and for the array of big hitters he has tempted away from the long table. With some double-counting, we have a professor of government, a Cabinet Secretary, a Clerk of the House of Commons, three government Chief Whips, the Convenor of the Cross Benches, a Lord Chief Justice, a Lord Chancellor, a Lord of Appeal in Ordinary, two Leaders of the Commons, the Leader of the Opposition and a Lord Privy Seal. Between us, we could provide the entire cast for "Iolanthe" and "Trial by Jury".

The noble Lord, Lord Butler, has long been associated with initiatives to promote better scrutiny of legislation, and he and I have spent many weekends at Ditchley Park, with others, as part of the Better Government Initiative considering reform in this area. In the words of Sir Humphrey, it would be a brave Minister who refused to consider a proposal with the impressive pedigree of the noble Lords who have spoken this evening.

I want to reverse the normal order in which Ministers respond to these debates by addressing head-on the specific and narrow proposal from the noble Lord and then considering the broader context in which it is placed and addressing some of the other points raised in the debate.

The noble Lord asked whether the Government had any plans to include in the Explanatory Notes statistics on the time taken to debate each part of a Bill. The short answer is that we do not—but that does not, of course, rule out further consideration of the proposition put forward so eloquently this evening by him and others. The reason we do not is, first, because the Explanatory Notes are designed to help the readers of legislation understand its legal effect. Secondly, the notes to Acts already include the *Hansard* column references to debates at each stage, so the Act is permanently accompanied by a record of how each House scrutinised the legislation in its various stages.

The raw data which the noble Lord is after on the actual time spent on each part, which goes beyond what is currently published, are already available in the public domain, as he said, since *Hansard* includes the times when consideration of each part of the Bill begins and ends. So, against the background of what I have said about the Government's proposals, perhaps the noble Lord, Lord Butler, as a first step might want to ask the authorities in both Houses to conduct a pilot to publish the data he is after in respect of some suitable Bills.

Another option would be to see whether the Hansard Society might produce some historical data, and we could then see whether this adds value to the legislative process or produces the outcomes that the noble Lord seeks in terms of influencing behaviour. I will certainly bring to the attention of colleagues in government the proposition we have been considering, and I noticed the veiled threat that if action is not taken a whole series of Parliamentary Questions might be tabled to elicit, at some cost, the information that he has asked to be included in the Explanatory Memorandum.

I shall add a health warning at this stage and echo some of the points made by others as the publication of these data may give an incomplete picture of the time spent. A Bill that has been published in draft first, that has been extensively considered and amended and has had the wrinkles ironed out may need less time than a Bill not published in draft. Key clauses in a Bill may have been considered elsewhere, for example in an opposition day debate, or may have been examined in detail by a Select Committee. A good example of this was the work of the Home Affairs Select Committee into the Psychoactive Substances Bill when the Bill was before Parliament. Simply taking at face value the time spent on a specific Bill might underestimate the volume of scrutiny that it had attracted.

I turn now to some of the broader issues that were raised. In doing so, I recognise the force of many of the criticisms that have been made about how legislation is considered. I am sure that your Lordships will agree that this Prime Minister's aspiration to publish more Green and White Papers can only be a good thing—a point underlined when my right honourable friend the Leader of the House of Commons recently gave evidence to the Constitution Committee and said he was keen to see more legislation preceded by Green and White Papers. That committee is currently conducting an inquiry into the legislative process, and two members of it have spoken in our debate today.

Baroness Taylor of Bolton: Three.

Lord Young of Cookham: Three members. Again, I will ensure that members and officials note the contributions that have been made in this debate. Were the Constitution Committee to be persuaded by the

[Lord Young of Cookham]
arguments that have been put forward this evening and to include that in its final report, that would of course be a significant step forward.

At the same evidence session, the Leader also expressed his support for pre-legislative scrutiny. So far in this Parliament, we have seen several major pieces of legislation published in draft, including the Wales Bill and the then Investigatory Powers Bill. It is the Government's intention to publish legislation for pre-legislative scrutiny wherever possible. The draft Public Sector Ombudsman Bill was published only last month, following hot on the heels of draft tax legislation at the Autumn Statement.

I endorse what the noble Baroness, Lady Smith, and others have said about the value of scrutiny by your Lordships' House, which the Government value enormously. I recognise that it may be possible to make further progress, and I will deal with some of the suggestions in a moment. I know that many of your Lordships are concerned that Bills are not subject to enough scrutiny in Parliament, particularly in the other House. I just ask your Lordships to remember that each House has its own style, and we should be diplomatic in discussing how the other place conducts itself, not least so we do not precipitate a domestic dispute and retaliatory action from down the Corridor.

I would like to address my noble friend Lord Ryder's concerns about programming. Like him, I would not support the use of the guillotine by any Government unilaterally to curtail discussion on controversial Bills in an overprogrammed legislative Session. This is what has happened in the past, and I have voted against such Motions. But here I find myself in agreement with the noble Baroness, Lady Taylor, in that this does not mean that it is wrong for business managers to seek agreement among themselves and then to put to the House a proposal for the passage of a particular Bill. This can avoid wasting valuable time on procedural Motions and enable the House do to its job properly.

I had to sit opposite the noble Baroness, Lady Taylor, on the right-to-buy legislation, I think, discussing at length the timetable Motion in Committee. I think we would both agree that that was not the best use of time for either of us. Indeed, as shadow Leader of the House in the other place in the late 1990s, I added my name to some programme Motions tabled by the noble Baroness where I thought adequate time had been proposed, as did the then shadow Leader from the Lib Dems, the noble Lord, Lord Tyler. Both MPs and stakeholders outside value the certainty that programme Motions deliver, so that they know when particular measures will be debated in a Bill and can plan their lives appropriately. That is the model that has been put in place for the last five years and is in marked contrast to my earlier years in another place. The noble Lord, Lord Butler, referred to the 2005 Finance Bill, and I very much hope there will be no recurrence of what happened then.

No programme resolutions have been divided on since the 2012-13 Session. Although I was either Leader or Chief Whip for part of the time, the credit goes as much to opposition parties for not making unrealistic demands. Nor was it the case that this is all a Front-Bench stitch-up between the major parties. Back-Benchers, who are more independent than at any time previously—as I know to my cost as a former Chief Whip—could have forced a Division on these programme Motions, as could have the minor parties. But they did not. The fact that this and the previous Government have relied less on draconian programme Motions is testament to the more mature approach now adopted in the other place, exemplified by the lack of Divisions on those Motions. Things have changed since my noble friend left the House in 1997.

Following on from this, the Government have consistently allocated a more generous amount of time for Bill stages in the Commons. If we look at the current Session, three Bills had multiple days for Report in the other place, something which was previously very rare. On the 12 Bills which have had Report in the Commons, all groups of amendments were reached. Twelve Bills have been committed to Public Bill Committee, and all but one Bill has reported early. Only the Public Bill Committee on the Digital Economy Bill was still debating new schedules when time ran out, but all the other provisions in the Bill as proposed by the Government had been scrutinised. No knives have been used to control debate in Public Bill Committee in any programme resolutions since the 2012-13 Session.

Time spent is the subject of this debate and, by the end of last year, the amount of time spent in this Session in the Commons scrutinising Bills in Committee was 151 hours and six minutes. Oral evidence has been heard from 124 witnesses, in eight Public Bill Committees. By the time Parliament rose for the Christmas Recess, it had spent a total of 472 hours and 15 minutes debating the Government's legislative programme. This averages out to more than 23 hours per Bill. Although exact comparisons between the two Houses are difficult, your Lordships may be interested to know that the Whips estimate that the Commons spent 247 hours and 22 minutes debating government legislation, while your Lordships' House spent 224 hours and 53 minutes.

We should not forget that the other place has often been more innovative and introduced reforms that have aided parliamentary scrutiny. These include carryover Bills, which in practice mean that Parliament has more time to scrutinise such Bills, but also public evidence sessions before Commons Committee stage, which have been popular with stakeholders and MPs.

A number of issues were raised, which perhaps I can deal with briefly. A number of noble Lords referred to the legislative process and delegated powers, as well as to Henry VIII. My right honourable friend the Leader of the House has written to the Constitution Committee in connection with its inquiry a letter headed "The legislative process: delegated powers". It is a six-page letter and Henry VIII features quite prominently. I hope that in due course the letter will get into the public domain because it addresses some of the issues raised in this debate about the scrutiny of secondary legislation and Henry VIII powers.

On the volume of legislation, in the 2014-15 Session there were 26 Bills, while in the current one there are also 26. Looking back, in 1997-98 there were 53 and in 2001-02 there were 39. We are actually at the lower end of the spectrum. In terms of pages there is similar progress: in 2014 there were 2,640 pages but in 2000

there were 3,865. So it is not the case that there have been a huge number of extra pages of legislation when one looks broadly over the last 15 years.

I am conscious that I am already into injury time. I would like to write to noble Lords to deal with some of the issues that have been raised. I recognise that there is scope for improvement and I am interested in many of the suggestions that have been made in this debate. Once again, I thank the noble Lord, Lord Butler of Brockwell, for instituting this very agreeable exchange of views.

8.39 pm

Sitting suspended.

Higher Education and Research Bill

Committee (4th Day) (Continued)

8.41 pm

Clause 10 agreed.

Amendment 122A

Moved by ***The Earl of Listowel***

122A: After Clause 10, insert the following new Clause—

"Fee limit condition: requirement for progressive reduction in fees for older care leavers

(1) A fee limit condition must include a requirement that any regulated course fees within the meaning of section 10 must, if payable by any person falling within subsection (2), reduce by 5% for each additional year of age, over the age of 21, of that person.

(2) A person falls within this subsection if they are a care leaver, or an adult who has previously held care leaver status under the Children (Leaving Care) Act 2000."

The Earl of Listowel (CB): My Lords, I shall speak also to Amendments 138A, 229A, 229B and 449A in my name in this group. All these amendments deal with access to higher education and further education for young people who have been in the care of local authorities.

I intend to be as brief as possible but, before I begin, I thank the noble Baroness, Lady Goldie, for her kindness in making some comments on Monday despite my absence due to ill health. I appreciated what she said. I am grateful to learn that four-fifths of higher education institutions detail in their access policies particular measures for care leavers. Perhaps we might speak before Report about the other one-fifth that do not and what progress is being made in that area. The noble Baroness recognised in what she said that a low proportion of young people from care access university; in 2012 the figure was 5%, down from 8% a few years earlier. The figure in 2012 for all young people was 43% so clearly there is a disparity. She referred to problems about the data about care leavers attending university. I wonder whether it might be possible to anonymise it so that we understand how many care leavers are attending higher education without stigmatising them in doing so.

My amendments are probing. Amendment 122A would reduce annually by 5% fees paid by care leavers over the age of 21 so, for example, by the age of 41, a care leaver or care-experienced adult would no longer have to pay any fees. Amendment 449A would remove all fees for care-experienced adults. The purpose of both the amendments is to make it as easy as possible for older care leavers and care-experienced adults to access higher and further education.

The Government recognise in legislation that early trauma in childhood delays child development. That is why we have the Children (Leaving Care) Act 2000, which provides support for care leavers up to the age of 25, and the Children and Social Work Bill, which extends further rights for young people up to the age of 25. We recognise that early trauma delays development. Foster carers and adoptive parents tell me that many of their young people struggle early on, but in their late twenties, they can be thriving, with a family, being in employment or studying. They just start later.

Dr Mark Kerr, a care leaver himself and an academic, performed a study a while ago of care leavers who were 25 year-olds and found that about 30% had attended higher education. It may not be a particularly robust study, but it indicates that many care leavers and care-experienced adults will return to higher education later, especially if we make it as attractive as possible for them.

Amendment 138A would prioritise care leavers in student protection plans, in particular recognising their vulnerability. The context for this is that young people being taken into the care of local authorities will often have from their early years profound trauma which is continued repetitively over time. They have often had a very difficult start in life. When they enter care, that can also be a traumatic experience. I fear that often, still, despite good work from all Governments to improve the situation, they experience instability in care itself. There is a lack of access to mental health services, which would be very helpful to them in recovering from past trauma. Most of them have been in foster care. Foster parents have often had a poor experience of education themselves, as the academic, Professor Sonia Jackson, has noted. That is another disadvantage for those young people, as what happens in the home is very important in their education.

For example, the mother of a young woman of my acquaintance was a crack addict. When she spoke to her children, she would say, "If you don't come and see me, I will commit suicide". She would also say: "Drugs are much more important to me than you are". She liked this young woman, saying that her father had abandoned her at birth and had never shown any interest in her. Fortunately, thanks to the work of her foster parents, she was reunited at the age of 16 with her father, who disagreed with that view and they have had a good relationship since, which has been extremely important to her success. She went on to university. She made a friend or two at the start of her course but, when they discovered that she had grown up in care, they did not want to know her. She felt stigmatised. She was shunned by them. She was devastated at first by that experience but, fortunately, she met more sympathetic young women, with whom

[The Earl of Listowel]
she came to share accommodation, who were immensely supportive, because she experienced bouts of depression during her degree course. She has now graduated; she provides services for care leavers; and she sits on two boards as a trustee. She has recently married an accountant, a professional. My reflection on that is that her experience at university raised her aspirations, introduced her to a whole network of friends whom she would not otherwise have met and has clearly made a huge difference to her life.

Amendment 229A would make it a priority for governing authorities to attract care-experienced young people and provide them with the right finances to be successful in their courses. Amendment 229B would ensure that such students were offered 12 months of accommodation.

These amendments are necessary because in so many ways the lives of young people in care are impoverished—often emotionally impoverished—and there may well be low expectations of what they can achieve. They lack positive role models; the milieu where they grew up may have seen a great deal of dependency on welfare, and drugs and alcohol may have been involved. We need to do all we can to give them positive role models to reach out to them at school, into children's homes, or wherever, and show them that it is possible for them to go on to university.

Such young people also suffer because, as the Government have recognised, the system of personal advisers who hold the pathway plan for care leavers is faulty. There are no real professional standards about who personal advisers need to be; it is pretty much up to the local authority who they are. From my experience and knowledge, those advisers provide a very hit-and-miss service. Sometimes they are very good but they are the ones who help young people into employment, housing and education, so that is all the more reason why universities need to do as much as possible to reach out to them.

Accommodation is necessary, as often these young people have no family to turn to or their relationships may be destructive. Above all things in their lives, they need stability and a firm foundation. That is why having 12 months' accommodation would be so important to them. There are all sorts of challenges for the future lives of these young people, having left care. They have no family, poor support, as I have mentioned, and they are often caught in the housing trap nowadays as more and more local authorities are without their own local council homes. They may be placing young people in private rented accommodation. Once those young people try to get a job they find that they are trapped because as soon as they start getting into employment, housing benefit reduces and they cannot afford to keep their home.

There are all sorts of challenges for these children. The advantage of access to higher and further education gives them a far better chance of succeeding into the future and avoiding the particular risk that they themselves will go on to be parents who have their own children removed into care and we just repeat the old system. I look forward to the Minister's response. I beg to move.

Baroness Brown of Cambridge (CB): I rise to speak in support of the desire of the noble Earl, Lord Listowel, for there to be a strong focus in the Bill on care leavers as a very special group of students. When we were developing our strategy for care leavers at Aston University, I was absolutely horrified to discover that care leavers at 19 were very much more likely to be in prison than at university. It seems to me that supporting care leavers at university is a much better way of spending public money than supporting them at Her Majesty's pleasure.

I hope the Government can put something in the Bill such as the noble Earl described, or something in every university's access agreement, to ensure that this group of very special people get a really good opportunity to be socially mobile and successful.

Lord Willetts (Con): Noble Lords on all sides of the House appreciate the personal commitment of the noble Earl, Lord Listowel, to this issue. However, I have to say that there has always been a long queue of people who wish, for various reasons, to exempt students from fees. My view has always been that this is an extremely dangerous route to go down. Students do not pay fees, and as soon as one implies in some way that fees are a barrier to students getting into university, one feeds a misconception that can do enormous damage. Indeed, if students from care were not, through the Exchequer, repaying these fees, that would be a loss of revenues for the university. The noble Earl, Lord Listowel, has recognised that because his Amendment 449A provides an alternative means of financing their education out of public expenditure.

We have heard from the noble Baroness, Lady Brown, quite correctly, that we need to support more care leavers in university. If there were ever any public expenditure of the sort the noble Earl envisages in Amendment 449A, rather than devoting it to a group of students being exempt from fees that they are not going to pay anyway, it should be devoted to helping people leaving care to go to university. Exempting them from a fee that they are not going to pay anyway, or will pay only if they are in a well-paid job afterwards, is not the most effective way to help care leavers.

Lord Watson of Invergowrie (Lab): My Lords, I, too, pay tribute, as I have in the past, to the noble Earl, Lord Listowel, for his hard work in many areas, particularly in respect of care leavers. We worked together last year quite effectively on the Children and Social Work Bill, and made some progress in terms of government concessions; I hope that we might have some success here as well.

I am slightly disappointed to hear what the noble Lord, Lord Willetts, said about exemption from fees, as that is not what is sought here, as I see it. The amendment seeks a limit on or exemption of part of the fees, but not an entire reduction. In the circumstances that is important, because we have to understand that for people leaving care even to get to university is quite an achievement in many cases. Only 5% of care leavers make it to university, compared with 38% of the population as a whole at that age. So it is incumbent on us to do what we can to offer some assistance.

The amendments proposed by the noble Earl, Lord Listowel, cover a number of areas, which together create a package which would be of considerable assistance. People leaving care are some of the most vulnerable young adults, and they need help and encouragement to make their own way in life after a childhood that has often been devoid of the kind of settled home environment that many of us simply take for granted. For that reason, it is surely right that any care leaver who succeeds in gaining the passes necessary to be offered a university place should not be denied it due to financial constraints. I take the point that the noble Lord, Lord Willetts, made about a university degree leading to higher earning, and that is the general backing that the Government, and Conservatives generally, give for tuition fees. That has some traction, but in this case you are dealing with people who have had many difficulties in their lives.

We also have to think about the question of accommodation, which another of the noble Earl's amendments touches on. Some universities already discount fees; some do not charge fees to care leavers. But another issue is what happens outwith term time. As the noble Earl said in speaking to Amendment 229B, the question of accommodation can be a crucial factor. All too often, care leavers who begin a course of study do not complete it because they have been unable to settle during holiday periods, having no settled home to go to, to the extent that they do not feel able to resume their studies.

Being in care does not prevent young people achieving a successful life, but those who have spent time in the care system are less likely than other children to achieve academic success. In many cases, there has been a gradual improvement in educational outcomes, but the rate of care leavers going to university has hardly changed in recent years. Children in care have the wealthiest parent of all—the state—yet it fails them in the most fundamental aspect of child development: education. The noble Earl's Amendment 122 should not be seen as a cost to the public purse. In the longer term, care leavers who complete their courses will put back more than they have received—an argument understood in Scotland. Last year, the Scottish Government decided that all young people who have experience of care and who meet the minimum entry standards will be offered a place at university. Of course, although fees are not an issue in that part of the UK, those students are awarded a full bursary, which will be worth £7,600 from academic year 2017-18.

That is an example of the extra, targeted help to those who most need it, so that young people who have had life experiences that most of us can barely imagine are given an enhanced chance to succeed in building a life for themselves. Reduced tuition fees should, I believe, be automatic for care leavers, although I accept what the Minister said on Monday about not all care leavers wishing to self-identify as such. There are various reasons for that and I hope we can at least try to understand them, but we should do all that we can to minimise those reasons in offering a helping hand into higher education. The group of amendments of the noble Earl, Lord Listowel, would provide a powerful means of doing so.

9 pm

Viscount Younger of Leckie (Con): My Lords, I am grateful for the opportunity to speak to this issue and I thank the noble Earl, Lord Listowel, for raising it. Everyone who wants to and has the ability should be able to go to university, including care leavers. We know that care leavers face specific difficulties accessing and succeeding in higher education; universities take their responsibilities in this area very seriously and progress has been made. Care leavers are recognised as a priority group by universities and a particular focus is placed on supporting them during the admissions process. It is not appropriate for government to interfere in providers' admissions processes, as they are autonomous institutions. We are, however, introducing the care leaver covenant, so that organisations can set out the commitment that they make to care leavers. We see this as the main vehicle for engaging the higher education sector in the wider effort to improve care leavers' outcomes. I will not have time to go into all the issues that arise under the covenant but we would like to see some more practical things being offered, such as providing dedicated contact time to support accessing and completing courses of study, and organising outreach activities, taster sessions and staff awareness sessions. We see this as primarily being the way forward.

As the noble Baroness, Lady Brown, said, support for care leavers in access arrangements has grown considerably over the years. Around 80% of the access agreement actions that are agreed between the Director of Fair Access and a provider to widen participation as a condition of charging higher fees include activity to support access and success in higher education for care leavers. These include pre-entry visits to the institution, taster sessions—as I mentioned earlier—summer schools, and academic support to raise attainment. Universities frequently prioritise care leavers for financial and other support for students. Provision often includes substantial cash bursaries and fee waivers, and a named contact to assist care leavers.

As the noble Lord, Lord Watson, said, most higher education institutions offer year-round accommodation for care leavers, as stated by the Buttle Trust. For those institutions that do not offer year-round accommodation, local authorities are required, as corporate parents, to ensure that suitable accommodation is available during vacation periods, as set out in the Children Act 1989. Given that this duty already exists for local authorities, we should not duplicate it for higher education institutions.

I turn to Amendments 122A and 449A. In addition to support for accommodation outside term time, local authorities must provide financial assistance to the extent that the young person's educational needs require it, as well as a £2,000 higher education bursary. Students defined as care leavers in the student support regulations are treated as independent students when their living costs support is assessed. This means that most care leavers qualify for the maximum living-costs support package for their higher education course. For 2016-17 this was around £8,200 and £10,702 in London. Given the nature and extent of support that is offered to care leavers to equalise support and opportunity, I do not therefore consider it necessary to provide tuition fee reductions or grants for care

[Viscount Younger of Leckie]
leavers. Like other eligible students in higher education, care leavers qualify for loans to meet the full costs of their tuition.

I will move on to Amendment 138A. Student protection plans should play an essential role in ensuring that institutions have made the necessary steps to protect all their students, by offering real protection to students should their provider or course close. The OfS will issue guidance on student protection plans, which is expected to include advice on what additional or alternative protective measures should be considered for particularly vulnerable groups of students or those from disadvantaged backgrounds, such as care leavers.

Given the existing measures to support care leavers, the focus on them as a priority group by the Government, universities and the Director of Fair Access, the financial and pastoral support provided by universities, the care leaver covenant, and the progressive and relatively advantageous student finance offering that we have in place, I hope that noble Lords are in no doubt about our aspirations for care leavers to go to and succeed at university. I am not therefore convinced that these amendments are necessary to deliver our goals and I ask the noble Earl to withdraw his amendment.

The Earl of Listowel: My Lords, I thank the Minister for his response. I am grateful to all noble Lords who have spoken in this debate, particularly to my noble friend Lady Brown, who highlighted the fact that more care leavers go to prison than into higher education. I imagine that is still the case and it should give us pause for thought. I very much welcome the detail of the Minister's response. I will withdraw the amendment but may come back on Report with a couple more to press some of these issues a little further. I beg leave to withdraw the amendment.

Amendment 122A withdrawn.

Schedule 2: The fee limit

Amendment 122B not moved.

Amendment 123

Moved by ***Baroness Goldie***

123: Schedule 2, page 76, line 36, after "be" insert "equal to or"

Baroness Goldie (Con): My Lords, as the Government have set out previously in this and the other place, as well as in publications, our policy is that increases in tuition fee limits must be earned by demonstrating excellent teaching quality through participation in the teaching excellence framework.

These amendments correct a small drafting error in Schedule 2 to ensure that this policy is achieved. Under the amended wording, a sub-level amount can be set at the same level as the floor level, meaning that the Secretary of State can create a fee limit that applies specifically to providers that do not participate in TEF—either because they choose not to, or because they are ineligible—and set that limit as equal to the floor level.

Let me be clear: the floor level is the baseline, minimum fee limit, which is £6,000 for those providers without an access and participation plan and £9,000 for those with an access and participation plan. We have no plans to increase these values. Within the sphere of high-quality rating, providers who achieve a gold or silver rating will get a 100% inflationary uplift, and those who achieve a bronze rating will be recognised with a 50% inflationary uplift. Without these amendments, any sub-level amount assigned to non-participating providers would need to be greater than the floor amount. That would mean that these non-participating providers would derive benefit for no reason. That is unfair and contrary to our policy intent. That is why I am speaking to these amendments. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, will the noble Baroness reflect on the point she made as she concluded her remarks when she said that the fees would remain at £6,000 and £9,000 respectively, and gave the reasons for the two different fees and the reason for the amendment? She went on to say that the Government had no plans to increase these. She knows that is not right. A statutory instrument has already been laid—a negative instrument—which we shall debate shortly in this House which seeks to increase these figures by inflation to quite significant sums above £6,000 and £9,000. Will she confirm that that is the case?

As I am on my feet, and reflecting back on the debate we had on the first group of amendments this evening, I say that it was clear from the Minister who responded that he was making play of two reasons why he would not consider the arguments made all around the Committee on the link between the TEF and the increases in fees. One of them was simply that it was a good cause but he repeated the other several times and ended up having to defend it quite vigorously—namely, that this matter was contained in the Conservative Party manifesto at the last general election. The dinner break followed very shortly afterwards and I checked the Conservative Party manifesto. I am afraid that he is wrong on that point. The manifesto says:

"We will ensure that universities deliver the best possible value for money to students: we will introduce a framework to recognise universities offering the highest teaching quality; encourage universities to offer more two-year courses; and require more data to be openly available to potential students so that they can make decisions informed by the career paths of past graduates".

It does not make a connection between the TEF and the quality of the courses, which would mean that only those with a good rating in the TEF would get increased fees. I therefore ask him to withdraw that when he next has the opportunity to do so, because he has misled the House a little on this. It does not matter in the great scheme of things—he was going to reject the amendment anyway—but we should have the right reasons for doing that, and that was not the case.

Baroness Goldie: My Lords, briefly, in response to the noble Lord, Lord Stevenson, on the specific matter he raised on the values for the floor levels, I can

confirm that there are no plans to increase the floor level—I want to make that clear—and the inflationary uplift will be at the higher level. I hope that that clarifies the position.

Amendment 123 agreed.

Amendment 124

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

124: Schedule 2, page 77, line 23, after "be" insert "equal to or"

Amendment 124 agreed.

Amendment 125 not moved.

Schedule 2 agreed.

Clauses 11 and 12 agreed.

Amendment 126 had been withdrawn from the Marshalled List.

Amendment 127 not moved.

Amendment 128

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

128: After Clause 12, insert the following new Clause—

"Reviews of admissions and access

The OfS must undertake or commission regular reviews, in consultation with relevant bodies, of—

(a) the university admissions system, and

(b) the numbers of, and range of provision available to, part-time and mature students."

Lord Stevenson of Balmacara: My Lords, I will be brief. Although the phrasing of the amendment is quite broad, the intention behind it is relatively straightforward and quite narrow. In keeping with earlier debates that we have had in Committee, our feeling was that we should do all we can to make sure that those who have a commitment to extend access to higher education to as many people as possible would share the view—I think the Government also share it—that there would be value in having a more flexible system that would, in particular, include more part-time students. It therefore seemed that there was a bit of a gap, which this proposed new clause is intended to fill. With regard to access and participation, there would be a duty on the OfS to make sure that the system of admissions ensured that those who wished to apply for university were fully apprised of the fact that there were alternative models for how they pursued their higher education careers. They should think in terms of part-time or flexible courses, since that might be in some ways better than trying to do a full-time, three-year course immediately after leaving school.

I am sure that that is in the Government's mind and that they would accept that the underlying thinking behind this is right. The amendment may not be the best way of providing this, but I thought it was worth putting it in as a probing amendment to make sure that we get on the record the Government's commitment to this type of approach and to the idea that the architecture of regulatory and other bodies involved in the process has this as part of their thinking. I beg to move.

Lord Lucas (Con): My Lords, I am happy to support the noble Lord, Lord Stevenson, on this amendment. It is only the OfS that will do these things when they need doing and keep an eye on them, and it ought to be part of what it is meant to do. It is far too easy for schools, colleges and universities to continue with their current practices and to grouse about what is happening. However, no individual or small collection of individuals ever has sufficient incentive to kick against the current system and to try to get a motion for change going. An example of that is post-qualification admission. I speak to a lot of schools, and a large number of them would like to move to post-qualification admission. Nothing will happen unless the OfS or a similar body decides to take a look at it. I hope that my noble friend can reassure me that, should the OfS or the Government wish to take a look at these things, they can do so without any powers beyond those provided in the Bill.

Baroness Garden of Frognal (LD): My Lords, I support both the amendments in this group. I think that the arguments for post-qualification admissions are very strong and need further review. I would also welcome a mention in the Bill of part-time and mature students, who deserve to be given full consideration and are too often overlooked. I think that there is merit in both the amendments.

9.15 pm

Baroness Goldie: My Lords, I thank noble Lords for tabling a set of amendments relating to admissions. By way of preface, I listened carefully to the points made previously by your Lordships about the importance of retaining the independent and autonomous state of higher education providers. Noble Lords will recall that I yearn to see something comparable in Scotland, but I am afraid that we have lost that.

One consequence of independence is that providers are then responsible for their own admissions decisions and, rightly, government has no power to interfere in this area. Universities are best placed to identify the candidates with the talent and potential to succeed at an institution or on a particular course, and the Bill makes it clear that this will continue. Indeed, Clause 2 ensures that the Secretary of State must have regard to the need to protect the freedom of higher education providers to determine their own admissions criteria. Clause 35 carries forward an important requirement from existing legislation that, like the current Director of Fair Access, the OfS will have a duty to protect academic freedom and institutional autonomy over admissions.

No doubt concerns would be raised across this House and the sector about the OfS overstepping its powers if a requirement regarding admissions were included in the Bill, and those concerns would be justified. The OfS will, as part of its broader duties, want to look strategically across the HE sector and to

[Baroness Goldie]
consider the implications arising from the admissions cycle. However, we would expect the OfS to work with bodies such as UCAS to ensure that the right information was available to inform a broader picture.

UCAS is a charity, established by HE providers, with a clear role in university admissions. It can and already does undertake and publish reports into admissions on behalf of the sector. Through the Bill we are introducing a transparency duty on registered HE providers, requiring them to publish application, offer and drop-out rates broken down by socioeconomic background, ethnicity and gender, and to provide the OfS with these data.

My noble friend Lord Lucas raised post-qualification applications—an issue that has been around for a number of years. As I said earlier, the autonomy of institutions in relation to admissions is enshrined in law. The current system has many strengths, including that prospective students can apply after they have their results, through clearing.

UCAS conducted its own review of the introduction of post-qualification applications and gave a clear recommendation not to move to this system. Should further investigation of the system be desired, it is for higher education providers to instigate it. The OfS could potentially be involved, but I suggest that such a requirement should not be set out in legislation.

The Government agree that part-time and adult education bring enormous benefits to individuals, the economy and employers. Our reforms to part-time learning, advanced learning loans and degree apprenticeships provide significant opportunities for mature students to learn. Allowing new providers to enter the system should result in greater choice of HE provision for part-time and distance learning, which can greatly assist mature learners. Under Clause 2, when carrying out its functions the OfS has a general duty to have regard to the need to promote greater choice and opportunities for students, which would include more choice and opportunities with regard to part-time and mature provision. However, it is important that we keep the duties of the OfS broad and overarching so as not to overburden the organisation and so that we can enable it to function efficiently and flexibly.

Having regard to what I have just said, I very much hope that the noble Lord will feel able to withdraw Amendment 128.

Lord Lucas: My Lords, I am sorry that the Government take the attitude they do to post-qualification admission. It seems to me that this is something in which schools and students should have a voice and that it should not be entirely down to universities. It distorts school education very substantially and therefore I think that it is not only the interests of universities that should be taken into account. However, I accept that the Government think differently.

Since the noble Baroness is in the business of dispensing bad news to me at the moment, can she confirm the rumour that we are to sit well past midnight on Monday?

Baroness Goldie: I have always regarded the noble Lord as my friend and I shall do my best not to alienate that happy relationship. Your Lordships will be aware that this is very significant legislation—I understand that it is unprecedented in terms of amendments. Although I have no precise timings for Monday, it may help your Lordships to know that I am given to understand that we can anticipate a long sitting, but until when, I cannot be precise about.

Lord Stevenson of Balmacara: I am sure that the usual channels will come up with an equitable solution for all concerned. I think it would be for the benefit of the House, and indeed for our ability to cope, if we all cut down our speeches quite a lot more than we are currently doing, but that is not a matter for debate at the moment. I will do my best to live up to my aspirations, although I am not very good at it.

I simply want to say that I agree with what the Minister said about the amendment because I did not ask for any additional burdens to be placed on the OfS or any issues to be raised about the autonomy of individuals and institutions and their admissions. What I asked for was that some regard should be given by OfS to commissioning regular reviews, in consultation with those bodies, in order that there be better information about the advantages of part-time and mature student routes and courses that would appeal more to those with more flexibility. However, I think that enough has been said on the record to make sure that this issue has been picked up. With that, I beg leave to withdraw the amendment.

Amendment 128 withdrawn.

Clause 13: Other initial and ongoing registration conditions

Amendments 129 to 131 not moved.

Amendment 132

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

132: Clause 13, page 8, line 21, at end insert "and which must include information about how students will be protected from any reasonable financial loss if an event specified by the OfS were to occur, in particular the closure of a course or a higher education institution"

Lord Stevenson of Balmacara: My Lords, with this amendment we move to registration conditions, and a number of issues arise in this and subsequent groups in relation to these conditions. The conditions are very important and I do not think that we should skip too quickly over them, despite what I just said about trying to move forward quickly. As well as my amendments, to which other noble Lords have very kindly added their name, this group includes an interesting amendment from the right reverend Prelate. They affect some important issues and it is worth pausing slightly on each amendment as we go through.

Amendment 132 picks up the hopefully unlikely situation that if a provider was to close—or, as does happen, a course closes—there should not be any reasonable financial loss transferred to individual students. There are one or two scare stories about how difficult it is sometimes to extricate students who have

commitments, particularly when a course has an overseas engagement. The amendment is valuable in that it picks up on an area that is not covered well in the Bill. However, it may not be necessary to press it if sufficient reassurances about the processes that would be applied can be given when the noble Baroness comes to respond.

Amendment 133 was an attempt to use the registration conditions contained in the Bill to, in this particular clause, try to sketch out a bit more what was meant by saying that there is a vision of what universities are in the United Kingdom. The amendment lists a range of issues that one would hope to see in these institutions, which may or may not be attractive to the Government in trying to help with their understanding of it. It is a probing amendment and deals with something that is of interest. We will read what they say in due course and think about bringing it back, if necessary.

Amendment 134 would enable the OfS to set stricter requirements for new providers to get on to the register by looking in more detail than is perhaps given in the Bill at the moment at previous history and the forecast of future sustainability. The problem we come up against is that, in considering challenger institutions, we are often talking about very small and relatively recently formed organisations, some of which may not even have proper corporate status or, indeed, the issues related to that, which I gather have been touched on in the Minister's recent letter about what was required of an institution intending to register as a university—that was very helpful. This plays back against a little of that because there will be concerns about small institutions. They may be unwarranted but size is a factor in what may be required to sustain an institution. We need to think about track records and these entry requirements might be worth considering in that context.

With Amendment 138 we are again back to the question of what happens in the event of the failure of a course or institution. It is more about courses and focuses on simple protection plans which would make sure that there was no disruption to the studies of existing students if a particular course was pulled out, and more generally would make sure that institutions that fail have got plans in place to ensure that the students effected are not lost to the system, for example, and that there are other arrangements.

Our attention has been drawn to the phrasing of the Technical and Further Education Bill, which contains significant recommendations in this area. They do not appear in the Higher Education and Research Bill and I would be grateful if the Minister could explain why we do not have the same degree of reassurance in this area as we will have when the Technical and Further Education Bill becomes law. There is a gap—it may just be because the two Bills are proceeding at a different pace—and if it is possible to look at that and bring back something on Report, it would be a good thing.

Amendment 149 relates to a technical question about what happens to students in any suspension period. At the moment the regulations are clear in general terms but they are not specific about what would happen in terms of notifying students. The student protection plan agreement should be revisited to make sure that that is covered.

Amendment 224 would ensure that when higher education providers produce an access and participation plan there is a consultation process with the students—and it gives a definition of the students who would be consulted. I beg to move.

Lord Norton of Louth (Con): My Lords, I will speak to Amendment 138, to which I am a signatory.

I made the point at Second Reading that a shell provision for student protection plans is not sufficient to reassure students that, in the event of institutional failure, they will be able to continue their education. I chair the Higher Education Commission and in our report, *Regulating Higher Education*, we stressed the need to have a strategy in place that allowed for an institution to exit the market in an orderly manner with the right level of protection in place for students.

Institutional failure would create obvious problems for students, not least in terms of disrupting their education and potentially leaving them adrift, at significant financial cost. As we argued, good governance and proper scrutiny should reduce the chances of failure, but there needs to be greater attention given to what happens when an institution does fail.

On the recommendation of HEFCE, we looked at the travel insurance industry, which participates in a sector-wide scheme to protect air passengers. We argued that this model could be applied to the HE sector, with a requirement for institutions to sign up and pay a sum per student into a fund which would cover costs in the event of failure. Our recommendation was:

> "Institutions need to be better prepared for the possibility of a failure in the sector. Given the potential damage this could inflict on students and the sector as a whole, a 'protection' or 'insurance' scheme coordinated by the lead regulator should be put in place".

I welcome the fact that the Bill recognises the need to have some student protection plan in place, but merely placing a duty on the OfS to ensure that such plans are in place is inadequate, in my view, for the purpose of providing the reassurance to students before they embark on a course of higher education that they will be able to complete it. The more new entrants come in to HE and the more a market exists, the greater the risk becomes. However, it is not the new entrants causing the potential problem; that already exists. It just exacerbates the potential.

9.30 pm

It would therefore be desirable, at the very least, to ensure that student protection plans make provision to avoid or minimise the disruption to students in the event of institutional failure. Without such provision, students will be uncertain whether they have a right to continue their education at another institution and whether they will be able to reclaim their fees. For international students, it will be unclear as to their right to continue their education in the UK if their visa is connected to the particular institution.

The amendment would impose a duty on the OfS to make provision to avoid or minimise disruption to the studies of existing students of an institution. It would empower the OfS to include provision for transferring some or all of an institution's undertakings to another appropriate body; to include provisions that would

[LORD NORTON OF LOUTH]
enable existing students to complete their studies; and to identify arrangements that would be established for existing students to complete their studies at another institution.

As the noble Lord, Lord Stevenson, indicated, the wording of the amendment should be familiar to the Minister. It is drawn from a provision in the Technical and Further Education Bill. If such provision can be provided in that Bill, I see no reason why it should not, and every reason why it should, be included in this Bill. I regard it as the minimum necessary. We need to address more substantially the implications of possible market failure.

The Lord Bishop of Portsmouth: My Lords, my colleague and right reverend friend the Bishop of Ely is unable to be in his place, but has asked me to bring before your Lordships Amendment 134A. I and he welcome the Minister's assurances thus far for disabled students. It is very welcome that he intends to publish guidance to ensure that higher education institutions are best able to fulfil their duties to disabled students.

For any student to begin the undertaking of a university course is a large commitment. Students with disabilities may face additional challenges to those encountered by their peers, as the noble Lord, Lord Addington, so eloquently expressed last week—hence the importance of ensuring that adequate provision is made to allow them fully to engage with their course of study and all the other dimensions of a university education on equal terms with their fellow students who do not have a disability. In the event of a closure of their course, or even of the whole institution, plainly all students affected would face significant upheaval. For students with disabilities or other learning needs, the stakes are understandably even higher. For example, they may have specific needs around transport, specialist support, or adapted accommodation.

The numbers involved are significant. About 86,000 students in the UK—5% of all students—claim disabled students' allowance, which, as noble Lords will know, covers those with long-term health conditions, mental health conditions and specific learning difficulties. In addition, there will be other students who are not eligible to claim DSA but who will have support needs which institutions work hard to meet. I mention only one such group: those with mental health issues, for whom we were pleased to hear of plans further to improve support arrangements in conjunction with, for instance, UUK.

That is why I ask the Minister to consider giving specific priority, when student protection plans are being drawn up and approved, to those students with these specific needs. Especially in the light of sympathy expressed so far, will Ministers and officials consider looking afresh at the explicit inclusion of those with specific needs in criteria for approving and reviewing student protection plans, as the amendment would require?

Baroness Garden of Frognal: My Lords, I support the right reverend Prelate's amendment. We hear increasingly of mental ill-health and stress among students, so building in provision for them would be helpful.

On Amendment 138, as the noble Lords, Lord Stevenson and Lord Norton, have said, it seems strange not to have such a provision in the Bill. I see in the guidance notes that the wording is not quite the same, but these same provisions have been put as "the measures for a protection plan could include", so there seems no reason why there should not be the extra assurance of having these measures spelled out in the Bill.

Lord Lucas: My Lords, we are surely clear that the route that we are going down will mean that institutions go bust and find themselves unable to function. My noble friend the Minister said in one of his replies to me on Monday that information as to whether a university was getting near the borderline, in terms of having the ability to admit overseas students removed from it, would be concealed. So we must expect students to be faced with the closure of their courses at short notice, and we must expect the institutions running those courses to be completely incapable of helping them.

In those circumstances, we need what my noble friend Lord Norton of Louth has proposed, which is a mutual scheme. That must have the ability to organise for the courses to happen—so it must have money and it must have agreement that room will be made for students. It must have enough leverage to deal with the Home Office, because any student who is looking at an extended time here to complete a course will be in real trouble—returning home; six-month waits—trying to organise extensions. It is difficult enough for a student at Imperial who needs an extra year for his PhD; it will be extremely difficult for students in a failed institution. We need some money, some clout and some organisation behind this. If it is not to be the sort of structure that my noble friend proposes, my Amendment 163 would dump the obligation to look after such students on the OfS—but it has to be somewhere.

Lord Willetts: My Lords, I welcome particularly the amendment proposed by my noble friend Lord Lucas. The official doctrine has always been that a university can go bust, but I was never able to contemplate the political feasibility of a scenario where a padlock is swinging on the gates of a university, with a group of students outside desperate to go in for their history lectures and being told, "I am terribly sorry; we're closed", while tumbleweed blows through the campus. Indeed, Margaret Thatcher faced this in 1985 in Cardiff. She was not willing to allow University College, Cardiff to go bust. I think that we can accept that we are functioning in an environment where in reality it will be very hard just to say, "Bad luck. You've done 18 months of a course and it's come to an end".

The question is how one should address that, which gets to the heart of some quite important issues in the Bill. There has been a fashionable doctrine for a few years of the ABTA solution—and some kind of scheme like that could be made to work—but in my experience the closest we got to this problem was clearly HEFCE. It was acting as the co-ordinator, organiser and convenor. It might have been that students had to be located at several other universities and it would get different universities to make their contributions so that students would be educated. If we get into such a scenario—my

noble friend Lord Lucas is absolutely right that we have to contemplate it—it is very hard to see how it could be resolved without some convening power for the OfS, which, as I have said in other contexts in this Committee stage, is in many respects the son of HEFCE. A lot of our problems will be resolved if we think of it as the son of HEFCE. My noble friend's proposal to make it clear that there is some legal responsibility for OfS must be an important and credible part of any solution. It is not credible to imagine that the matter could be addressed via an ABTA-type scheme.

Baroness Goldie: My Lords, I will try to abbreviate my remarks somewhat but this is a very important group of amendments so I want to try to genuinely address some of the points that have been raised. I am grateful to noble Lords for their contributions. Student protection and experience are important issues.

Student protection plans are important. They should be robust and offer real protection to students, should their provider or course close. The Office for Students will have overall responsibility for creating and issuing specific guidance on student protection plans. That is an important development and a very important safeguard. We expect this guidance to include the content, the process for approval and review, and the likely triggers for implementing student protection measures. The guidance will be developed as part of the regulatory framework, in consultation with the higher education sector, including bodies representing the interests of students.

In relation to the specific point raised by my noble friend Lord Norton, it is absolutely right that the OfS consults on this issue fully, and it should set out further details and best practice in guidance. We tabled an amendment to the Bill in the other place to require student protection plans to be published and therefore brought to students' attention. That is an important step to ensure transparency in relation to these plans.

I agree with the noble Lord, Lord Stevenson, that protection from financial loss could be an important function of some student protection plans, as could measures to enable students to transfer or continue their studies, perhaps within the same institution but in a different faculty or department. Student protection plans are likely to include a diverse range of measures to protect students, reflecting the diversity of the higher education sector, together with a diverse range of possible triggers for a student protection plan, including suspension of registration.

The noble Lord, Lord Stevenson, asked why we do not have the same degree of reassurance in this Bill as in the further education Bill. The different mechanisms reflect the different characteristics of students in higher and further education as learners in these two spheres. But both approaches are designed to protect the interests of students. That is something we must not lose sight of.

The noble Lord, Lord Stevenson, also raised the issue of strengthening registration conditions for new providers. That is an important matter. In determining initial and ongoing registration conditions, the OfS will assess, among other factors, a provider's academic track record and—this is very important—its financial sustainability. I assure the noble Lord that where the OfS determines that a new provider represents a higher level of risk, it must, under the provisions already included in Clauses 6 and 7, apply more stringent, but proportionate, conditions to that provider. There is a facility to recognise where there may be an element of risk.

I wholeheartedly agree with the views expressed by the right reverend Prelate the Bishop of Ely in his amendment, which were very helpfully expressed by his colleague, the right reverend Prelate the Bishop of Portsmouth. I thank him for being with us this evening. Student protection plans should be mindful of additional or particular protections that may be required for disabled students or those with special educational needs, which the noble Baroness on the Liberal Democrat Benches referred to. Again, this could be made clear in the OfS guidance.

Turning to Amendment 163 in the name of my noble friend Lord Lucas, I want to make it clear to your Lordships that there are currently no direct regulatory barriers to students moving between universities. Supporting students who wish to switch higher education institution or course is an important part of our reforms.

In relation to student experience, which the noble Lord, Lord Stevenson, raised, there is no universal neat-fit template that covers all situations because student populations vary hugely in their requirements. As independent and autonomous organisations, higher education institutions are best placed to decide what experiences they can and want to offer. I do not think that that should be prescribed by government.

Finally, the noble Lord, Lord Stevenson, also raised the question of involving students in access and participation plans. I reassure the Committee that the Office for Fair Access currently expects providers to include a detailed statement on how they have involved and consulted students in the development of their plan, and the Director of Fair Access has had regard to these when deciding whether to approve a plan. Providers are encouraged, for example, to set out where students have been involved in the design and implementation of financial support packages. Some student unions run information, advice and guidance sessions to explain the support packages to ensure maximum take-up from eligible students. We fully expect this successful approach, which has developed over a number of years, to continue.

I hope these comments reassure your Lordships that these issues have not fallen off the radar screen. They are very much before us and I therefore ask the noble Lord, Lord Stevenson, to withdraw his amendment.

9.45 pm

Lord Willetts: My Lords, my noble friend Lord Lucas can speak for himself but it is worth focusing on this scenario for a few more minutes. I would be grateful if the Minister could take us through what she expects now to happen if a university gets into difficulties. I can tell her that it will end up on the Minister's desk within a matter of hours. In my view, the Minister needs to have the power to ask the OfS to do things which ensure that those students continue

[Lord Willetts]
to get higher education. That could supplement ABTA-type arrangements or whatever. I would be grateful for her assurance to the Committee that either the powers already exist in the legislation as drafted, or that the Government will support measures to ensure there are those powers. There will otherwise be quite a serious gap. We know from other areas, including health service legislation, that it is a fantasy to imagine, "Don't worry, we can just leave it all to the individual universities and their ABTA arrangements—it is nothing to do with the Minister". It will end up on the Minister's desk and we are doing a disservice to future Ministers if they find themselves in this situation and ask, "Why on earth did nobody give me or the OfS any power to do anything in a situation like this?", where clearly public action to convene is expected as a minimum.

Baroness Goldie: I thank my noble friend for raising significant points. Let me try to put his mind at rest. I hope he will accept that the whole thrust of the Bill is to create not just new territory for the way in which we deal with the provision of higher education in England but a set of new relationships, not the least of which is putting the student right at the core of higher education provision—perhaps doing so in a way which we have not seen before. That is to be applauded. The constitution and creation of the OfS develop a body which is not just a paper tiger. This body is given significant, meaningful and tangible powers in the Bill—powers that it will be required to deploy and use if difficult situations arise.

My noble friend posed the specific question of what will happen to students if a higher education institution goes bust. First, it is intended that the OfS will monitor the financial health of institutions and require student protection plans to be implemented if a provider is at risk of being unable to deliver a course. The OfS will not be operating in some silo or vacuum. It will actually be a hands-on and in-touch body, with its finger on the pulse to know what is happening. It will have an early indication if there are reasons for concern.

For example, if in the unlikely and very unhappy event that a higher education institution goes bust, existing students might be taught out for the remainder of their course or academic year, with provision to transfer to another institution having banked their existing credits. It would entirely depend on the terms of the student protection plan but that is indicative of how these plans have to be broad, far-reaching and flexible. The core of all this is that at the end of the day, they must provide that underpinning protection to which students are entitled.

It is currently the case with HEFCE that the Office of Students may be able to support an institution while it implements a student protection plan. It might, for example, reprofile loan repayments or provide short-term emergency support. This is very much a nuclear option because instances of a provider suddenly and without warning exiting the market completely are likely to remain extremely rare. We would expect student protection plans to be implemented as far as possible—for example, measures to financially compensate students—and the OfS to support students in transferring to alternative institutions. There is a variety of solutions, remedies and initiatives which could be deployed, and it is very clear that the powers that will be available to the OfS will make such deployment perfectly practical, reasonable and manageable. I hope that reassures my noble friend on the issues which he raised.

Lord Stevenson of Balmacara: I have to say to the Minister, who cannot see behind her, that her noble friend was not looking that reassured.

Lord Lucas: No, I do not find myself reassured. I very much hope my noble friend may be able to write to us. The sort of protection plan she is talking about is starting to look extremely expensive. Are they going to hold a year's fees in reserve? If we do not have some kind of mutual arrangement, each course will have to look out for itself; that is going to be extremely expensive and make new initiatives very difficult to finance. I would really appreciate a properly worked example of what happens when a university ceases to trade at relatively short notice.

Baroness Goldie: I am very happy to undertake to write to my noble friend. I have so much of interest to tell him that it will be a long letter.

Lord Stevenson of Balmacara: As I was saying, I do not think the Minister quite got to the heart of the question asked by the noble Lord, Lord Willetts, about what the Minister does when this letter arrives on the desk. I think the noble Baroness managed to avoid mentioning Ministers at all. We take on board what the Minister is saying about the role of student protection plans and the institution in this. She is right to say that this has to be settled long in advance and we have to know what we are doing, but there is the question of realpolitik. When these matters arrive courtesy of the *Daily Mail* and land on the Minister's desk, she is going to have to have a better answer than that. I suspect that the answer is that the power to direct the OfS will remain in the armoury given to the Minister. Although we have some reservations about that, in exceptional circumstances that will obviously be the right thing to do. I was pleased to hear that, like us, the Government accept that if the student is at the heart of this new reformed plan for higher education, the student has to have some rights and responsibilities, and they have to be real and exercisable. The letter should try to cover that journey in these extreme situations.

I am, however, left with Amendment 138 and its drafting. I think the Minister said that it is not necessary to bring it into the current Bill from the Technical and Further Education Bill because the institutions are different. These institutions will probably be offering a similar number of courses around degree apprenticeships, and higher education is often provided in further education situations, so I do not think that argument sustains itself. Will the Minister write to us about the reasons for not including these rather well-worked-through arrangements, which seem to answer all the questions she has been asked, as they exist in legislation which we are about to consider and could, with very little effort, be copied into the current Bill? I beg leave to withdraw the amendment.

Amendment 132 withdrawn.

Amendment 133 not moved.

Amendment 133A
Moved by ***Lord Desai***

133A: Clause 13, page 8, line 26, at end insert—

"( ) a condition requiring that all student assessments, written and otherwise, including assessed dissertations at both undergraduate and postgraduate levels, are either—

(i) robustly blind marked to ensure the identity of the student is not known to the marker, or

(ii) where it is unavoidable or probable that the identity of the student will be known to the marker, secondarily marked by an independent marker to whom the identity of the student is unknown."

Lord Desai (Lab): My Lords, I shall speak also to Amendment 133B. They are pretty straightforward. They concern the notion that students should not feel that they are being discriminated against; they should not actually be discriminated against and they should not perceive that they are being discriminated against. The suggestion is that there should be blind-testing as far as possible—and if blind-testing is not possible, there should be a second examiner who should not know the name of the students.

Amendment 133B applies the same principle to admissions. BAME students in particular feel the possibility of discrimination, so this is to reassure them. I beg to move.

Lord Bew (CB): My Lords, I rise briefly to support the amendments in the name of the noble Lord, Lord Desai. I learned earlier this evening that he taught at the University of Pennsylvania, as did I and the noble Lord, Lord Norton of Louth. That university is about to be further distinguished by the fact that one of its alumni is to become President of the United States in two days' time. But I did not agree with his saying that it is easy to assess university teaching, partly because of the mixture of research that is involved with teaching and the difficulties of making judgments in that area.

I will come to this issue in Amendment 189, in my name, but there is a real danger that the Government are aiming for a spurious scientificity in their attempt to deal with the problem. On the other hand, Amendments 133A and 133B hit on something that can and should be dealt with to protect students' interests. It shows greater objectivity in the treatment of students, which is all the more necessary in the epoch we are now in, when these matters are greatly disputed, much more than they were a generation ago. Broadly speaking, it is easier, and I think more appropriate, to meet the requirements of the government manifesto by aiming at things which actually hit at what I might call the fecklessness of university teachers—not marking properly or quickly enough, not being good enough at getting in contact, not replying to emails. Those are things that legislation should be aiming to correct to protect teachers, but it should not aim at a spurious scientific metric, which is quite a dangerous thing to do.

The thinking behind Amendments 133A and 133B, in the name of the noble Lord, Lord Desai, is very solid and goes to the heart of putting, as the Minister said, the student and the legitimate protection of the student's interests at the heart of things, rather than seeking a bogus popularity among students. This is a legitimate concern for students and they have a right to be protected in this matter.

Lord Watson of Invergowrie: My Lords, as someone who is not an academic, I find it quite surprising that amendments of this sort should be necessary, but given that they have been moved and supported by very long-established academics, it is clear that there is an issue here. I thought that that blind-marking assessment was what happened all the time in the established universities, but it may not be the situation in some of the newer or smaller providers, and the question is what will happen with some of the future providers. To me, this is something any student should have a right to expect. Nobody, whatever their background, should be discriminated against, consciously or unconsciously, by whoever is involved in marking an assessment. If we are being told by academics, as it appears we are, that these amendments are necessary, I would certainly want to support them. I hope the Minister will take it in good faith that they are necessary.

Baroness Goldie: My Lords, I thank the noble Lord, Lord Desai, for tabling these amendments, which speak to concerns about unconscious bias in admissions and assessment, which I know we all take very seriously. As we have established, institutional autonomy is a vital principle for higher education, and academic freedom will continue to be protected through the Bill. I suggest the matters raised in these amendments are for individual institutions to take their own decisions on, as independent and autonomous bodies.

Amendment 133A would add a new requirement to Clause 13 to ensure that judgments made by higher education staff when making an assessment of a student's work are not pre-determined by knowledge of the student whose work is under consideration. Under the current quality system, this is covered by the UK Quality Code. Expectations and guidance to ensure that judgments of student performance are based on the extent to which the student is able to demonstrate achievement of the corresponding intended learning outcomes are of course the essence of what is intended by that quality code. Indeed, all providers are expected to abide by the requirements of the quality code, and that will continue under the OfS. We would not want to undermine the flexibility of providers to achieve a fair assessment by introducing a new level of prescription, which the amendment would do. We do not feel that would be in the best interests of providers or indeed of students.

10 pm

Amendment 133 deals with admissions. I hope noble Lords will be reassured that the sector is committed to combating bias. UCAS produced a report last year showing that universities have a high level of awareness of the risks of potential bias in admissions decision-making, and are already employing a range of strategies to prevent such bias arising. Work is already under

[Baroness Goldie]
way in this area by the sector, including developing good-practice guidance for universities and training materials for admissions staff, all of which is a significant contribution to improving the situation. Indeed, a pilot scheme for name-blind admissions is currently operating at a number of universities to gather evidence on the impact it might have. Additionally, the transparency duty will shine a spotlight on institutions' admission practices so that, if there are any issues relating to unconscious bias, the institution will be made aware and can take action to address these matters. We can take stock of current practice by examining the results of the pilot and the transparency duty before suggesting that the sector should go further. I reassure the noble Lord, Lord Desai, that it is not as though nothing is happening. It is absolutely right to want to highlight this issue, but I hope I am managing to reassure him that some very good work is going on.

There is no doubt that the amendments are well-intentioned and speak to issues of great importance, but I suggest that the principle of institutional autonomy and the good work the sector is already doing in this area mean that it would not be appropriate to include them in the Bill. I therefore ask the noble Lord to withdraw his amendment.

Lord Desai: My Lords, I thank all noble Lords who have taken part in this debate. I thank the noble Lord, Lord Bew, and my noble friend Lord Watson, and of course the Minister for her reply. I beg leave to withdraw the amendment.

Amendment 133A withdrawn.

Amendments 133B to 138 not moved.

Clause 13 agreed.

Amendment 138A not moved.

Clause 14: Public interest governance condition

Amendment 139

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

139: Clause 14, page 8, line 43, leave out "English higher education providers" and insert "higher education providers in England"

Lord Stevenson of Balmacara: My Lords, with the agreement of the Committee, and in the hope that we can get through a bit more business, I was going to suggest that we move very quickly through this group of amendments, which are largely in my name—although there is also one in the name of the noble Baroness, Lady Deech—in order to get one more group of amendments in before we finish. We shall see how we get on.

The reason for my saying that is that although at the core of this group is the question of academic freedom, which I know the noble Baroness wants to speak about—I ask her to do so as soon as I sit down—the other amendments are about a list of principles in the Bill, and play to questions of institutional autonomy, academic freedom and the practice of what universities are about. Much of that was covered in the debate on Amendment 1 on the first day in Committee, so it is not necessary to make these arguments in detail, and I ask the Minister not to spend much time on them; indeed, they will come up again later. I will give way to the noble Baroness if she wants to make some remarks, because she has a taxi waiting.

Baroness Deech: My Lords I appreciate the kindness of the House in allowing me to speak to my Amendment 166, which is a little different from the others in the group. I make no apology for returning to the issue of academic freedom. When it was discussed in relation to Amendment 65 on the first day of Committee, the Government's response was that academic freedom is already enshrined in Clause 14 as one of the principles that must be in the governing documents of a university. The amendment before us goes further in that it extends the principle of academic freedom to every person and body under the Bill, including the OfS and its satellite bodies. Moreover, it will apply directly to the university in its everyday operations, not just in its governance documents. There will be nothing to stop a future Secretary of State removing that principle rather than, as in the past, finding that power only in the Privy Council.

There is also concern that the new Clause 1, which was passed by this House, which mentions academic freedom, might not survive Commons scrutiny. All our freedoms, including those in the convention on human rights, are circumscribed by law, which changes from time to time, so academic freedom—limited here to academic staff, not visiting lecturers, students or auxiliary staff—is subject to the criminal law. There is a lot of law circumscribing academic freedom and freedom of speech, including terrorism, equality and discrimination law. Academic staff are free to hold conferences at the university, but will not have protection —rightly so—if that conference promotes racial hatred or gender discrimination. I have often wondered about the example of a medical lecturer teaching students how to perform female genital mutilation, as opposed to how to how to discover it or take remedial action.

The extent of the teaching excellence framework also risks infringing on academic freedom if it goes as far as to tell a lecturer what, or perhaps how, to teach his or her class. We remain in dangerous water and the amendment is sorely needed. It is also a safeguard for lecturers against students' censoriousness in this age of safe spaces and snowflake undergraduates. A lecturer must be able to lecture, despite the disapproval of his colleagues and students. I instance an LSE lecturer, Dr Perkins, whose well-researched views on benefits and their recipients were not welcome. The amendment would also incorporate the human rights of freedom of expression, assembly, thought and belief. It is sadly necessary that this be repeated as a direct responsibility on each university.

Baroness O'Neill of Bengarve (CB): My Lords, I very much regret delaying things at this hour, but I ask for a clarification on Amendment 139, moved by the noble Lord, Lord Stevenson of Balmacara. It states

that an English higher education provider is a higher education provider in England: we go back to this territory. I thank the Minister very much for the letter that was quickly sent to those of us who asked about it, but the clarification provided in the letter does not meet the need.

The letter states: "If an overseas university wishes to set up a base in England and wishes to appear on the register for its students to be potentially eligible for student support and to apply for English degree-awarding powers and university title, but most of its students are based overseas, then it will need to set up a presence in England as a separate institution". It is not clear to me whether that separate institution is incorporated under English law or could be incorporated under other laws. That needs clarification. I think the letter is intended as a clarification of Clause 77. However, I do not think it really takes account of the reality of contemporary distance learning, because it continues: "But if it was the case that such an overseas university had more students based in England and overseas, it would be able to meet the definition set out at Clause 77 without establishing a separate institution in England". The OfS will of course have to apply a risk-based approach to regulating such institutions and could impose stricter initial or ongoing registration conditions where it considered that such an institution presented a greater degree of regulatory risk.

If this overseas institution that has a majority of its students in England is not incorporated under English law, I am not clear how this will work. Maybe I am being thick about this but I think I can imagine an overseas institution that is primarily teaching via MOOCs that has, as it happens, more students registered in England than it has registered in whatever jurisdiction it is incorporated in. I ask myself whether that is an adequate protection. Would we need to be clear that an English higher education provider or the sub-institution it sets up be incorporated under English law? In particular, would any holding of property or funds by that subsidiary institution have to be under English law?

Viscount Younger of Leckie: My Lords, in the interests of brevity I shall write a full letter addressing the main amendments in this clause. Just before I conclude, I want to say that the issue focuses on the provider which carries on some of its activities outside England. The only proviso is that it must carry out most of its activities in England. We are focusing on the English higher education provider.

The amendments, particularly Amendments 140 and 164, go to the important principle of academic freedom that we all agree underpins the success of our higher education sector. I believe that there is no difference of view on that matter. As I said earlier this week, the Minister in the other place and I are reflecting on this issue, taking account of the views that we have heard in this place. I listened carefully to the comments raised by the noble Baroness, Lady O'Neill, and, as a result of the letter that she received today, the very best thing to suggest is that I will meet her to take her points further and/or write to her.

While I understand and sympathise with the intention behind all these amendments—I promise that I will follow up with a full letter and the new clause—I do not think they are necessary, and ask the noble Lord to withdraw his amendment. Just before I conclude, I want to clarify one point and to address the issue raised by the noble Lord, Lord Stevenson, who asked me to clarify my position on the linking of the TEF fees. I have also had time to check the Conservative manifesto. I agree that the manifesto commitment was to introduce a TEF, and I want to make this quite clear to the House.

Lord Stevenson of Balmacara: I thank the Minister for that clarification. I am sure that we will return to the issue on a more substantive basis in the future.

I was very grateful to the noble Baroness, Lady O'Neill, for raising that question. I almost did a little riff at the beginning because I wanted to explain why my amendment looks like nonsense; the world of Alice in Wonderland came to mind. It was precisely because of my frustration because I could not get my mind round what was meant by an English higher education provider, and whether that was different from a higher education provider in England, and what did it all mean anyway? I am grateful to the Minister for saying that he will write again about that because, like the noble Baroness, I have read the letter, but only briefly, and I do not think that it clarifies exactly where we need the clarification, which is: what is the constitutional position and where could these places be sued since it is all now on a contractual basis? Until we know how they are constituted and where they are, we will not be able to do that. With that, I beg leave to withdraw the amendment.

Amendment 139 withdrawn.

Amendments 140 and 141 not moved.

Clause 14 agreed.

Clause 15: Power to impose monetary penalties

Amendment 142

Moved by ***Lord Lisvane***

142: Clause 15, page 9, line 18, leave out "it appears to the OfS" and insert "the OfS has reasonable grounds for believing"

Lord Lisvane (CB): My Lords, as this is the first time I have spoken in Committee on the Bill, I should declare, as I did at Second Reading, that I am one of the founders of the New Model in Technology & Engineering university to be established in Herefordshire—and I am most grateful to the Minister for his mention of that in earlier proceedings. I am also an honorary fellow of Lincoln College, Oxford.

In view of the lateness of the hour, I shall be as quick as I can with this slightly technical set of amendments, all but one of which are concerned with the concept of legal certainty. In each case, they seek to raise the standard required. The Bill allows the OfS to take action "if it appears" to the OfS that particular circumstances have arisen. The actions are rather serious ones—imposing monetary penalties; suspending registration; deregistering; or refusing to renew an access and participation plan.

10.15 pm

On 9 January, the Minister mentioned this issue in responding to another group of amendments. He said:

"Intervention based on 'if it appears' is standard legislative drafting and is underpinned by the usual public law considerations so that the OfS cannot act irrationally. As a public body, the OfS must at all times act reasonably and proportionately in accordance with public law when exercising its powers".—[*Official Report*, 9/1/17; cols. 1814-15.]

Well, yes, up to a point. "It appears" is only one of the formulations available to the drafter—it is not the only one. The lowest requirement is to "suspect" something; "it appears to" is not that much higher; and the highest requirement is to be "satisfied" that something is the case. The distinguished former parliamentary counsel Daniel Greenberg put it like this:

"To be satisfied of something is more or less synonymous with being certain of it and is a high threshold. It requires a real certainty based on strong evidence".

These amendments do not seek to place such a high requirement on the OfS, but they do seek to raise the threshold before the OfS is entitled to take action. Serendipitously, judicial confirmation of the nature of needing grounds for belief comes from my noble and learned friend Lord Judge who, when he was Judge LJ, emphasised the need for reasonable grounds for a belief in Bright v Central Criminal Court 2001 1 WLR 662.

I hope that, in responding, the Minister will not rest on the probability that the OfS would be safe with "it appears" but will spell out for noble Lords exactly why more should not be asked of it before it takes the serious actions that would be permitted by Clauses 15, 16, 18 and 21 once enacted.

Finally, the odd one out in this group of amendments is Amendment 159, which addresses a formulation used several times in the Bill in cases where a matter is appealed to the First-tier Tribunal. In this instance, an appeal against deregistration, the tribunal may, first, withdraw the removal, secondly, confirm the removal and thirdly, vary the date on which the removal takes place—or, crucially, it may,

"remit the decision whether to confirm the removal, or any matter relating to that decision, to the OfS".

Amendment 159 would remove that last option. As drafted, the provision could mean that the OfS, whose own action is being appealed, might be the body that took the final decision—in effect, as a judge in its own cause. So it would be very helpful if the Minister could explain why this will not be so and tell us whether any further route of appeal exists once the First-tier Tribunal remits the decision to the OfS in this way. I beg to move.

Lord Judge (CB): My Lords, I support the amendment. I shall not repeat how subjective the test is,

"if it appears to the OfS"—

but it is entirely subjective. These are very wide-ranging powers that are envisaged; they are very serious powers that will be exercised. Of course, as the Minister said on 9 January, they are powers that will have to be exercised reasonably, not on a whim, and would be subject to a judicial review—but a judicial review of such a decision would succeed only if the decision made by the OfS were unreasonable in a particular legal sense, so that no body exercising these particular powers in this situation could have exercised them in this way. It will not succeed merely because the decision is wrong.

If I may make it more personal, two reasonable people can disagree with each other and both can still be reasonable. If the Minister disagrees with me—perhaps he will, perhaps he will not—I may respectfully suggest to him that he is wrong, but I would certainly not suggest to him that he was being unreasonable. It is a point of view. There is a great deal to be noticed in the context of what the reasonable exercise of powers actually amounts to.

These amendments are designed, as I see it, to secure from the outset that the office must believe that there are reasonable grounds for its decision to deploy its statutory powers. Framed in this way, the grounds for relief can themselves be examined. Although there are passages in the schedule which deal with that, it would encourage greater thought and analysis being given to any process of deploying the draconian powers that are being vested in the office.

Lord Watson of Invergowrie: My Lords, I do not rise to add anything to the remarks of the noble Lord, Lord Lisvane, and the noble and learned Lord, Lord Judge—I am not able to do so; the points they make sound very sensible and backed up with legal opinion. I hope that the Minister will take them on board. I rise on an amendment on which I and my colleagues have no involvement to make the more general point that I am sure that the Minister is going to say, "This is all very well, it sounds fine, but it's not necessary—in the best of all worlds it will all be fine". It is getting very tiresome. This is not the way in which legislation is meant to progress in your Lordships' House. There have been absolutely zero concessions so far from the Government since the Bill came to your Lordships' House. It is inconceivable that anyone outside looking in would accept that every amendment put forward is unnecessary or does not fit in with the Bill. That cannot be the case. I say in all good faith to the noble Viscount the Minister—and to the noble Baroness the Minister—that I am not making a political point as it is not one of my amendments but, with so many amendments on this Bill, they cannot all simply be turned down flat. I hope that he will bear that in mind, if not on this group of amendments then as we move forward.

Viscount Younger of Leckie: I shall address the points raised by the noble Lord directly. He will know that we are and have been listening and that I gave some very warm words on certain amendments on the previous day in Committee. I therefore ask him to take back that point. I think that it is uncalled for, if I may say so.

I want to be brief in responding to this group of amendments. I thank the noble Lord, Lord Lisvane, and the noble and learned Lord, Lord Judge, for raising these issues. I will be brief, as they were. The Bill states that the OfS may take these actions if it appears to the OfS that a breach of conditions has occurred. While I understand and respect the honourable intentions of noble Lords here, this test is used in other legislation, as I have mentioned before. For

example, under Section 151(1)(a) of the Apprenticeships, Skills, Children and Learning Act 2009, Ofqual may impose monetary penalties on a body that it has recognised for the purpose of awarding or authenticating certain qualifications where,

"it appears to Ofqual … that a … body has failed … to comply with any condition to which the recognition is subject".

This provision has been in force since 1 May 2012.

It is also the case that the usual public law considerations will apply so that the OfS may be legally challenged if it acts irrationally or unreasonably or fails to follow the proper procedure. The OfS, as a public body, must at all times act reasonably and proportionately in accordance with public law when exercising its powers. In addition, before suspending a registration, imposing a penalty or deregistering a higher education provider, the OfS must give the reasons for the action. Decisions to deregister or to impose a penalty are subject to appeal to the First-tier Tribunal. So it is my belief that,

"it appears to the OfS",

requires the OfS to make a judgment and take responsibility for its decisions—and that, we believe, is the right approach. The OfS is obliged under Clause 2(1)(f) to regulate in a,

"transparent, accountable, proportionate and consistent",

way. It is in all of our interests to want a more engaged OfS applying its judgment flexibly and sensibly. And Clause 2 of the Bill is relevant here too—making it clear that the OfS must follow the principles of best regulatory practice, including that its regulatory activities should be,

"transparent, accountable, proportionate and consistent, and … targeted only at cases in which action is needed".

I think it is best that I write in full on the points raised by the noble Lord, Lord Lisvane, when he spoke to Amendment 159. Therefore, without further ado, I ask the noble Lord to withdraw Amendment 142.

Lord Lisvane: I am very grateful to the Minister. If I may borrow the phraseology of my noble and learned friend Lord Judge, I think this may well be an occasion on which two entirely reasonable people can disagree without either one of them being unreasonable. Given that, the lateness of the hour and the delightful promise of another of the noble Viscount's splendid letters, I beg leave to withdraw the amendment.

Amendment 142 withdrawn.

Clause 15 agreed.

House resumed.

House adjourned at 10.26 pm.