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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

Monday 23 January 2017

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Product Recall Question

2.36 pm

Asked by Lord Kennedy of Southwark

To ask Her Majesty's Government what assessment they have made of the case for improving the product recall system and manufacturing standards for white goods.

Lord Kennedy of Southwark (Lab): My Lords, in asking the Question standing in my name on the Order Paper, I refer Members to my declaration of interests.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, the Government consider product safety to be paramount. We have set up a specific working group on product recalls and safety to look at further options to improve the safety of white goods and the recall system. The working group brings together key stakeholders from a range of trade associations and consumer groups, the fire service and trading standards professionals.

Lord Kennedy of Southwark: My Lords, the London Fire Brigade attends, on average, one fire every day caused by white goods where there is no fault on the part of the householder. We have seen a death in Wealdstone and, more recently, a devastating fire in Shepherd's Bush caused by a Whirlpool tumble-dryer. Does the Minister agree that Whirlpool's advice issued in Australia, which was not to use the product, and its advice until recently in the UK that, "You can use it but don't go out or go to bed" are unacceptable? Will he agree to meet the chair of the London Fire and Emergency Planning Authority, Dr Fiona Twycross, London Fire Brigade officials and me to discuss this matter and ensure that we can improve safety, save property and avoid injury and death?

Lord Prior of Brampton: My Lord, the noble Lord knows that trading standards has the main responsibility in this area, rather than the Government directly. I am certainly happy to arrange a meeting with my colleague Margot James in the other House with him and whomever he wants to bring to talk about the whole recall system in more detail. I note that the deputy director of the London Fire Brigade sits on the working group that is looking at recalls more generally.

Lord Razzall (LD): I accept that the noble Lord, Lord Kennedy, clearly makes a good point, but I am sure he appreciates, as no doubt the Minister will confirm, that if the Government insist on us leaving the single market, in future any manufacturer selling goods into the European Union will have to accept any new European Union standards, which we will have had no role in determining.

Lord Prior of Brampton: Clearly, if we carry on selling products into the European Union—as we will—we will have to comply with the standards in the European Union, as we do in any other market in the world.

Baroness Gardner of Parkes (Con): My Lords, I declare an interest in that my daughter has an interest in one of those flats that was burnt out in Shepherd's Bush. She tells me that that could have been avoided by people just fitting a part—I think costing 10p—in front of the vent that was accumulating the dust. Suppliers of these white goods should be providing information about how essential it is to clean the filters.

Lord Prior of Brampton: My Lords, I bow to my noble friend's expertise on the subject of laundry but there is no doubt that the instructions on these machines talk about cleaning the filters and removing the lint from the filters. That is clearly important. However, there is a problem in this particular machine that does require modification. There is no doubt that if everyone registered the product when they bought it, many of the recall problems that we are facing would be addressed. But only 47% of those who buy these tumble-dryers actually register the machine in the first place.

Lord Campbell-Savours (Lab): My Lords, how does the Minister respond to the idea of a single register of UK product recalls, as proposed by Andy Slaughter MP in an Early Day Motion in the other place?

Lord Prior of Brampton: My Lords, there is no doubt that recall can be improved and this issue is being considered by the working group, which has given its interim findings to my honourable friend in the other House, Margot James. It is due to give its final report in March, when we will be able to respond more fully to the noble Lord's question.

Sudan Question

2.40 pm

Asked by Baroness Cox

To ask Her Majesty's Government what assessment they have made of recent developments in Sudan.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we remain concerned by the situation in Sudan, particularly the humanitarian situation in Darfur and the Two Areas. We welcome positive steps, such as extension of the unilateral ceasefire by the Sudanese

[BARONESS ANELAY OF ST JOHNS]

Government and conclusion of the first phase of the national dialogue, coupled with assurances that this process remains open to the participation of opposition groups. We welcome our frank engagement on human rights, on which we need to see more progress.

Baroness Cox (CB): My Lords, I thank the Minister for her sympathetic reply. Is she aware that I have just recently returned from the Nuba mountains? I saw there first-hand evidence of the Sudanese Government's continuing destruction of homes and schools in military offensives and aerial bombardment of civilians who have been forced to live in caves with deadly snakes. I met a girl who had been bitten by a cobra and a father whose five children had been burnt alive when a shell hit the cave in which they were sheltering. They have no healthcare, acute shortages of food and there has recently been a measles epidemic in which at least 20 children are known to have died. Will Her Majesty's Government urgently reconsider the obligation to provide cross-border aid to save the lives of these innocent civilians, as the people of the Nuba mountains and Blue Nile cannot accept aid from the Khartoum Government, who are killing them?

Baroness Anelay of St Johns: My Lords, humanitarian assistance is indeed a high priority for the UK and the international community, as is finding a lasting peace settlement. As part of the peace process, the US reached an agreement with the Sudanese Government on humanitarian access to the Two Areas. We believe this offered a real opportunity to provide support to the people of the Two Areas and to allow the current ceasefire to be made permanent. We were therefore disappointed that at a meeting of the troika envoys in Paris last week, the secretary-general of the SPLM-North—the opposition forces—rejected the offer. We remain in direct contact with organisations on the ground in the Nuba mountains, including with the SPLM-North itself. It is not suggesting to us that there has been a resumption in fighting. However, I am very grateful for the information provided by the noble Baroness in her report, which I have read. I reassure her that we will continue to monitor the situation closely and raise breaches of the ceasefire, when they occur, with the Government of Sudan.

Lord Sheikh (Con): My Lords, the United States has agreed to lift sanctions which previously applied in Sudan. Will we now consider trading with Sudan and strengthening our educational and trade links with that country?

Baroness Anelay of St Johns: My Lords, we will continue to provide support to UK companies to understand the opportunities and challenges of operating in Sudan. However, we have been clear with the Government of Sudan that the current conflicts, human rights abuses and business environment remain obstacles to a sizeable increase in interest from British companies. We continue to urge them to make progress on these issues. The UK will continue to support the UN targeted sanctions for Darfur, as well as the EU arms embargo that remains in place across Sudan.

Baroness Kinnock of Holyhead (Lab): My Lords, in South Sudan tens of thousands of people have been killed, there are 2.2 million displaced people, 4.6 million need food aid, and the economy has been absolutely destroyed. Despite this awful misery, South Sudan has been largely forgotten by the rest of the world. Does the Minister share the view that another Rwanda is looming, and accept the UN Secretary-General's warning of a potential genocide in South Sudan? What will our Government do to ensure that the term "never again" has real meaning this time?

Baroness Anelay of St Johns: My Lords, I perfectly understand the valuable reasons why the noble Baroness asks that question today—but perhaps she was unable to see that the Question on the Order Paper changed, and therefore South Sudan is no longer part of today's Question. However, I reassure her that it will be on the Order Paper to be asked next week, and I will certainly address it at that stage. She is right to raise those questions. Indeed, some from South Sudan have fled to Sudan itself, and we are trying to assist with aid there.

Lord Chidgey (LD): My Lords, the United States sanctions placed on Sudan because of the humanitarian and genocidal crimes in Darfur, the Nuba mountains and South Kordofan and Blue Nile states have apparently been lifted by executive order from the past United States President, in response to supposed positive actions. I think that the Minister acknowledges that the abuses have continued pretty well unabated, with humanitarian access still blocked, the indiscriminate slaughter of civilians, the refusal to rein in sexual violence throughout Darfur, and attacks by militia forces in South Kordofan and the Blue Nile. Apart from providing potential business investment opportunities, what positive relief has the Sudan dialogue and Khartoum process given to the oppressed and abused minorities in that region?

Baroness Anelay of St Johns: My Lords, there were several important points there. May I in response point out that when the US promised to lift economic sanctions it was on the basis of a raft of conditions, which will be assessed by July? The first condition is a ceasefire across the country. The noble Lord raised Darfur and the Two Areas, on which I thought I had already responded. The opposition forces there say that there has not been a breach. We are aware, however, of reports of clashes in Nertiti, Darfur. The problem is that we have not been able to verify those with people on the ground, because of the difficulty of access—but I assure the noble Lord that we shall continue trying to do so.

Lord Howell of Guildford (Con): My Lords, has my noble friend noticed that the Chinese have about 8,000 troops in the peacekeeping force in Sudan—in southern Sudan? Might this not be an opportunity to review our own peacekeeping contribution, and indeed the mandate under which those people have to work, and also, in the longer term, to strengthen our security links directly with the Chinese Government?

Baroness Anelay of St Johns: My Lords, my noble friend is right to raise the question of the importance of being able to discuss with China the whole issue of security round the world—and indeed its contribution to the peacekeeping forces. I would again point out that the peacekeeping forces are in South Sudan and this Question is about Sudan—but I can reassure my noble friend that we are looking carefully at how the UK's contribution to peacekeeping in South Sudan is being developed accordingly, including providing a stage 6 hospital there.

Lord Alton of Liverpool (CB): My Lords, would it not have been better if on 13 January, when Minister Tobias Ellwood welcomed the lifting of sanctions against the Republic of Sudan by the United States, he had said what the noble Baroness has said to the House this afternoon and made the following abundantly clear? When a regime is led by people who have been indicted by the International Criminal Court for genocide and crimes against humanity, and has been responsible, as we heard from my noble friend, for indiscriminate bombing of hospitals, schools and homes, the unlawful killing of civilians, the abduction and rape of women, the looting and destruction of entire villages, the alleged use of chemical weapons in Darfur, details of which I have sent to the noble Baroness, and the forced displacement of an estimated quarter of a million people—what the White House itself once described as a “stain on our soul”—surely it cannot be a case of business as usual.

Baroness Anelay of St Johns: My Lords, I agree with the noble Lord; indeed, it is not a case of business as usual because what is unusual now is that the Government of Sudan have agreed to a series of markers of progress they must make to maintain the removal of some of the sanctions that the US has imposed. The US has clearly set out how those sanctions will be lifted. As ever, the noble Lord raises a vital point about the International Criminal Court, international justice and the fact that al-Bashir himself is subject to an order under the ICC. I discussed those matters with members of the ICC when I attended the states parties meeting at the end of last year in The Hague, including with the South African Justice Minister, and I will continue to do so.

The Lord Bishop of Durham: My Lords, I recognise that improvements between the Anglican Church of Sudan and the Sudanese Government have occurred but it remains the case that, after over a year, there are two Sudanese pastors, one Czech aid worker and a Sudanese civil rights activist still in al-Huda prison in Omdurman under the death penalty. Human rights activists say that there is no case at all. What contact have Ministers with the Government of Sudan regarding these prisoners and the treatment of Christians more generally?

Baroness Anelay of St Johns: The right reverend Prelate is right to raise these disturbing cases. We were pleased to hear about the release of the Reverend Kwa Shamal but remain very concerned about the fate of the three men who remain in detention charged with a

number of crimes, including espionage and waging war against the Government. Together with our international partners, officials from our embassy in Khartoum regularly attend hearings. The next hearing is expected to be held on 29 January. It has been delayed. In addition, the UK embassy officials are in close contact with the lawyers representing the defendants. We will continue to monitor the case closely.

Lord Collins of Highbury (Lab): My Lords, I return to the question of impunity. Despite the best efforts of many Governments, including our own, we know that there has been extraordinary violence and breaches of human rights. What are the Government doing to ensure that we monitor and report human rights abuses and violations? How can we bring the people responsible to justice?

Baroness Anelay of St Johns: My Lords, we monitor human rights abuses through a wide range of sources, particularly with the NGOs which provide humanitarian aid across the region, and through the contacts that our own and other embassies have. This is a case where the international community must, and does, co-operate. However, as the noble Baroness, Lady Cox, pointed out, in some areas it is exceedingly difficult to get accurate information.

NHS: Debt Question

2.52 pm

Asked by Baroness McDonagh

To ask Her Majesty's Government why debt has increased in NHS trusts in 12 months from £894 million in 2014–15 to £2.45 billion in 2015–16.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): The NHS is facing pressure from the ageing population, increasing demand and changing expectations. In addition, there are the costs of new drugs, treatments and safer staffing requirements. All these factors have an impact on NHS trust budgets. To address this, the NHS leadership bodies have developed their own plan to deliver financial sustainability for the NHS. The Government are supporting that plan by investing a further £10 billion a year in the NHS by 2020–21.

Baroness McDonagh (Lab): I must start by apologising to the Minister, but I do not recognise reality in that Answer. The Government have cut £1.8 billion from social care during this period, which has led to the escalation of the £2.5 billion in NHS debt. I do not know whether it is a case of incompetence or ideology, but the Government have set about providing us with the most expensive and worst system of care for the elderly in the western world. Will the Minister use all his powers of persuasion to do what the Chancellor wanted to do last year and persuade the Prime Minister to put more money into local authorities for social care? It will save lives and money.

Lord O'Shaughnessy: The noble Baroness's Question is about debt in NHS trusts. I think that referred to deficits, and the facts I have given her are absolutely right. It did increase, not least because of important increases in staffing in response to the Francis inquiry, following events at Mid Staffordshire. Regarding the social care budget, there are a million more over-65 year-olds than there were in 2010 and social care is of course under a lot of pressure. That is why the Autumn Statement outlined additional money for social care. There is £900 million extra over the next couple of years, the precept is rising faster than previously and we have the Better Care Fund, so money is going in, but I accept that there is pressure on the system. That is something we are all working to address.

Lord Maude of Horsham (Con): My Lords, will my noble friend reflect on the contribution that could be made to addressing the problem of overspending by NHS trusts, which has contributed to the growing deficit to which the Question refers, by reviving the programme of health service mutuals? Under the coalition Government, some tens of thousands of health service workers put themselves into not-for-profit social enterprises—staff-led and staff-owned—which showed a dramatic improvement in productivity and quality, and cut costs. A revival of this process, which has been slightly stifled, I suspect, by the attitude of the NHS establishment, could make a major contribution to improving productivity in the health service.

Lord O'Shaughnessy: I thank my noble friend for that point. I know he was a passionate advocate of mutuals when he was in government, not just in the health service but elsewhere. They can make a huge difference to productivity. Improving productivity in the health service is obviously one way in which we will meet our ambitious targets, as well as reducing demand on the most expensive bits of the system. I shall certainly look at the ideas he has suggested. Through the sustainability and transformation plans, the NHS has a number of routes to drive extra efficiency in the system, and I am sure that mutuals can play a part. I would be delighted to meet him to discuss that.

Baroness Boothroyd (CB): My Lords—

Lord Reid of Cardowan (Lab): My Lords—

Baroness Boothroyd: Order. That is a very good way to begin the week. My question is brief and very much to the point, and concerns the transportation of patients to and from hospitals. We are all aware that many patients often have to go to major hospitals—travelling 20 or 30 miles—on a daily, weekly, fortnightly or thrice-weekly basis. The cost must be horrendous; is this part of it? Can the Minister give any indication of the cost of transporting patients to and from hospitals?

Lord O'Shaughnessy: I will write to the noble Baroness with specific details of cost. It is certainly true that if you have to go to or be taken to a distant hospital for

care, that is more expensive both in transport and setting terms. Part of the transformation that the NHS needs to make is that more care should be delivered in primary settings and in the community, which by definition will be closer to home.

Lord Reid of Cardowan: My Lords, first, I apologise to the noble Baroness; I thought it was the Liberal Benches. Has not the noble Lord missed the point of the Question? In the first sentence of his first answer, he said his first challenge was an ageing population. Is it not now obvious to even the most obstinate that cuts in social care have a knock-on effect on the ageing population in putting pressure on the NHS? It is not just that the deficits have trebled; 27 hospitals have now declared that they cannot provide comprehensive care, and more than 50 hospitals are asking for outside assistance every day of the week. The situation is getting worse every week. Will he not take the advice of my noble friend and urge his colleagues to reverse the cuts to social care in the Budget, which are not only affecting care provision but having a disastrous effect on provision through the National Health Service?

Lord O'Shaughnessy: It is certainly the case that one part of the system impacts on the other parts, whether that is primary, secondary or social care. There is no denying that and I do not seek to do so. On the picture the noble Lord paints of worsening deficits, in fact, the picture in 2016-17 is considerably better than it was in 2015-16. It has been helped not least by the sustainability and transformation plans. We are putting £1.8 billion into trusts, 95% of which have accepted control totals to get a hold of that financial sustainability. Extra funding is going in. There is a big increase this year for the NHS budget, which will help, as will the extra money for social care; but of course the challenges are there.

Baroness Walmsley (LD): My Lords, is the Minister aware that 96% of hospitals say that they employ fewer registered nurses than they themselves have planned for safe staffing of the wards, and some of them employ more healthcare assistants than they had planned for? What does the Minister say to those who suspect that hospitals, in an attempt to deal with their deficits, are employing too few registered nurses for safe staffing of the wards and/or putting less qualified people on the wards?

Lord O'Shaughnessy: Clearly, trusts have a responsibility to make sure that they have the staffing right. There are more nursing places available and more coming through training, as we talked about in the House the other day. There has been a general uplift in staffing numbers because of the safety requirements post Francis, especially as we seek to leave the European Union, which will mean that that source of nurses and staff in general will change. We have to train more of our own staff, which is why we are increasing the number of doctor and nurse training places.

Community Rehabilitation Companies Question

3 pm

Asked by Lord German

To ask Her Majesty's Government what changes they propose to the operation and effectiveness of community rehabilitation companies.

Baroness Buscombe (Con): My Lords, we are currently conducting a comprehensive review of the probation system to make sure that it is reducing offending and reoffending, cutting crime and preventing there being future victims. We will set out our plans for the probation system, including community rehabilitation companies, after the review concludes in April.

Lord German (LD): My Lords, I welcome the Minister to the Dispatch Box in answering, I think, her first Question on this brief. She will be aware that the recent joint report from the prison and probation services, on their inspection of through-the-gate resettlement services, was highly critical. It raised some big red flags about the way this new service was rolling out. Can the Minister tell the House what changes the Government are making and whether they want to avoid taking the wrong turn at such an early stage of this new development, by listening to and hearing what those inspectors have said—and by taking action? What steps are being taken?

Baroness Buscombe: I thank the noble Lord for his question and for his kind words. Yes, I can say categorically that part of our comprehensive review of the whole probation system is about listening and having conversations with all involved to ensure that we get it right. In connection with the through-the-gate services, we accept that there are pockets of good practice but also that the quality of those services is not as consistent as we want it to be. As the inspection report notes, there is the potential for great change and help for offenders in their transition from custody into the community. We are carrying out this comprehensive review of the probation system, including through-the-gate services, to make sure that our reforms are delivered and delivering improved outcomes for offenders and communities. However, it is of course early days.

Lord Beecham (Lab): My Lords, I join the noble Lord, Lord German, in welcoming the Minister to her first Question Time and I look forward to many more exchanges. A report last month by Her Majesty's Inspectorate of Probation on the service stated that,

“services have deteriorated of late, largely due to the poor performance of the London Community Rehabilitation Company”—

which is owned by the US company MTCNovo, an organisation we have had some problems with in the Prison Service, and—

“are now well below what people rightly expect”.

The report cited a lack of awareness of domestic violence and child safeguarding issues, unmanageable workloads, with inexperienced staff and lack of contact

with offenders. In January, a report on Stafford and Stoke, run by RPP, stated that public safety was an issue, despite having been raised in an earlier report, and caseloads were too high. Another CRC, Working Links, in Wales and the south-west, is failing targets and has already been fined £145,000. Will the Secretary of State use her powers to intervene and take these and any other failing services back into public control?

Baroness Buscombe: I thank the noble Lord for his question and for his kind words. In connection with the performance of the London CRC, we have taken steps to make sure that all offenders are being seen by the London CRC and that appropriate enforcement action is taken where offenders have breached the terms of their supervision. Contract management activity had already identified problems in London prior to HMI Probation's findings, and we were working with the provider to address these. However, we accept that improvements are required, and we are working closely with London CRC to improve their performance. There is a wide range of options within contracts to tackle poor performance and we will take whatever action is required to ensure that offenders are properly supervised and that the public are protected.

Lord Laming (CB): My Lords, does the Minister—who I also welcome—accept that concerns about the size of the prison population will go nowhere unless the courts have available to them community service and probation supervision orders, in which they have confidence that people will be seen, supervised and held to account over the basics of work and non-offending?

Baroness Buscombe: I agree entirely with the noble Lord. That is why it is important to think about this in context. Transforming Rehabilitation has already radically reformed our probation system; its whole purpose is to improve support to offenders and reduce reoffending. For example, all offenders sentenced to custody now receive at least 12 months statutory supervision and support from probation after release. This includes approximately 45,000 prisoners serving sentences of less than 12 months, who previously received no supervision at all. All offenders released from prison receive a through-the-gate resettlement process, helping them to find accommodation and employment and to build a life free of crime.

However, it is important to accept that these are early days. This was introduced only in May 2015. We could have sat back then and looked at how things were progressing. We are not doing that. We are saying we need a comprehensive reform of the whole system, to make sure that it also works seamlessly with the prison system.

Lord Dholakia (LD): My Lords, one of the priorities for CRCs must be to ensure that a low level of offending behaviour in the past should not be an obstacle to securing jobs for those discharged from prisons. Employers often turn down applications because of offences that have no relevance to the jobs for which candidates are

[LORD DHOLAKIA]

applying. What initiatives is the Minister taking to ensure that employers play an important non-discriminatory role here?

Baroness Buscombe: My Lords, I agree entirely with the noble Lord. Helping prisoners, while they are in prison, to train, retrain and think about how they can get work when they are released, is the most important priority in reducing reoffending. That is why, for example, under this new system, 12 weeks before a prisoner is released, the CRC is contracted and must, as a minimum requirement, spend time with each individual prisoner, thinking about how they can help with their housing—which is also critical—as well as retraining, apprenticeships and jobs. We welcome companies such as Timpson and Halfords, which focus on giving jobs to prisoners, to give them a second or, if necessary, third chance in life and help reduce reoffending.

Higher Education and Research Bill

Committee (5th Day)

3.07 pm

Relevant document: 10th Report from the Delegated Powers Committee

Amendment 143

Moved by Baroness Wolf of Dulwich

143: After Clause 15, insert the following new Clause—
“Power to restrict enrolments

- (1) If the OfS has reasonable grounds for believing that a registered higher education provider is in breach of an ongoing registration condition with respect to the quality of the higher education provided by the provider, or to its ability to implement a student protection plan which forms a condition of its registration, the OfS may place quantitative restrictions on the number of new students that the provider may enrol.
- (2) The Secretary of State may by regulations make provision about the procedures for imposing such restrictions and about rights of appeal.”

Baroness Wolf of Dulwich (CB): My Lords, this amendment stands in my name and that of the noble Baroness, Lady Garden.

Before explaining why this slightly technical-sounding amendment is the way it is, I should like to explain that I tabled it because quite technical issues are central to the purpose of the Bill and to the Government’s commitment to preserve and raise the quality of the higher education system, ensuring that students throughout the country and the system get a fair and quality deal from the institutions that they attend and to which many of them now pay a great deal of money.

One of the slightly curious aspects of the Bill is that the sanctions which it mentions, and which can be brought to bear by the Office for Students when an institution appears not to live up to its promises and commitments and to the requirements placed on it, seem to be either rather draconian or very restricted. The sanctions are either a draconian response of withdrawing degree-awarding powers or university title,

or a whole range of fines, which might be in response to a fraud, on which there is a whole schedule allowing powers of entry. However, what is striking about the sanctions is that they are very different from the way in which, for example, the regulators in the health or school sectors tend to approach their task, which is much more about maintaining or improving something as a going concern—that is, how they might work with it.

I have raised the issue of certain powers, which we understand from the Minister are seen as not as relevant under the proposed new regime as they were under the old one, both because closing down an institution in which students are studying should be seen as an absolutely last resort—I think we all share the Government’s determination that institutions should be of high quality and serve their students—and because a bit of history is in order.

In recent years we have seen a very large increase in the number of institutions in this country that provide higher education. Some have been universities, where numbers have increased, and many have been alternative providers, where numbers have increased enormously. Some of the alternative providers have degree-awarding powers and some award higher national diplomas or certificates, but many of them also have tier 4 sponsor status, which allows them to enrol students from outside the EU. Between May 2010 and September 2016, no fewer than 968 institutions had their tier 4 sponsor status withdrawn. That is a fairly terrifying number, because all those institutions had students in them, who were studying and had paid money—and, basically, they had their education and their plans pulled out from under them.

As part of this recent history, there was also a somewhat fraught hearing with the Public Accounts Committee, which I seem to remember was not happy with the way that the Government had been regulating these institutions, and an NAO report. Following that, BIS, as it then was, took additional powers, which included imposing student number controls on alternative providers. One of the other things that has happened in the last few years is that student number controls for universities have been lifted, so universities can recruit and enrol as many students as they wish. I am not implying that an alternative provider is a bad thing—actually, I am strongly in favour of greater diversity and of an open, diverse and innovative sector—but, in a spirit of risk-based regulation, we have to take account of that recent history.

3.15 pm

The Minister has said that in future he would not expect to use student number controls as they were used in the past. I have to admit that I am slightly unclear about the legal status of imposing any student number controls on anybody who has degree-awarding powers and university title. But is this wise? Is this very small repertoire of sanctions, which the Government seem to envision, really sensible? Is it in line with what we know about risks and is it fair to students? When something goes wrong, it is a personal tragedy and a catastrophe for the students who are involved. I found—quite randomly—a small story on the BBC website from March 2016, when the London School of Business

and Finance, which is owned by Global University Systems and operates in this country, lost its tier 4 status. What was striking about this story was how terrible this was for the students who were involved. One student said:

“I paid £8,500 up front, which is a lot of money”.

It is, indeed, a lot of money. It is a great deal of money, particularly for the groups of students who—and this is highly commendable as long as it is properly regulated—come from families which do not have a history of higher education, or from recent immigrant groups, or minority groups, or from overseas and who have often saved up vast sums of money to come to the UK. They are, in other words, many of our most vulnerable students.

We also have to be aware that things can go catastrophically wrong. One reason why I am very conscious of the risks that can follow from inadequate oversight, inadequate care and inadequate powers to intervene before things go wrong, is because of much of what has happened in the United States where, with a great deal of optimism and in many cases, realised optimism, it became increasingly easy for institutions to set up and, above all, expand. We then had, a little bit further down the road, the catastrophe for students who were enrolled at Corinthian, which went bankrupt overnight. This happened because when you are going bankrupt, you wait until the last minute and you hope it will not happen, but suddenly your students are told that you do not exist anymore and that the institution to which they have given their money is now in the hands of the receivers. As a result, students have an incomplete degree and a debt which they cannot pay off. I am not saying that is not something that happens to all institutions—and I am not saying that the public sector is good and the private sector is bad. I am saying that these are areas where we know the risks are high and we therefore know the importance of having risk-based regulation and a whole repertoire of ways of responding and picking up on situations which threaten catastrophe for the students concerned.

That is why I have tabled this amendment. I do not expect for a moment for it to become law, but I would like to draw to the Minister's and to your Lordships' attention, the importance of making sure that, if we are having this integrated sector with a single regulator and a single register, we do not, in the process, abandon a range of sanctions, tools and approaches which were developed very recently by this Government's immediate predecessor for very good reason. What sanctions will remain in the hands of the Office for Students, if it feels as if things are going wrong, other than imposing a fine and other than going for a draconian closure? Is the Office for Students expected to take any sort of active role in not only spotting risk but doing something to mitigate it and ensure that students are not left in the situation of that young man whose story I have just quoted? I beg to move.

Baroness Garden of Frognal (LD): My Lords, I have added my name to the amendment moved by the noble Baroness, Lady Wolf, which is self-explanatory. She has set out very clearly the reasons behind it: to ensure that the OfS can place restrictions on the number of new students a particular higher education

provider may enrol, if it has reasonable grounds for believing that the provider is in breach of a registration condition.

Given that the Bill aims to improve the student experience, it is particularly important that, if a higher education provider is falling short in the provision it should be offering, the OfS should, as part of its duty, have powers to intervene to prevent cohorts of new students being enrolled. The registration conditions in the Bill are important but, as the noble Baroness, Lady Wolf, set out, it is important that the OfS should have a range of sanctions available if a particular provider is not abiding by the registration conditions, and that those sanctions should be proportionate. On the amendment's second paragraph, it is only right that that there should be regulations setting out the procedures, but only right too that rights of appeal for any such sanction should be added to the clause.

Lord Watson of Invergowrie (Lab): My Lords, as the noble Baroness, Lady Wolf, set out very clearly, her amendment would allow the OfS to place,

“quantitative restrictions on the number of new students that the provider may enrol”,

if it has,

“reasonable grounds for believing that a registered higher education provider is in breach of an ongoing registration condition with respect to the quality of the higher education provided ... or to its ability to implement a student protection plan”.

She went into some interesting and rather unfortunate detail about what can happen when colleges or providers get into serious difficulty.

The amendment has echoes of Amendment 142, moved by the noble Lord, Lord Lisvane, last week, which sought to replace the words,

“it appears to the OfS”,

with,

“the OfS has reasonable grounds for believing”,

relating to the power to impose monetary penalties in Clause 15. Restrictions on new students would be a new power following the provisions of Clause 15. In effect, it is another form of monetary penalty, which we support in principle, although we would be concerned if it were left open-ended. As soon as a breach is shown to have been brought to a conclusion, we believe the restriction should be lifted so as not to harm existing students, who are blameless but could be affected—as the noble Baroness, Lady Wolf, graphically explained—to their detriment through the institution either being closed, or having fewer resources.

I read closely the Minister's response to the noble Lord, Lord Lisvane, from our debates on Wednesday. I cannot say that he made a convincing case for rejecting the rather stronger words in that amendment. He basically stated that as the wording in the Bill is used in other legislation—he quoted the apprenticeships Act of 2009—there was therefore no reason to change it. He did not come up with any other reason, despite the noble Lord, Lord Lisvane, saying in moving the amendment that “it appears to” was but one of the options available and one of the lower ones at that.

Although the words “it appears to” are used in other pieces of legislation, few use the formulation in the context of a decision to take enforcement action,

[LORD WATSON OF INVERGOWRIE]

which is what raises concern with this Bill. The noble Lord, Lord Lisvane, stressed that the aim was to raise the legal threshold before the OfS was entitled to take action. In doing so, he was supported by the noble and learned Lord, Lord Judge, one of whose cases was quoted. It seems at least odd that the Government feel that their lawyers, who I suggest probably do not have the noble and learned Lord's expertise and experience, know better on this matter. The same applies to some extent to the amendment in the name of the noble Baroness, Lady Wolf. Having had time to reflect, perhaps the Minister will—if not today, before Report—come to the view that it is appropriate to raise the standard required of the OfS in such situations.

Viscount Younger of Leckie (Con): My Lords, the Bill creates the conditions to improve the overall quality and diversity of the higher education sector, creating a level playing field through a risk-based approach to regulation. Clause 6 enables the OfS to impose specific, ongoing registration conditions on a provider. The practical effect of this is that the OfS will assess the compliance of all higher education providers with the appropriate conditions and will adjust its regulatory approach accordingly. This is central to the risk-based approach to regulation that the OfS is being established to provide.

In practice, we envisage that, if the OfS considers that an institution or an element of an institution, such as its financial sustainability, poses a particularly high risk, it can add, change or tailor the registration conditions applicable to that provider to address that risk. I hope I can reassure noble Lords that the Bill already provides for the OfS to set a student number control condition in cases where it is appropriate and proportionate; for example, an institution that the OfS considers may be in breach of registration conditions that relate to quality of provision could have a student number control imposed by the OfS as an additional specific registration condition, if the OfS believes that such action is reasonable and proportionate. The OfS may also exercise this power if it considers that there is a risk that the provider is recruiting more students than its student protection plan can properly cater for.

I am in complete agreement with the noble Baronesses, Lady Wolf and Lady Garden, about the importance of providing the OfS with the tools it needs to ensure the quality of higher education provision. However, given the powers already conferred on the OfS through Clause 6, it is unnecessary to include in the Bill one example of the conditions that could be imposed. Indeed, including one example of such a condition might appear to exclude other conditions which might be more appropriate in the circumstances of a particular provider, including those which have no plans to increase their student numbers. However, I appreciate the noble Baroness, Lady Wolf, raising this and I hope I can provide some further reassurance for her, focusing particularly on overseas providers, which she mentioned. Our plans will speed up and streamline process without lowering standards. In order to become eligible for degree-awarding powers, any provider must register and pass rigorous entry requirements. It is a high bar which only high-quality providers will be able to meet.

We welcome overseas providers which meet this test increasing choice for students. Providers that cannot meet the rigorous entry criteria will not be able to become registered or obtain access to degree-awarding powers or university title.

The noble Baroness, Lady Wolf, asked what sanctions are available to the OfS. I start by saying that the best principles of regulatory practice will be adhered to. These include transparency, accountability, proportionality, consistency and, where issues are targeted, targeting only cases where action is needed. Specifically, the escalated suite of actions and sanctions available to the OfS includes: putting in place a support strategy or issuing a direction for a provider to take specified actions; imposing additional specific ongoing registration conditions—for example, as I mentioned earlier, student number controls; or imposing a monetary penalty. We envisage that most often this will be used where a breach has occurred but has now been remedied, but it can also be used alongside a suspension. Also—and by the way, this is as a last resort—the OfS can order deregistration. To further reassure the noble Baroness, this will be where all other efforts have failed or it is clear that imposing monetary penalties or suspensions will simply not be sufficient to deal with the provider. I hope that, with those reassurances, the noble Baroness will withdraw her amendment.

Baroness Wolf of Dulwich: I thank the Minister most sincerely for what he has just told us and for—I do not want to call it a gloss—the additional information he has provided. I am extremely relieved to know that it is clearly the intent of the Government that the OfS should have a wide range of actions and get deeply involved not merely in risk regulation but in avoidance of catastrophe, which I have alluded to. I am extremely grateful to the Minister, I am delighted to have had the points of fact he has just given us placed on the record, and I beg leave to withdraw the amendment.

Amendment 143 withdrawn.

Schedule 3: Monetary penalties: procedure, appeals and recovery

Amendment 144

Moved by Baroness Brown of Cambridge

144: Schedule 3, page 78, line 37, at end insert—

“() During the specified period the OfS must have due regard to the general desirability of keeping confidential the fact of, and reasons for, its intention to impose a monetary penalty on a provider, until it has issued a notice to the provider under sub-paragraph (1).”

Baroness Brown of Cambridge (CB): My Lords, Amendment 144 in my name and that of my noble friend Lady Wolf, and the others in this group, Amendments 148 and 153, concern confidentiality during ongoing investigations by the Office for Students. I ask the Minister to consider that the OfS should be required to maintain appropriate confidentiality during ongoing investigations, because of the risks to the reputation of an individual provider. Such risks have

huge implications for the provider's students and graduates, as well as for its staff and the rest of the sector. There are risks of publicity in cases where, for example, an allegation or complaint may not be upheld. As we know, reputations are much more easily lost than they are restored. The reputation of a provider is critical to its students and graduates.

Will the Minister consider that the OfS should have a duty for its proceedings to remain confidential and to ensure that it will not announce that it is considering taking action against a provider until it has made a decision to do so, and until the provider has had the opportunity to respond to the points made in the initial notice from the Office for Students? I hope that this will be uncontroversial, because it will be of benefit to students as well as providers in the sector as a whole. I beg to move.

3.30 pm

Lord Watson of Invergowrie: My Lords, we support the amendments in this group in the names of the noble Baronesses, Lady Brown and Lady Wolf. It is appropriate that until the OfS has issued a monetary penalty notice to a provider, has issued a notice to suspend a provider's registration, or has issued a notice to remove a provider from the register, the OfS should keep its intentions and the reasons for them confidential, as already stated by the noble Baroness, Lady Brown.

Confidentiality is an important factor in situations such as these and it is necessary to protect against that all too common suspicion that there is no smoke without fire. Even if exonerated, an institution may never completely recover its reputation, and the ensuing stigma could have serious effects on its ability to attract students, academics and research funding. There could be significant risks in such situations, not just to the reputation of the individual provider but to the higher education sector as a whole. For that reason, these amendments are necessary.

Baroness Goldie (Con): My Lords, I first apologise for my voice. I have a heavy head cold and my remarks may be more impenetrable than usual.

I agree with the noble Baroness that it is important to protect provider reputation in the early stages of an OfS investigation while evidence is being gathered. We recognise that even the knowledge that the OfS is considering sanctions could have a detrimental effect on a provider in a number of ways. I hope I can reassure your Lordships that the Bill already contains safeguards to protect the interests of providers in the circumstances outlined, and that it is moreover highly unlikely to be in the interests of the OfS to disclose that it is considering sanctions.

When the OfS is considering action as a result of a perceived breach of registration conditions, the primary objective is generally to achieve compliance. I am sure your Lordships agree that the desired outcome, for the benefit of students and the provider alike, is that the provider takes the actions necessary to ensure compliance with the conditions of registration that have been placed on it. Providers are expected to be given guidance and time to enable them to take corrective action or make further representations to the OfS. Only in very

serious circumstances would we expect sanctions to be imposed. Disclosing details of possible sanctions during this sensitive period, when the OfS has yet to decide to take action, and when discussions, representations, remedial action and evidence-gathering may be ongoing, would not generally be either appropriate or helpful.

I assure your Lordships that under the Bill, in Clause 2, the OfS must have regard to the principles of best regulatory practice and act in a proportionate, accountable and consistent manner. As the noble Baroness is aware, there are many regulatory bodies covering a wide range of areas of activity in the UK which do indeed implement and deploy that best practice. As such, the OfS, like any other public body, would not look to disclose information prematurely or unnecessarily that could have an adverse effect on a provider before a decision was taken. To do so would not be in accordance with regulatory best practice. Let me be clear: if a decision has been taken to impose a sanction, we would expect the OfS to consider making it a specific condition of registration that a provider's governing body advises students promptly and accurately of the OfS's sanctions. The OfS itself may also look to publicise the details if appropriate, especially where this may be in the interests of students.

I hope that this reassures the noble Baroness and I ask her to withdraw this amendment.

Baroness Brown of Cambridge: I thank the Minister for her reassurance that we have a common intent in how the Bill expects things to work and how these amendments try to ensure that things work. I hope she may consider adding a few extra words to the Bill, but I am very pleased to hear the reassurance and, in light of it, I beg leave to withdraw the amendment.

Amendment 144 withdrawn.

Amendment 145

Moved by Baroness Goldie

145: Schedule 3, page 79, line 14, leave out from "when" to end of line 16 and insert "—

- (a) an appeal under paragraph 3(1)(a) or (b), or a further appeal, could be brought in respect of the penalty, or
- (b) such an appeal is pending."

Baroness Goldie: My Lords, I shall speak to the government amendments and wait to hear from the noble Lord, Lord Judd, before responding to his amendment. These government amendments relate to the various appeals processes contained in the Bill in relation to a decision by the OfS to deregister a provider, impose a monetary penalty, vary or revoke degree-awarding powers or revoke a university title. The amendments address points of inconsistency and are intended to ensure a smooth and clear appeals process. I emphasise that the amendments clarify and put beyond doubt various procedural points, including that no decision can come into effect while any appeal, including a further appeal, can be brought or is pending; that a provider may appeal against the decision itself, the date on which it comes into effect or both; and that a provider may appeal, in relation to degree-awarding

[BARONESS GOLDIE]

powers and university title only, the exact sequencing of a decision, an appeal and any order which brings the decision into effect. These amendments further align the various appeals provisions across the Bill. They are not a change of policy but simply to try to iron out inconsistencies. I beg to move.

Lord Judd (Lab): My Lords, I am very interested to find my amendment surrounded by government amendments, and I am not quite sure whether to interpret that as good will from the Government towards my amendment or what. Due process sounds an awfully boring phrase, but it is often terribly important. My amendment is very brief and to the point and is about due process. I should remind the Committee that I am involved in the governance of three universities—the LSE, the University of Newcastle and the University of Lancaster. The rights to appeal in the Bill are somewhat patchy. In particular, there is no right to appeal against a decision not to register an academic provider or to challenge the suspension of registration. Decisions over the registration, suspension or deregistration of academic institutions represent significant examples of the exercise of discretionary power by the Office for Students. It seems only right that in the exercise of these powers the Office for Students is properly accountable, and my amendment seeks to ensure that. It is not right that it should be accountable to an appeals process for decisions about removal from the register and yet will not have the same accountability for decisions to suspend or not to register. This conforms to the norms of public law that bodies should be properly accountable.

Baroness Deech (CB): My Lords, I support the noble Lord, Lord Judd, and ask the Government whether they have fully considered the appeal and legal implications of this new structure. There is already quite a body of education lawyers. I have no doubt, subject to correction by noble and learned Lords, that every single significant decision in the Bill will be appealed when it comes into force. The awards of gold, silver and bronze will immediately spark judicial review, as will the metrics used for the teaching excellence framework. Grant and non-grant of title are mentioned in the Bill. Registration, validation, numbers of students, access—every single vital decision is unprotected, quite rightly, from appeals and, in particular, judicial review, which could bring a whole system to a halt.

There is already a student complaints system which will, I am sure, expand, given the promises that will have to be made under the new structure being brought into effect by the Bill. Have the Government thoroughly considered all the areas in the Bill that will be open to judicial review and how institutions and the OfS will cope with it?

Lord Watson of Invergowrie: My Lords, it seems to me that my noble friend Lord Judd's suggestion would be a very useful addition. The comments of the noble Baroness, Lady Deech, just now support that.

In response to the previous group of amendments, the Minister stated that under Clause 2(1)(f) the OfS must give due consideration to "best regulatory practice".

Surely, offering somebody the opportunity to appeal a decision, which could have pretty far-reaching consequences, cannot be described as anything other than best regulatory practice. On that basis, I hope the Minister will accept the amendment in the name of my noble friend Lord Judd, along with the Government's amendments, because it is undoubtedly a question of best regulatory practice.

Baroness Goldie: My Lords, I note that a similar amendment to that proposed by the noble Lord, Lord Judd, has been tabled in relation to the provisions on degree-awarding powers, which we will come to in future sessions.

The appeals provision in the Bill has been drafted to cover specific scenarios where the OfS makes a decision that deprives providers of a status powers or imposes a monetary penalty. I understand the sincerity behind the amendment tabled by the noble Lord, Lord Judd, but he is proposing something additional: extending the appeals provisions to unsuccessful applications to join the OfS register.

I was interested to hear the noble Baroness, Lady Deech, say that her apprehension is that the justice system would become overloaded without this amendment. The Government's contention is that extending the appeals provisions to unsuccessful applications could achieve that very consequence, which would be undesirable and could also encourage ill-prepared applications. But let me provide some reassurance—

Lord Watson of Invergowrie: It is not about just unsuccessful applicants but situations where a registration is suspended, having already been given.

Baroness Goldie: I thank the noble Lord for his intervention. I might observe that there is a distinction: suspension is a temporary compliance measure. Although there is no formal right of appeal, the Office for Students is required to notify an institution of its intention to suspend registration and allow 28 days for the institution to make representations. So there is a process, which means that the institution at risk of suspension has a right of comment and an opportunity to take remedial action.

Lord Watson of Invergowrie: I realise that the Minister is a lawyer—that is understood—but she seems to be making a significant distinction. It is not just about having a right to comment, saying "I wish you hadn't done that". This is about the right to appeal a decision—building an appeal and trying to have it overturned.

Baroness Goldie: I cannot claim to be a lawyer—I am a very long since defunct lawyer—but what I am endeavouring to do, without reference to legal parlance, is to draw a distinction between the scenario I have outlined, where we understand that appeals could be competent and would be important, and that outlined by the noble Lord, Lord Watson. We think there is a difference between the scenario I have outlined and suspension, which by its very nature is an interim process—either it will be dealt with or it will not be dealt with.

I will try to provide some reassurance. Where the OfS proposes to reject an application to the register, or indeed to suspend a provider's registration, the provider is afforded a minimum period of 28 days to make further representations to the OfS before the final decisions are taken. In these circumstances, I asked the noble Lord, Lord Judd, to consider not moving his amendment.

3.45 pm

We consider a well-functioning decision-making and appeals process to be vital for the smooth running of this new regulatory framework. The Government amendments do not reflect any change in policy but merely clarify some points of procedural detail, with the aim of making the processes as clear and robust as possible.

I omitted to respond to a point raised by the noble Baroness, Lady Deech, who inquired about the assessment by government lawyers of the potential for claims arising. I do not have that information but I undertake to write to her.

Lord Judd: My Lords, the Minister has not altogether reassured me. There is a very important principle in justice that it should not only be done but be seen to be done. There is also an anxiety that it would not be possible to have new applicants who challenged the established order because they were bringing a completely new or fresh approach. If they are refused recognition, surely the normal practice of law is that they should be able to appeal against that decision. I do not see why the Government should resist that, because it is in everyone's interest that everyone can understand why the applicant was refused. Otherwise, anxiety might begin to build up about what was really happening, along with the anxiety that the Government were backing some of the existing club, as it were, in excluding new members. I am still anxious about the principle of justice in this context, but I will consider very carefully what the Minister has said. At this stage, I shall not move my amendment.

Amendment 145 agreed.

Schedule 3, as amended, agreed.

Clause 16: Suspension of registration

Amendments 146 and 147 not moved.

Clause 16 agreed.

Clause 17: Suspension: procedure

Amendments 148 and 149 not moved.

Clause 17 agreed.

Clause 18: De-registration by the OfS

Amendments 150 to 152 not moved.

Clause 18 agreed.

Clause 19: De-registration by the OfS: procedure

Amendment 153 not moved.

Amendments 154 to 156

Moved by Viscount Younger of Leckie

154: Clause 19, page 12, line 27, leave out subsection (8)

155: Clause 19, page 12, line 29, leave out from "when" to end of line 30 and insert "—

(a) an appeal under section 20(1)(a) or (b), or a further appeal, could be brought in respect of the decision to remove, or

(b) such an appeal is pending."

156: Clause 19, page 12, line 32, at end insert—

"(11) Where subsection (9) ceases to prevent a removal taking effect on the date specified under subsection (6), the OfS is to determine a future date on which the removal takes effect.

(12) But that is subject to what has been determined on any appeal under section 20(1)(a) or (b), or any further appeal, in respect of the decision to remove."

Amendments 154 to 156 agreed.

Clause 19, as amended, agreed.

Amendment 157 not moved.

Clause 20: De-registration: appeals

Amendment 158

Moved by Viscount Younger of Leckie

158: Clause 20, page 12, line 35, leave out from "against" to end and insert "either or both of the following—

(a) a decision of the OfS to remove it from the register under section 18;

(b) a decision of the OfS as to the date specified under section 19(6) as the date on which the removal takes effect."

Amendment 158 agreed.

Amendments 158A and 159 not moved.

Amendment 160

Moved by Viscount Younger of Leckie

160: Clause 20, page 13, line 3, after "decision" insert "(including the date on which the removal takes effect)"

Amendment 160 agreed.

Clause 20, as amended, agreed.

Clause 21: Refusal to renew an access and participation plan

Amendments 161 and 162 not moved.

Clause 21 agreed.

Amendment 163 not moved.

Clause 22: Voluntary de-registration

Amendment 164 not moved.

Clause 22 agreed.

Amendments 165 and 166 not moved.

Clause 23: Assessing the quality of, and the standards applied to, higher education**Amendment 166A**

Moved by Viscount Hanworth

166A: Clause 23, page 14, line 30, leave out from “may” to “of” and insert “appoint an independent body to make assessments”

Viscount Hanworth (Lab): My Lords, Amendment 166A and the allied Amendments 168A and 173 propose that the body that is to judge the quality of the teaching and the standard of assessment in universities should be independent of the Office for Students. Amendment 173 declares that no members of the body should also be members of the Office for Students.

These amendments are overshadowed by my noble friend Lord Stevenson’s amendments that give a detailed remit to a proposed independent office of quality assurance. No doubt he will speak persuasively to those amendments with his customary wit and wisdom, but in effect, they propose re-establishing the existing Quality Assurance Agency, or the QAA, under another name and on a different constitutional basis. This raises the question of why the role of the independent QAA should not be perpetuated. This is not a rhetorical question; it is a genuine request for a response from the Government.

However, I will not hesitate to suggest that, as it stands, the Bill will allow the quality assurance regime to become subject to much closer oversight and control from the Secretary of State than has been the case hitherto. If that were to be the case, I am bound to say that it would be likely to have very deleterious consequences. I should be honest at this point about declaring that, notwithstanding the respect that it has acquired, the effect of the existing QAA regime has been deleterious.

I can imagine that when it was first established, there was thought to be a need for a formal centralised system of quality control. This I would like to dispute. Despite many impressions that may have been fostered by the campus novels of the 1960s and the 1970s, universities were well regulated as regards both the quality of their teaching and their standards of assessment. As I mentioned at Second Reading, this was achieved largely through the system of external examining, whereby universities appoint persons from other institutions to monitor their examination procedures and to assess their methods of teaching.

The detailed findings of the external examiners were private to the institutions concerned, albeit that any lapses in standards would quickly become common knowledge throughout the university sector as a whole. The system of external examining not only served to

keep the teaching within academic departments up to the mark, but also ensured a degree of uniformity in the standards within particular academic disciplines throughout the sector. With the advent of the formal quality assurance regime and with the duty to publish the findings of external examiners, a great pressure arose to ensure that any publicity would be good publicity. The quality assurance officers within individual institutions worked assiduously to this end and they often imposed upon the external examiners, asking them to amend any comments that seemed to be critical. Thus the purpose of the regimes of external examining has been utterly subverted. This is only one of the many ill effects of a formalised centralised quality assurance regime that I can instance; there are many others.

In view of these experiences, I have some misgivings regarding the prescriptions of my noble friend Lord Stevenson. Nevertheless I am bound to support them on the grounds that they emphasise the need for academic independence and that they tend to remove matters of quality assurance from the direct influence of the Secretary of State. I hope that in replacing the existing Quality Assurance Agency by a newly founded system there will be some regard to its failures and some recognition of the qualities of the pre-existing system that I have described. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I have a significant number of amendments in this group. I thought that for the convenience of the House, I should introduce them at this stage so that the debate can be as full as it can be. I support the comments made by my noble friend Lord Hanworth. He is right in describing where my amendments would take us. I do not specifically say that I would rule out the continuation of the existing QAA. Indeed, this group is wide enough to allow a number of different interpretations and some of the amendments do concern the status quo ante. However, the amendment at the heart of this group would create a new independent body. This would probably be best achieved by transmogrifying the QAA but it does not require that.

The new clause in Amendment 170A sets up a body called the Quality Assurance Office, which has come largely from discussions and debates around the sector. It has gained considerably by comments made by the Council for the Defence of British Universities, an organisation that has attracted a lot of attention from Members of your Lordships’ House and more widely in the sector. I am grateful to it not only for its ideas and discussion but also for some of the drafting in these amendments.

Amendment 170A therefore sets up a new body. Amendment 201A sets out the functions of that body. It is a key point that it would be independent of the Office for Students and of the Secretary of State, with a focus on responsibility for qualities and standards. Amendment 213A inserts a revised schedule setting out the detail of QAO which replaces that which appears in the Bill for a committee to deal with standards. Amendment 217A sets out how the QAO will be funded. We are thus presenting a complete package. It would be relatively easy for the Minister to respond by saying that he accepts every word of it. I am sure that as I sit down I shall hear him say exactly that.

To be serious, the reasons for these amendments are in two groups. The first group is about the creation, in the Office for Students, of what I think is primarily a regulator. I say that partly because that is how it has been described by the Minister, although in his recent letter he tries to backtrack a little from that in saying that it is not a regulator as one would understand the term “regulator” since it will not acquire with its establishment any of the functions currently given by the code of regulators. This is neither one answer nor another. We shall have to come back to this problem. What we know is that the regulatory structure in higher education is becoming more complex because of the requirements in the Consumer Rights Act 2015 which made the CMA responsible—although there were powers before that—for obtaining undertakings from universities and higher education providers in order to ensure that they were operating with the proper integrity required of bodies offering services to those consumers who wished to take them up.

So we have a rather complicated field. The letter from the Minister dealt in part with this, but it does not quite answer all the questions. I hope we will get some more information from him during this debate. Either today, or at some future date, we will know that the Office for Students is indeed a regulator. However, in the Bill as currently drafted, it has responsibility for setting up committees or, in some cases, direct functions relating to quality assessment and fair access; the statistical underpinning of these areas and validation. Indeed, it is appointed as validator of last resort. This would be a situation which is unparalleled in the regulatory framework: a body which is not only responsible for the health, existence and support of the bodies which it is regulating, but also has the power to deregister them and shut them down. At heart, it is an all-singing, all-dancing model which has been tried in other areas and just does not work. Such a body is not right in principle and will not work in practice. That is the first strand—what the Bill is trying to set up is not the most efficient and effective way of operating in this sector.

4 pm

My second point is a positive argument for why it is important to have an independent regulator in this area. The key issues we have been discussing, both at Second Reading and in Committee, are: how we establish the appropriate standards for the university sector in the United Kingdom—in this part of the Bill, in England particularly;—and how a body that wishes to become a higher education provider can be registered as such and how it will acquire degree-awarding powers. This is a key plank which we must get right as we go through the Bill. Secondly, it goes further than we currently do in providing quality teaching and research—this Bill is mainly about teaching—in a way which has not been tried before and using methods which are not yet in proper state, but we must all support the aspiration. This work is currently done by QAA, which at the moment is an independent body and not part of the HEFCE set up. We need to think about how we can find an addition to the structures which will enhance and encourage others to develop both quality and standards even further than they currently do, although the two are completely different.

In these amendments we argue that it is important to get an independent body for standards which is, therefore, outside any possibility of pressure from the OfS or the Secretary of State to do one thing or another; gives independent advice to the OfS and the Minister; can respond separately on innovation and enterprise and support them without having to be part of a broader corporate approach, reflecting what is happening on the ground and not filtering it through some other set of instructions or bodies organised through the OfS; and ensures, with the purity that only an independent body can provide, that threshold standards, and the knowledge of the institutions that are making up those who have threshold standards, and the assessment of the quality deployed by these bodies, is fully in accordance with the highest standards that can be achieved. If it being separate also enables the appeal mechanism—which we have just been looking at—to be improved that would also be a plus.

Those are the reasons behind these amendments and the primary points I wish to make at this stage. There are other amendments in this group which are mainly, as I said, about the status quo.

Baroness Garden of Frognal: My Lords, I will speak to Amendments 171, 202 and 213 in my name. Amendment 171 proposes that the chair of the quality assessment committee should be independent of government and party politics and builds on the remarks of the noble Viscount, Lord Hanworth, on the importance of independence. There are concerns that, throughout the Bill, the Government will have powers more than is healthy in the affairs of higher education institutions. It is important that the chair of the QAC should be a non-party-political appointment.

Amendment 202 brings us back to a may/must debate—so beloved of your Lordship’s House across a whole swathe of legislation. Here we propose that the OfS “must consult”, rather than “may consult”, about whether there is a body that is suitable to perform the assessment functions. This should not be a matter of choice. Amendment 213 adds additional conditions to any directions given by the OfS to a designated body, such as ensuring that the powers of the OfS to give directions to a designated body do not adversely impact on that body’s suitability to carry out assessment functions, must be compatible with other duties, and must not relate to operational activity without previous concerns having been raised. These measures are designed to safeguard the authority and autonomy of the universities while acknowledging the duties of the OfS. I hope they will be seen as helpful additions to the Bill.

I support the arguments put forward by the noble Lord, Lord Stevenson, for the quality assurance office. Without doubt, with the new measures in the Bill, we need a really robust quality assurance system, and I think the measures proposed could provide that.

Baroness Warwick of Undercliffe (Lab): My Lords, I support an independent quality assessment process, and I believe it is right that an organisation independent of the Office for Students should undertake this role. Most importantly, it needs to be a body that has the confidence of the sector to undertake assessment of quality on behalf of the OfS. As others have said,

[BARONESS WARWICK OF UNDERCLIFFE]

I would like to see a continuation of the co-regulatory approach to quality assessment, which would allow the QAA to continue in its current role. It is important to ensure that the relevant stakeholders, including the OfS, the Secretary of State and the sector, respect the principles of co-regulation.

Sector ownership of the QAA, with HEFCE and other devolved bodies as essential stakeholders that also fund and direct some of the QAA's activities, has until recently been highly successful. It has ensured sufficient buy-in from the sector and the academic community, while providing processes for assuring the public about standards and quality that are seen as world-leading outside the UK. Also, the UK is a member of the European Higher Education Area, which is quite separate from the EU, and its standards and guidelines require that the body responsible for quality review be entirely independent of the Government.

I am rather anxious that a body appointed on a statutory basis would be for England only, so would undermine a UK-wide approach to quality. I hope that in his reply the Minister will address both those points. I also reiterate a point that has been made by others: I certainly would not want to see a quality assurance system that was vulnerable to political interference and would undermine the sector's own vital role in quality assurance.

Lord Deben (Con): My Lords, I am sure that I am not the only one for whom the particular solutions that have been presented are not ones that we wish to support wholeheartedly. However, the reason for them is, I think, one that would attract support across the House. We live in a society where the dangers to our liberal system become daily more obvious, so we should not do anything that would enable those who would use the system for anything other than the free, liberal debate of which our universities are so central a part. We do not want a system that could in any way inhibit that.

One difficulty of discussing these issues is that no one is suggesting that this Government, or these Ministers, are of that kind. But a lot of things have happened over the past two or three years that have led many of us to be much more worried about those fundamentals that we have taken for granted. Therefore, I hope that the Minister will understand that there will be a considerable lack of ease if he cannot assure us about the independence of that part of the structure which ensures both quality and independence. As I say, I am not entirely delighted by the various suggestions as to what one might do, and I am concerned about the proliferation of bodies, groups and persons; I am never quite sure how such things can be totally divorced from party politics, but I certainly think we ought to try. I hope that the Minister will understand that there is an underlying concern, which may demand a different answer, but which must be assuaged, because we live in times when none of us is any longer willing to risk any of the things that we hold so fundamental and so dear in our liberal society.

Viscount Younger of Leckie: My Lords, Clause 23 establishes powers for the Office for Students to assess the quality and standards of higher education. It updates and modifies the current duty on HEFCE to do this.

I should like to say a few words about standards. As the Committee will know, we have already had a useful debate about the inclusion of standards in Clause 23. I reiterate that the intention here is not to weaken or undermine current sector responsibilities and ownership in relation to academic standards. I recognise noble Lords' concerns. I have been listening, and continue to do so carefully, considering the points that have been raised.

These amendments touch on the importance of co-regulation and how that will be supported through the roles of the designated quality body and the quality assessment committee. They all give welcome recognition to the value of having an independent quality body to undertake the assessment functions under Clause 23, with effective independent oversight built into the quality system. That is why under the Bill the OfS must establish an independent quality assessment committee to provide quality oversight, and is given powers to designate a quality body which is independent from government. I hope that reassures my noble friend Lord Deben. The functions of the OfS and the quality body in this area are overseen by an independent quality assessment committee. Clause 24 will ensure that the majority of its members are not members of the OfS, while offering it the flexibility to draw on the expertise of individual OfS members.

I wish to address the points raised by the noble Viscount, Lord Hanworth, who was supported by the noble Baroness, Lady Garden. The general theme was that we needed a body which was independent, like the QAA. However, amendments to create a new body on a statutory footing, solely responsible for quality assessment without any links to the OfS, would remove the important ability for the system to operate as one and abolish the system of co-regulation, which has endured for almost two decades, by removing any possibility of a truly independent sector-owned body, such as the QAA, from the regulation of quality; instead creating a statutory body whose chair and chief executive are appointed by the Secretary of State. I reassure noble Lords about the independence of the designated quality body. Although the OfS, in having ultimate responsibility for the register of higher education providers, has to retain appropriate oversight and contact with the designated quality body, the Bill is specific about how this relationship can work; for instance, granting information powers in certain instances will also allow the OfS to give the designated quality body directions which can be general only, such as when advice may be required to fit with the registration cycle. This is only on the condition that it does not undermine the quality body's expertise.

The noble Lord, Lord Stevenson, raised an important point about the independent quality regulator. I thank him for the amount of work and thought that have gone into his huge number of amendments. The body already has to be independent of the Crown and individual higher education providers but it has to have the confidence of a broad range of higher education providers—tests it would be unlikely to meet if it was not independent. There are safeguards in the Bill which allow it to operate independently on an ongoing basis, including that the quality assessment committee will advise on the work of the OfS and quality body;

that the body must have the confidence of the sector to be considered suitable, as the noble Baroness stated; and that directions from the OfS can only be general. Therefore, Clause 23 is key to maintaining a high and rigorous bar for entry into the system, while reducing the burden on those high-performing providers. I reassure the Committee again that there are safeguards built into the quality system that allow an effective co-regulatory approach to function without oversubscription from government, which noble Lords have made clear that they want. With this balance in mind, I therefore request that Amendment 166A be withdrawn.

Viscount Hanworth: My Lords, I do not believe that the speakers in this short debate will be entirely reassured by what the Minister has told us. It is clear that there is work to be done in this area of the Bill. I trust that the Minister will take the opportunity to react to what he has heard today and bring something back to us on Report. Therefore, I beg leave to withdraw the amendment.

Amendment 166A withdrawn.

Amendments 167 to 170A not moved.

Clause 23 agreed.

4.15 pm

Clause 24: Quality Assessment Committee

Amendments 171 to 173 not moved.

Amendment 174

Moved by Lord Stevenson of Balmacara

174: Clause 24, page 15, line 21, at end insert—

“() At least one member of the Committee must, at the time of their appointment, be engaged in the representation or promotion of the interests of individual students, or students generally, on higher education courses provided by higher education providers.”

Lord Stevenson of Balmacara: My Lords, this is a further development about quality assessment—this time, focusing on the committee. First, picking up on the remarks made at the conclusion of the previous debate by my noble friend Lord Hanworth, I agree with him that some issues remain in the mind after the Minister responded to that debate. I suggest to the Minister that it might be helpful if we could have a little more detail, when he has had time to reflect on the debate, on how “independent” is defined. If he is correct in saying that the OfS has the responsibility for assessment of standards, but that an independent committee of the OfS is set up in order to maintain the threshold standards in the institutions and the quality of the teaching that is provided in those institutions, it needs to be clearer than it is to me—and I think to many people—how exactly that independence is to be guaranteed. In conventional terms, if you are a member of a committee of a body, you are subject to the rules and regulations of that body. It seems to me on that basic analysis that the independent committee is not

independent but a creature of the OfS operating in an independent way but not totally independent. These matters are perhaps too abstruse to debate today. I would be grateful if the Minister might focus on this in a letter, and I look forward to receiving that from him.

Moving to Amendment 174—and to Amendment 203, which is primary in this group—I will not speak to the clauses stand part because the issues raised there are reflective of the earlier debate and the clauses would have had to be removed, I think, had those amendments been accepted. The focus of this group is the familiar issue that if we are having an independent body within the OfS, but separate in some magical way from it, it should have its own focus and functions. We suggest in Amendment 174 that at least one member of the quality assessment committee should be representing the interests of students. We also think that the interests of staff, and higher education staff more generally, should be engaged as well. I beg to move.

Baroness Goldie: My Lords, I thank the noble Lord, Lord Stevenson, for his contribution. This debate is on clauses that lay the foundations for a risk-based, co-regulatory approach to quality assessment. That is important, as the noble Lord has rightly conceded. As set out in the higher education White Paper, we believe in the principle of co-regulation, which the BIS Select Committee also endorsed strongly in its report earlier this year, saying:

“We believe it essential that the quality assurance of universities should remain administratively and visibly independent from Government or the new regulator”.

Turning to the amendments, I thank noble Lords for raising the importance of having staff interests fully represented in the quality system. That does matter. I turn first to the amendments concerning student representation on the OfS quality assessment committee. First, I reassure noble Lords that students are at the heart of our reforms. The OfS will bring together the regulatory levers that will enable us to improve quality and allow students to make informed decisions. For that reason, we listened to points raised in the other place and amended Schedule 1 to the Bill to ensure that at least one member of the OfS board must have experience of representing or promoting the interests of individual students or students generally.

The quality assessment committee will play a similar role to the current quality, accountability and regulation strategic advisory committee, established under the Further and Higher Education Act 1992, which advises HEFCE about the way it undertakes its quality assessment functions. HEFCE's committee currently includes direct student representation. Students are also represented on the QAA's board of directors, the QAA has a student advisory board, and students are included in review and scrutiny processes for DAPs. I assure your Lordships that we see no reason why such student representation would not continue in future. We would not want to reduce the future flexibility of the OfS or the designated quality body to respond to future changes in the nature of the sector. It is better to allow the OfS discretion over the membership of the quality assessment committee. To be clear, we would expect this to include people who can represent students, unless there are some very strong arguments for not doing that.

[BARONESS GOLDIE]

On the amendments to Schedule 4 regarding the views of higher education staff, again, I hope I can reassure your Lordships that, given the way the sector currently engages its staff, we would absolutely expect higher education staff to be involved in consultation. These amendments would introduce unnecessary additional complexity. I realise that that is possibly not the consequence of the changes but I will try to reassure the noble Lord, Lord Stevenson. We would expect higher education staff to be actively engaged through their provider or by directly engaging with the OfS in any consultation. Of course, the OfS is not precluded from adding to the list of people it consults.

Amendments 204 and 205 return to the theme of standards, on which we have already had a thought-provoking debate. Noble Lords will recall that the Government have set out that this is an issue on which we are actively considering the views that have been raised in this House. I will therefore be brief in summarising that under no circumstances do we want to undermine the prerogative of providers in determining standards, but we want providers to meet the standards that are set out in a document endorsed and agreed by the sector, currently embodied by the frameworks for higher education qualifications.

The standards should be those that are set with the sector, rather than prescribed narrowly within legislation. The amendment limits the standards to be embraced in the consideration of whether a quality body is appropriate to be designated, so that rather than referring to standards applied to higher education in general, it refers to the standards of higher education provided for the purposes of registration—a narrower definition. Our legislation is deliberately not this narrow because of other important functions the designated quality body would undertake under Clause 23, such as baseline checks for degree-awarding powers. Amendment 205 seeks to amend Schedule 4 to clarify that the definition of standards that applies is that within Clause 13. I reassure the noble Baroness that this is already the case under Part 3 of Schedule 4. For these reasons, I ask that Amendment 174 be withdrawn.

Lord Stevenson of Balmacara: My Lords, I thank the Minister for her comments and for engaging so fully with these issues. I look forward to reading exactly what she said in *Hansard*. That is not because I could not understand her—she was very clear—I just want to reflect on how she made them and the way they came across.

It strikes me as ironic that a set of reforms aimed at putting students at the heart of the system is still struggling to try to keep students away from the points at which they can have the most impact on the key bodies and committees that will run the whole system. I am sure that this is more “small p” political than something that will in any sense organisationally be defensible, but it is wrong. The same approach applies to the question of whether the interests of staff should be involved. It is fine to consult people, but if they are intimately involved and care about it, seeing themselves at the centre, you will get much more out of them. I beg leave to withdraw the amendment.

Amendment 174 withdrawn.

Clause 24 agreed.

Clause 25: Rating the quality of, and the standards applied to, higher education

Amendments 175 to 186 not moved.

Amendment 187

Moved by Lord Lipsey

187: Clause 25, page 15, line 32, at end insert—

“() The scheme introduced under subsection (1) must be laid before and approved by a resolution of each House of Parliament before it may come into effect.”

Lord Lipsey (Lab): My Lords, I start by apologising for the absence from this debate of the noble Lord, Lord Bew, who has been delayed on his flight from Northern Ireland by weather. He was very keen to be here and will greatly regret that he has missed this debate.

I have four amendments in this group, beginning with Amendment 187. I can describe them most concisely as a range of options to de-fang the National Student Survey as an ingredient in the TEF. The options range from requiring parliamentary approval of the scheme proposed under Clause 25, to an independent inquiry into the statistical validity of NSS data and, finally, the nuclear option—that the Committee does not agree to Clause 25 standing part of the Bill.

I shall start where we left off in an excellent debate touching on these issues last Wednesday. That debate had a rather wider proposition at its heart: that the link between the TEF and the ability of universities to raise fees should not come into being straight away. They would be given time for the TEF—and the statistical ingredients and metrics within it—to be properly got right. I sympathise very much with that view, but it is not the question today.

In the debate last Wednesday, a majority were certainly critical of the metrics being used—of whether the things the National Student Survey asks students are indeed a good way of measuring the quality of teaching in an institution. Some pretty key difficulties were raised. For example, there seems to be very little correlation—or no correlation, according to a paper by the Royal Statistical Society—between the scores achieved in the NSS by an institution and the quality of its degree results. That seems a bit worrying to many people. Those who defended the NSS did not actually argue that it was perfect—the noble Lord, Lord Willetts, was very frank. It is not perfect. They made the reasonable point that if we wait for perfection on this earth we get nowhere very much, and therefore argued that we should include these metrics.

As I said, I shall not go over that argument again in detail this afternoon, though we shall probably come back to it on Report. However, I have to be absolutely clear: my worries about the NSS are not primarily related to whether the metrics are good metrics for deciding teaching quality, or whether they are the best

available, or any of those things; they are pretty well purely statistical. When the NSS survey results are compared, they do not reliably reflect the opinions of students in differing institutions as to the quality of the teaching they are getting. These are statistically flawed results, as well as, arguably, being flawed as metrics.

I am in danger of going on all night and being extremely boring. I know the Committee will have a limited appetite for a great deal of statistical discourse—although if there is anybody who shares my nerdy love of these things, they should read two documents by the Government's own ONS on the statistical basis. They should also read the excellent document by the Royal Statistical Society, which analyses this matter in detail.

I shall just mention one or two problems that are relatively easy to comprehend. The response rates to the NSS vary greatly between different institutions. It is perfectly clear from what we know that the non-responders are not the same as the responders and, in particular, that ethnic minorities are greatly under-represented in the responses. This can have a terrific effect on the results. Let us suppose that in one year there is a 70% response rate, giving a result of 60% satisfied. If that 70% response rate had gone up to 100%, the whole of the remaining 30% might have been satisfied or all of the non-responders might have been not satisfied. So the true result could vary by 30% each way—60% in total—from the result given by the NSS. There are particular problems with sample sizes in small institutions such as my own—Trinity Laban. Music students are our biggest group of students—there are 112 of them—and the statistical margin of error for that number is very large.

4.30 pm

A rather more complex but very important point is that in the NSS the results for nearly all institutions are very clustered, so very tiny changes, which may be no more than statistical noise, can make enormous differences to where you appear in the league table. They could very easily move you down from gold to silver or from silver to bronze. These are simply not reliable statistics on which to base facts. The ONS concluded that,

“given the confidence intervals ... it is likely that comparisons of raw data ... at this level would not be ... significant”,

yet the Government are using insignificant data to make a very significant decision about the category into which a university falls and therefore, in time, how much it will be able to charge in fees, as well as how immediately attractive it will seem to students thinking of applying to it.

I accept that the Government have slowly started to recognise the inadequacy of these numbers. In their latest instructions to assessors, they said:

“Assessors should be careful not to overweight information coming from the NSS”.

I would put it a lot stronger than that—I might even say, “Throw it in the waste paper basket”—but they did make the concession that it should not be overweighted and that other things should be relied on. One thing on which they can rely is the submissions made by

institutions, in which they lay out, according to a formula, the strengths of their teaching. To my mind, that submission procedure should be accorded much more weight than the statistics of the NSS in particular, and the metrics much less weight, if we are to get a TEF that works.

I conclude with two brief observations. Once upon a time, everybody thought that opinion polls were to be relied on, but we all know now that they were not. I am in quite a fortunate position because I said before the 2015 election that the polls were unlikely to get it right and they did not. I distrusted the polls on Brexit and they were wrong. I also distrusted the polls on the American presidential election, and those too were wrong. That is due to perfectly simple statistical things—which, again, we see in relation to the NSS—such as unrepresentative samples, poor response rates and so on. The opinion polls got it wrong and the NSS will get it wrong for the TEF. As a result, the TEF will be damaged and I shall be sad to see that.

Finally, as I said, I am a nerd, and I have peculiar Sunday reading. Last night I was reading a rather remarkable book called *Weapons of Math Destruction* by Cathy O'Neil, who has a PhD in maths from Harvard and is an ex-quant in the financial services industry. On page one, she describes the introduction of a scheme to improve teaching in the worst schools in the worst areas of Washington DC. That is something we would all want to do, just as we all want to see an effective TEF improve teaching in our universities. She follows through the steps by which that system, based on wrongly interpreted mathematical statistics, had led to the sacking of one of the best teachers in one of those deprived areas. It did not hurt the teacher, who got a job straightaway in one of the best schools and areas of Washington DC, but, my God, it hurt her pupils. This is the kind of road I fear we are going down. Your Lordships will find many other examples in her book.

The NSS in the TEF is using—or rather, abusing—statistics for a purpose for which the NSS was never designed. My amendments are designed to reduce that risk for good colleges with good teaching that are in danger of falling foul of a statistical lottery. I beg to move.

Lord Willetts (Con): My Lords, I rise to briefly comment on the interesting and important observations we have just heard from the noble Lord, Lord Lipsey. I completely support his commitment to using statistics with integrity. There are issues about the NSS. I would argue—as I did in Committee last week—that the NSS itself is changing and increasingly has genuine questions about student engagement and academic experience. For example, I know from speaking to many vice-chancellors that how their university does on the metric of academic feedback is something they pay a lot of attention to; it reflects genuine concern among students sometimes when they do not get essays back in time and they do not get prompt feedback.

I would like, however, briefly to comment on the noble Lord's specific point as to whether the use of the NSS, as proposed in the TEF, meets the required standards. He briefly gave a quote from the ONS on its views, saying that it would not be right to use the

[LORD WILLETTS]

raw NSS data. I would like to assure him that, to my understanding, the TEF does not use raw NSS data. Using raw data simply means taking all the universities and seeing how they stand. Instead, the way in which the TEF is being constructed is to benchmark universities against similar universities. Using his own example of students from ethnic minorities, it would be possible to compare groups of universities that all have roughly similar proportions of students from ethnic minorities, so the data that will be used are not raw data. Universities will find themselves being assessed and compared with a peer group. That itself, interestingly, raises a new set of questions, but at least it means that the TEF is not exposed to the charge which the noble Lord, Lord Lipsey, has levelled this afternoon.

Baroness Blackstone (Lab): My Lords, I find myself in agreement with the noble Lord. There is a slight danger that this will become a club of former higher education Ministers. However, as a vice-chancellor and former Minister, I found that the National Student Survey was a rather useful device—in a rather broad-brush way, admittedly—for telling us something about what students perceive about their own experience as undergraduates. It is not done for graduate students. I am somewhat at loggerheads with my noble friend Lord Lipsey, and I am sorry about this because normally we agree on many things. I would say that a 70% response rate that—if I understand correctly—my noble friend was quoting to be unacceptable, is a rather high response rate in most surveys of this kind. It is sometimes possible to do deep dives and find out a bit more about the group that had not responded to see whether they are in any way different in their views or backgrounds. I had not read the critique that he quotes by the ONS and the RSS. It is important that the Minister comes back and tells us whether the Government have looked at those criticisms. If not, why not, and will they in future?

I have a lot of concerns about the TEF and how it should be done. The Government are taking on a very difficult and complex task. I am not sure whether they realise how difficult it is to get reliability and validity in the responses provided. I look forward to hearing what Professor Chris Husbands, who has a lot of expertise on this, will say. I would also like to hear his response to the criticisms and comments of the ONS and RSS.

We cannot entirely take out and ignore what the NSS tells us about students' experience. There is only a small number of questions about teaching, but there are some. There are many other questions about things that are relevant to the successful completion of their courses, including how they are assessed and examined. I hope we can look at this in a bit more depth and not completely rule out the contribution that a rethought NSS can make to any assessments of how our universities, and departments within them, are teaching, and whether it meets the kind of quality that we expect it to meet.

Lord Storey (LD): I shall speak to Amendment 197, which would ensure that the TEF has to be reassessed before it is introduced. We welcome a focus on teaching. It is vital that any student in a higher education

establishment gets the highest level of teaching. Given the fees they pay, it is not acceptable for students to be in a lecture of more than 100 students where the lecturer is unable to inspire or inform those students. It is not acceptable to have the practices that go with poor teaching, whether it be poor marking of dissertations and essays, or late return of those pieces of work. Teaching quality has to be at the heart of the university experience for young people.

Our concern is that employment outcomes do not give an insight into teaching excellence, nor does retention. We have had this discussion on previous amendments. I am not totally averse to a student survey—it is about the questions that it asks. If it asked questions that challenged the student to think properly about their teaching experience, about how they were challenged and how the subject was put across to them, rather than easy tick-box answers, that would be a proper student survey. The student survey would have to be a very small part of the metrics.

As I said, Amendment 197 would ensure that the TEF has to be reassessed before it is introduced. It follows an amendment tabled by Paul Blomfield in the Commons on Report. He stated:

“Amendment 50 reflects concern over the reliability of the metrics used to measure teaching excellence”.

He emphasised many times in Committee, that,

“we all welcome the Government's focus on teaching excellence, and we can all work effectively together on the principle of the teaching excellence framework. However, the metrics on employment outcomes, on retention and on the national student satisfaction survey have been identified by the Government themselves as a proxy for teaching excellence.

The amendment simply seeks to add to the Bill a requirement that the metrics used by the Government to determine teaching quality should have a demonstrable link to teaching excellence. This was the unanimous recommendation of the then Business, Innovation and Skills Committee ... We all agree that employment outcomes do not necessarily demonstrate teaching excellence. There are also enormous regional variations in employment outcomes and salary levels. The Minister will know that someone who comes from the right family and goes to the right school and university could have an awful teaching experience but still get a decent job. The converse is also true. People who do not come from the right family and who do not go to what many see as the right university could have an excellent teaching experience but not command such high salary levels. So employment outcomes are a crude and almost perverse proxy measure of teaching excellence. I would therefore welcome the Minister's observations on why this simple amendment to introduce a demonstrable link between the metrics and teaching excellence would not strengthen the Bill and will not be accepted by the Government”.—[*Official Report*, Commons, 21/11/16; cols. 626-27.]

4.45 pm

Baroness Lister of Burtsett (Lab): My Lords, I have a few questions stemming from annexe B, which the Minister circulated last week but which unfortunately I did not see until after our debate. I apologise that I was not able to attend the briefings that officials provided; I might have got the answers then. My first question relates to the point made by my noble friend Lord Lipsey. The note that was circulated said that the assessment framework stresses to assessors that they should not overweight the NSS, but of course the only metrics on actual teaching quality—this follows on from the points just made—relate to the National

Student Survey. My noble friend suggested looking, therefore, at individual submissions from providers for that evidence of teaching quality, but those submissions are going to be up to only 15 pages for a whole institution. I would be grateful if the Minister would give us some indication of what kind of evidence it is anticipated that providers will present in those submissions that will focus precisely on the quality of teaching.

My second question relates to the statement immediately following—that the assessment framework mitigates the risk that courses could be dumbed down to encourage providers trying to gain the NSS. The document says that, to ensure that does not happen, the Government have included rigour and stretch as one of the criteria for the TEF and explicitly warned assessors that this may be inversely correlated with the providers' NSS scores. I am delighted: I think it is absolutely right that rigour and stretch should be included. I remember teaching a course on theory and concepts in social policy and I think the students felt they were being stretched like elastic bands and did not always appreciate it. I think it is really important that we stretch students to think critically and assess what they are being taught, but how is this going to be assessed? It is not clear to me. It is very important but how is it going to be assessed?

My final question is: how frequently will this assessment process be carried out? We heard last week about the gold, silver and bronze system and many of us had problems with it. The Minister was not really able to satisfy our concerns. Although the Minister presented bronze as if it was the equivalent of a bronze medal in the Olympics, noble Lords here saw it as the equivalent of failure, because there is nothing underneath it—no kind of “tin” assessment or anything. If someone is classified as bronze, they may well want to try to climb out of bronze into silver as soon as they can. How quickly will it be open to them to have another go and be able to show that they have improved the quality of teaching and can then be reassessed as silver or gold? Has the Minister had the chance to reflect on what was said about the gold, silver and bronze categorisation last week? All we got was the answer that the Government think this is right. That smacked to me a bit of “I told you so” and there was no real explanation as to why, if bronze is the lowest, it will not be seen—to the outside world at least, and to potential students, here and overseas—as something to be avoided.

Baroness Deech: I am glad to support the noble Lord, Lord Lipsey. I have the National Student Survey in front of me. It raises profound questions about what higher education is and how it has become perverted, in that we see the student now as a consumer, because the student is paying at least £9,000.

I draw attention to some statements in the survey. One says that the workload on the student's course is manageable. We ought to think about what that means: manageable for whom, whether you are a lazy student or an avid one? Another says that the course does not apply unnecessary pressure on the student. I am not sure about that either. There is another that says that all the compulsory modules are relevant to the student's course. Even now, 50 years after completing a law degree, I am still pondering whether Roman law was

really relevant to my course, but I yield to those who thought it was. That was long before we joined the European Union, which in a way made Roman law and the continental system more relevant. These questions would be better addressed to someone going on a package holiday. I am not sure that as it stands this student survey should play a part in the most profound questions that we face—about what a university is, what sort of young people we wish to turn out and by what process. So I hope that the survey will not be included, or that if it is it is thoroughly revised, bearing in mind the outcomes for which we are looking.

Baroness Wolf of Dulwich: My Lords, I support the comments of the noble Lord, Lord Lipsey, on the National Student Survey, and will speak to Amendments 194 and 201 standing in my name. Before doing so I would like to underline that we are talking about the use of measures to give ratings. With respect to the comments made by the noble Baroness, Lady Blackstone, I think that there is a huge difference between what is useful internally and what is suitable for a high-profile, high-stakes national rating system. In my first amendment I have suggested, or requested, that any measures used should be criteria-referenced, and therefore provide a substantive rating and indication of attainment or degree of attainment. I am slightly alarmed that this is even at issue, and take issue with the noble Lord, Lord Willetts, when he suggests that benchmarking is the way forward.

I have an example from the rail regulator. We can be told what proportion of trains are late, which is a substantive measure: we can have a target—which in fact it has—which says that it is reasonable that there should be X per cent, and then you fall this far short. We can be told whether a given rail company is doing better or worse than the others. This year it is really pretty easy for everybody to do better than Southern, but does that mean that they are all doing well? I do not think that you can conclude that.

If you have benchmarked or relative measures, the problem is that all that you are being told is how people stand relative to each other. We might have a system in which the quality of teaching was excellent across the board, yet in which half the institutions would by definition be below average; or we could have a system in which all the institutions were doing rather poor-quality teaching, yet in which half of them would be above average. That is not the sort of system that we wish to use. We would not wish to imply to students that that gave them helpful information. A measure that is bad does not become good by being made relative; and a measure that is good is good in its own right, not simply by being turned into something in which you rank people on the curve. That is an important aspect of how the Office for Students approaches the sorts of ratings that it gives and the way in which it conceives of them.

Lord Willetts: Does the noble Baroness accept that her objection is the opposite of the one raised by the noble Lord, Lord Lipsey? His objection was that these are raw data that cannot be trusted. As a result of that concern, they are being benchmarked, and that indeed raises the valid questions which she has raised.

Baroness Wolf of Dulwich: I think the noble Lord, Lord Lipsey, meant a number of things, but I am not saying that raw data are the problem. I think he was also referring to aspects such as whether you have a decent sample size. Benchmarking is not the answer. I am somewhat alarmed that it seems to have become a major part of what is under discussion.

My second amendment is something that is not an exceptional ask in the world of regulation. Before elaborating, I have a request for the Minister. If at the end of this debate he does not think that the Office for Students can and should report on whether its statistics meet the UK Statistics Authority's code of practice, will he explain why? Most regulators which I know that are involved in collecting statistics for information and regulation proudly boast on their websites that their statistics meet the code of practice.

Things that we can be proud of in this country are the UK Statistics Authority and that we have a record of knowing what makes a good-quality statistic and of making sure that among public bodies and for public purposes we do our very best to meet those criteria. One thing we know, for example, is the importance of sample size. We know about the importance of the reliability of measures. We know that in many things it is quite difficult to get a valid measure and that it is just as well to say that we cannot measure them properly.

Another thing we know is that the quality of statistics can change over time and that you have to keep looking at them. One thing that has clearly changed over time is the degree to which one can assume that a standard that was used in one time and place has been carried over to another. Many of us in these debates have been standing up for the quality of university education. It is pretty clear that in North America, this country and many other countries over time there has been grade inflation and that the proportion of people getting higher-class degrees and higher marks cannot be fully explained by harder working students, miraculous teaching or any other splendid innovation. There has been a slippage. One of the reasons there has been grade inflation and one of the reasons why we need to be very careful about this—this is why I raise the point quite clearly—is that students like easy grades. Since student satisfaction is quite important for promotion, particularly in North America, it has also been studied a great deal. We know that student satisfaction judgments and scores rise the more easily instructors, lecturers and examiners grade. We also know—these are statistics that I use a great deal in my teaching because students like them—that lecturers and professors get higher student satisfaction scores if they are good looking. This applies to both men and women; it is completely gender-neutral.

So there are things we know about specific statistics, and we also know more broadly that there are things we need to look at to know whether statistics are valid, reliable and fit for purpose. As the noble Lord, Lord Lipsey, has indicated, there are aspects of student satisfaction measures which require careful attention before they are used for something as important and high-stakes as a rating of teaching quality issued by the regulator.

The final thing I want to say about the importance of observing a code of good practice—and I have no reason to suppose that the Office for Students will not, but it would be nice to have reassurance that it will—is that you cannot add up completely unrelated statistics to make a meaningful total grade. This is often described as “apples and oranges”. Apples and oranges are relatively easy to add up, but trying to take a large number of different measures with different levels of validity—different levels of reliability in terms of whether you would get the same thing if you measured it again; different types of statistics, some with clear numbers attached and some judgmental—and adding those all up into a single judgment is a pretty dicey affair, at best. It is interesting that it is something that on the whole has not been done in research. It has always been done at a much more disaggregated level. However, it is also something which we need to be very careful about because, among other things, it risks not informing students but misleading them.

I find it very strange that, at the same time as saying that we want to give maximum information to students, we are also saying that the Government in their wisdom—or the Office for Students in its wisdom—are going to pull it all together into a single-rank order which cannot be unpacked. What is really useful to students is to have lots of different information on different aspects, so that they can look for the things that they most want.

Is there any reason why we should not expect the Office for Students to follow the code of good practice that we already have in this country and which many other regulators follow? I also suggest that, once again, we only use statistics which actually have substantive meaning. That in itself makes it extremely unlikely that a gold, silver, bronze all-encompassing, all-singing, all-dancing rating is going to fit the bill.

House resumed.

Trident Missile Test *Statement*

5.02 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I shall now repeat in the form of a Statement, the Answer to an Urgent Question given in another place by my right honourable friend the Secretary of State for Defence on the test firing of a Trident missile.

“On 20 June, the Royal Navy conducted a demonstration and shakedown operation, designed to certify HMS “Vengeance” and her crew prior to their return to operations. This included a routine unarmed Trident missile test launch. Contrary to reports in the weekend press, HMS “Vengeance” and her crew were successfully tested and certified as ready to rejoin the operational cycle. We do not comment on the details of submarine operations, but I can assure the House that, during any test firing, the safety of the crew and public is paramount and is never compromised.

Prior to conducting a Trident test fire, the UK strictly adheres to all relevant treaty obligations, notifying relevant nations and interested parties. On this occasion,

the chairman of the Defence Select Committee, the opposition defence spokesperson, and the chair of the Public Accounts Committee were informed in advance.

I can assure the House that the capability and effectiveness of the UK's independent nuclear deterrent is not in doubt. The Government have absolute confidence in our deterrent and the Royal Navy crews that protect us and our NATO allies every hour of every day".

That concludes the Statement.

Lord Touthig (Lab): My Lords, immediately on crossing the threshold of No. 10 on 13 July, the Prime Minister wrote four identical letters to the commanders of our Vanguard fleet, instructing them what to do in the event of the Government ceasing to function and this country being subject to a nuclear attack. That is the measure of how important we think our nuclear deterrent is.

With reports that a test missile launched in June failed, the Prime Minister was asked four times on live television yesterday when she knew about this and she would not answer. This morning, No. 10 confirmed that she was told about the test when she took office. Frankly, if the Prime Minister cannot face up and answer an honest question about the very basis of our nuclear deterrent, we must ask whether she is up to holding that high office in the first place. At the end of the day, it all comes down to character.

Today's Statement says:

"We do not comment on the details of submarine operations".

That is strange because I have an MoD press release, dated June 2013, in which we are told that HMS "Vigilant" was awarded a trophy for successfully completing a similar test to the one we are talking about today. More than that, the press release also tells us that the crew prepared for the test for six months. It gives the date of the test and tells us where it took place. It tells us that it was the 10th test in a row and how long our nuclear deterrent is at sea. Also, in the last hour or so, a spokesman for the White House has confirmed that the missile was successfully diverted and destroyed off the coast of Florida.

The Government's policy of no comment on these matters because of national security is in chaos—it is a shambles—and deserves to be thought through all over again. It is nonsense. Previous tests have been filmed and broadcast. Why was this one kept secret? I do not wish to compromise our national security—none of us wants to do that at all—but can the Minister confirm that the cause of this failed missile launch has now been identified and resolved, and that Britain's nuclear deterrent is fully operational?

Earl Howe: My Lords, I am sorry that the noble Lord saw fit to criticise my right honourable friend the Prime Minister. As I am sure he would expect, the Prime Minister is routinely updated on matters of national security. This DASO happened before she assumed office but she will have been briefed on a range of nuclear issues while Prime Minister.

I turn to his point about tests made in the past. There is no set approach to communicating the outcome of demonstration and shakedown operations; that is decided on a case-by-case basis, informed by the

circumstances of the time. Nothing should be read into the fact that the outcome of this particular test was not publicised.

The noble Lord asked about the test itself. If the premise of his question was to accept the validity of the weekend press reports then I cannot accept that premise. As I have said, this was a successful operation, following which HMS "Vengeance" and her crew returned to operational service for deployment on nuclear deterrent patrols, which was the purpose of the exercise.

5.07 pm

Lord King of Bridgwater (Con): My Lords—

The Earl of Courtown (Con): My Lords—

Lord King of Bridgwater: I apologise to my noble friend. I understood from the clerk that in an Urgent Question we go backwards and forwards across the House.

I do not think I am the only Member of your Lordships' House who was extremely disappointed by the line taken by the noble Lord, whom I thought normally rather a responsible spokesman on defence for the other side. I think it was a disappointment to many of us.

I think the Prime Minister was rather overzealous in her interview to preserve in this case the long-standing principle of not commenting in detail on our nuclear activities. As the Secretary of State for Defence in another place has made clear, he and the Prime Minister are kept regularly informed, as I was in my time, about the progress and activities of our critical nuclear deterrent.

The current situation is why we have tests. There have been problems before. As was made clear in the Statement, problems arise and are dealt with. The important thing is to maintain at all times the credibility of our deterrent, and anyone who seeks to undermine it or suggest that it is not working does great damage to our country. No one would be more interested in a running commentary on the activity of our deterrent tests at present than the Kremlin, Pyongyang and maybe Daesh. We need to maintain our last line of defence and its credibility. I strongly support the Statement that my noble friend has repeated here today.

Earl Howe: My Lords, I am very grateful to my noble friend, who has immense experience of these matters. I say again that this was a successful operation. There are very few matters that cannot be discussed openly in Parliament or outside it, but this is one of them. Noble Lords will, I hope, appreciate that it is appropriate and right for government to maintain secrecy on detailed matters relating to our nuclear deterrent.

Baroness Jolly (LD): My Lords, we on these Benches support the use of a deterrent, and the whole point of a deterrent is that people do not know, blow-by-blow, what happens when and how and where. However, it has been argued today that it could be a waste of taxpayer resources to have a nuclear deterrent, which depends on credibility for its deterrent effect, if there

[BARONESS JOLLY]

are doubts about its effectiveness. Does the Minister agree that the confusion surrounding this test will erode public trust in the credibility of the nuclear deterrent? Would the Government agree to make sure that Parliament and the public are kept updated on non-sensitive information?

Earl Howe: My Lords, I can only repeat that we have absolute confidence in the operation of our independent nuclear deterrent capability and that the effectiveness of the Trident nuclear system—should we ever need to employ it—is absolutely assured. I would add only that I often reflect on the importance of not believing everything one reads in the press. This is a classic example of the application of that principle.

Lord Hennessy of Nympsfield (CB): My Lords, I declare an interest in that I witnessed the launch in question from the survey vessel two and half miles away from where the missile came out of the sea. I put it to the Minister, with great respect, that it would make it much easier for those of us who very powerfully support the independent deterrent, and the building of the four “Dreadnought” submarines in the successor class, to make the case generally in the country when we are interviewed in the media if the Minister could assure us that a full analysis has been successfully made of whatever went wrong—I have no knowledge at all of the nature of what went wrong—and that remedies have been put in place. I understand that every particle of a D5 missile is riddled with the highest security classifications, but in this case, such an assurance could be possible and would be very welcome.

Earl Howe: My Lords, the most important assurance is the one that I have already given: this is a system in which we have absolute confidence. It has never been the practice of government to give Parliament details of submarine operations or of the systems and subsystems that are tested during a demonstration and shakedown operation. But I hope I have said enough to reassure noble Lords about our deterrent and its reliability.

Lord West of Spithead (Lab): My Lords, in naval parlance, this is a complete pot mess. A very successful DASO, which proved that “Vengeance” and her crew are well capable of being part of the CASD rotation, was carried out, but because of the way it was handled it has failed to reassure us all. I have spent my life fighting for Trident and I understand all the complexities and all the security issues. For 20 years, we have shot and sent out films of every single DASO and made an announcement about it. We did not do it this time, and consequently we are in a position where we have embarrassed our own Prime Minister—which is not very clever—and have given succour to those people who do not like the deterrent, do not understand why we need it and want to find some way of attacking it. That is what we have achieved. Does the Minister not agree that our failure to handle this openly has caused huge problems? It has given succour to those who do not like the deterrent, which our nation needs, and has embarrassed our Prime Minister. It has made a complete mess and was handled badly.

Earl Howe: My Lords, I do not agree with that. I can say only that we assess the approach to communicating or not communicating the outcome of a DASO in relation to the circumstances of the time. It is true that past tests have been commented on publicly, but I put it to the noble Lord that the circumstances back then were different from the circumstances now. Nothing at all should be read into the fact that the outcome of this test was not publicised. If a Question had been put down immediately after the test took place last summer, we would have given the same Answer.

Industrial Strategy Consultation Statement

5.15 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in another place by my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy. The Statement is as follows:

“Mr Speaker, this is a hugely important moment for the United Kingdom: a moment when we must prepare a new strategy to earn a prosperous living in the years ahead. Leaving the European Union allows—and requires—Britain to make long-term decisions about our economic future. We will, of course, be ambitious in the upcoming negotiations and will secure the best possible access for firms to trade with and operate in the European market.

While the terms of trade with other economies are important, so is the competitiveness of our own economy. That is why the Government are committed to a modern industrial strategy. Its objective is to improve living standards and economic growth by increasing productivity and driving growth across the whole country. Today’s Green Paper is part of an open dialogue to develop this strategy as the enduring foundation of an economy that works for everyone.

We start from a position of considerable strength. We are the fifth biggest economy in the world despite having the 22nd highest population. We have achieved higher levels of employment than ever before in our history—in fact, 2.7 million more than in 2010. We have businesses, research institutions and cultural achievements at the very forefront of global excellence. For all these reasons, we attract investment and talented individuals from around the world.

However, there are challenges that Britain must face up to now and in the years ahead. The first is to build on our strengths and extend excellence into the future. British excellence in key technologies, professions, research disciplines and institutions provides us with crucial competitive advantages, but we cannot take it for granted. If other countries invest more in research and development and we do not, we cannot expect to keep, let alone extend, our technological lead in key sectors or the world-beating performance of our universities. The same goes for our record as Europe’s leading destination for inward investment or our position as a centre of international finance. Our competitors

are not standing still. They are upgrading infrastructure networks and reforming systems of governance. Therefore, we, too, must strive for improvement.

In industrial sectors—from automotive and aerospace to financial and professional services and the creative industries—the UK has built a global reputation, but the competition for new investment is fierce and unending. The conditions that have allowed UK investment destinations to succeed include the availability of supportive research programmes, relevant skills in local labour markets, and capable supply chains. For continuing success, these foundations must be maintained and strengthened.

The second challenge is to ensure that every place meets its potential by working to close the gap between our best-performing companies, industries, places and people and those which are less productive. For all the global excellence of the UK's best companies, industries and places, we have too many that lie too far behind the leaders. That is why, on average, workers in France, Germany and the USA produce around as much in four days as UK workers do in five. It is also why despite having the most prosperous local economy in northern Europe—in central London—we also have 12 of the 20 poorest among our closest neighbours. We must address these long tails of underperformance if we are to build a strong economy and ensure sustainable growth in living standards. To do so is a huge opportunity for the whole nation to benefit from improved productivity—that is, earning power—in all parts of the country.

The third challenge is to make the UK one of the most competitive places in the world to start or to grow a business. A fatal flaw of 1970s-style industrial strategies was their dominant focus on existing industries and the companies within them—and then mostly the biggest firms. Too often they became the strategies of incumbency. It is worth noting that many of the most important companies in the world today did not even exist 25 years ago. Unlike in the past, industrial strategy must be about creating the right conditions for new and growing enterprise to thrive, not protecting the position of incumbents.

To meet these challenges, we have identified 10 pillars around which the strategy is structured—10 areas of action to drive growth right across the economy and in every part of the country. They are: investing in science, research and innovation; developing skills; upgrading infrastructure; supporting businesses to start and grow; improving procurement; encouraging trade and inward investment; delivering affordable energy and clean growth; cultivating world-leading sectors; driving growth across the whole country; and creating the right institutions to bring together sectors and places. Across all these areas, the Government are already taking strategic decisions to keep British industry on the front foot; for instance, the go-ahead for major upgrades to our infrastructure, such as Hinkley Point C, Heathrow and High Speed 2, and, in the Autumn Statement, the biggest increase in research and development spending since 1979.

In conjunction with today's Green Paper, we are launching a range of further measures. These include: a new approach to enabling existing and emerging sectors to grow through sector deals, with reviews

taking place regarding life sciences, ultra-low-emission vehicles, industrial digitalisation, nuclear, and the creative industries; deciding on the priority challenges and technologies for the new Industrial Strategy Challenge Fund to focus on and the other opportunities we can address using the £4.7 billion increase in research and development funding; and an overhaul of technical education, including £170 million of capital funding to set up institutes of technology to deliver education in science, technology, engineering and mathematics subjects.

In a world containing so much uncertainty, public policy should aim to be a countervailing force for stability, not an additional source of unpredictability. So our aim is to establish an industrial strategy for the long term, to provide a policy framework against which major public and private sector investment decisions can be made with confidence. It is therefore vital that the full development of our industrial strategy should take place with—and not just for—British enterprise. The full involvement of innovators, investors, job creators, workers and consumers in England, Scotland, Wales and Northern Ireland is the only basis on which we can produce an enduring programme of action. That is why this is a Green Paper—a set of proposals for discussion and consideration, and an invitation to all to contribute collaboratively to their development. I commend this Statement to the House”.

5.23 pm

Lord Mendelsohn (Lab): My Lords, I welcome the launch of the Government's Green Paper on industrial strategy. There is much to go through and be positive about and much to scrutinise. I hope there will be other opportunities to have meaningful debates on this matter. There are considerable questions about the Green Paper, which I hope the Minister can answer. It is clear that there is much for us to do to maintain our economic position. Whether or not it has novel ideas is no test of a good industrial policy. There is much to be gained by doing more of what was being done—just doing it better. Much of this has a familiar feel. Seven of the 10 pillars of the industrial strategy were key parts of the Government's productivity plan, *Fixing the Foundations*—the words “cut and paste” crossed my mind.

However, on this side of the House we are glad that some of the approach—particularly the sector plan—does represent a new way to support the development of our economy. We are keen to observe the development of this strategy: how the Government will deal with the obvious issues around picking winners and national champions, and how this approach will evolve. We are pleased that the Government are looking to support the automotive industry. A sector deal would undoubtedly be useful here. The Government have been very coy about the view that they did much to encourage the most recent announcement of investment by Nissan—the so-called secret deal. However, I am sure the Minister can confirm that there was, in fact, no deal and that the investment announced was planned for a timescale that would not be adversely affected by our relationship with Europe. Will the Minister confirm that the message from Nissan reminded the Government that, in common with other Japanese companies, it would review its

[LORD MENDELSON]

position in keeping with the Japanese Government's 15-page letter? Given the current plan for exit from Europe, and its inconsistency with their desired approach, a sector deal is the only way to ensure a viable car industry in the medium to long term.

I am also pleased to see that the pharma industry and the life science industry get a special mention. Can the Minister confirm that the Government will defend the UK base against US industry's ambitions in any potential trade deal with the United States?

The Green Paper was accompanied by the re-announcement of existing commitments of resources. The funds for science and research are very important and, as I understand it, recover our position since the cuts started to set in in 2010. None the less, the focus on supporting science, technology and innovation is to be strongly supported. Additionally, the support for technical education is welcome, and the work of the noble Lord, Lord Sainsbury, in promoting this crucial requirement for our economy should be acknowledged.

As with many areas of this plan, there is a case for scepticism about any further education proposals that do not address the severe capacity issues in the sector. Can the Minister provide a clearer idea of how the development of this strategy will be able to call on new resources, what the expected timetable is for outlining further elements of the industrial strategy, and how it will dovetail with the budget process?

The Green Paper suffers from two of the perennial problems we always face with government business policy announcements. There is a terrible lack of objectives, and there is no clear road map or sense of desired outcomes. Instead, a series of good and reasonable measures, worthy as they are, do not make a plan that is likely to have real impact or be effective and efficient. Can the Minister tell us whether any concrete objectives or goals that can reasonably be measured will be set in this process?

Secondly—the Statement just did this again—the Green Paper glosses over a huge imbalance in the economy. Our huge reliance on the service sector is not meaningfully addressed in this industrial strategy; nor is the acute problem of the size of our manufacturing industry and its disproportionate decline. While any industrial strategy must look to the long term, our immediate future relies on how well our services can perform. I would be grateful if the Minister could outline how the service sector is expected to be part of, or to be assisted by, the industrial strategy. This is especially important in areas where, in support of the industrial strategy, we are looking at reinforcing our research and innovation, such as in robotics and artificial intelligence, and many others that are likely to have a major impact on employment requirements in the services sector.

There are, of course, some areas in which we had been expecting something new and different in the industrial strategy. We had hoped for greater ambition on broadband and mobile capacity, signalling a change to the currently pedestrian goals in the Digital Economy Bill. We had also expected slightly more about how we see effective markets and competition, and the culture of business. Crucially, are there any plans to create

tougher oversight of foreign investment in the United Kingdom? Does the Minister agree with the sentiment that,

“A proper industrial strategy wouldn't automatically stop the sale of British firms to foreign ones, but it should be capable of stepping in to defend a sector that is as important as pharmaceuticals is to Britain”?

I am sure he does: those were, of course, the words of the Prime Minister previously. Can the Minister account for their omission from the Green Paper?

There is much to welcome in starting a conversation about an industrial strategy, and there are some positive ideas here. But this is not yet a plan, and on this side of the House we hope that, over time, one will emerge. This is a first step. Martin Luther King said:

“Faith is taking the first step even when you don't see the whole staircase”.

The Government would do well to remember the old adage that setting goals is the first step in turning the invisible into the visible. An effective industrial strategy will need that.

Lord Fox (LD): My Lords, the Prime Minister's decision to adopt a new active role for Government in industry is welcomed on these Benches. The Green Paper's 10 pillars have most of the right words, and they identify many of the areas of concern that have been voiced in many debates over the past few years. I trust that we will have an opportunity to debate some of those aspects in more detail. I shall focus on just two of those elements—skills and cultivating world-leading sectors. I remind your Lordships of my published interests.

First, the Green Paper is right to identify skills as a central issue to future prosperity and productivity for the country, and a cash boost for technical and STEM education is, of course, welcome. However, it should be put into the context of a 7.5% reduction in schools' per-pupil funding by 2020 and the cash-freezing of the adult skills budget until 2020—a £30 million real-terms cut next year. Thus, £170 million for new institutes of technology is all very fine but irrelevant given some of the wider cuts affecting all our young people. Therefore, can the Minister please tell us whether the Government plan to reverse their cuts to the education budgets for four to 19 year-olds? Also on skills, the Government continue to ignore the benefit and value that we gain from workers and scientists from the European Union working in this country. They continue to treat these people and their families as a bargaining chip. Could the Minister at least acknowledge the personal anguish being caused to these people, many of whom are already contributing greatly to the success of the industrial sectors that he seeks to bolster?

Secondly, the Green Paper's support for the coalition's sector strategy is very welcome. Here I disagree with the noble Lord, Lord Mendelson, in that a bit of cut and paste is actually a good thing as these strategies have to span more than one Parliament to be successful and take root. Therefore, they depend on a long-term approach. It is good news that the Government are continuing to run those strategies through. However, the idea that any Government can have a reasonable strategy for British industry while recklessly withdrawing from the single market is not credible.

Last week, the Prime Minister confirmed her intention to exit the single market, yet, extraordinarily, the Green Paper fails to refer to either the single market or the customs union, although a few euphemisms such as “turbulent times” creep in. The Government’s idea seems to be to negotiate individual sectoral agreements for “frictionless trade”—their term. Not every sector can benefit from this, or we would still be in the single market, and not every sector can expect the negotiations to succeed. Therefore, as these negotiations start, the Government will have to decide which sectors will be top of their list for trade deals. Conversely, some will be at the bottom. The Prime Minister has said that the industrial strategy is not about picking winners, but the Brexit negotiations will inevitably pick losers. Can the Minister please tell the House which sectors will win and which will lose?

Lord Prior of Brampton: I thank both noble Lords for their interesting comments. I agree with the noble Lord, Lord Fox, that if this industrial strategy is to have real strength, it will have to be spread across Parliaments. As part of the consultation process it will be interesting to hear whether noble Lords have any ideas on how we can do that and how we can institutionalise some cross-party agreement around productivity. I do not know whether anyone else read the speech given by Andy Haldane from the Bank of England in the north-east a month or so ago, which I think was entitled *Red Car, Blue Car*. He reminded us that the US economist, Paul Krugman, noted:

“Productivity isn’t everything, but in the long run it is almost everything”.

I think that most people would agree with that. Particularly in an economy such as ours with high levels of employment, if you want to increase wealth, you have to increase productivity.

It is true that we are building on the past. I pay tribute to the work done by previous Governments in this field. But despite what has been done in the past we have to accept that productivity levels in this country are low; worse than that, they are much lower in some parts of the country than in others. Although productivity may be just an economic concept, the consequence of that is that wage levels are much lower in some parts of the country than in others. In the East Midlands, for example, the average wage is £480 a week, whereas in the south-east it is £670 a week. No one, on either side of the House, can be happy with that degree of inequality. If we are to address that, we have to address productivity. Therefore, if there is a familiar feel to our Green Paper, I make no apologies for that. We are building on the past but we must do a lot better.

I think that both noble Lords support the very significant growth in R&D spending, and that there will be broad support across the House for the two horizontal parts of this industrial strategy: R&D and innovation spending, and the focus on technical skills. That is not to say that we are not doing anything now but we could do a lot more. We have huge strengths in our university sector, but we are less strong on how we commercialise some of that research. I was horrified to learn that 14 to 16 year-olds today are no more literate or numerate than people aged between 45 and 55. There has been no real improvement in teaching

basic literacy and numeracy for 20 or 30 years, which is quite an indictment of our education system. Therefore, putting more resource into education at all levels—primary school as well as later on—particularly into the STEM subjects, is extremely important. Skills are very important.

Reference was made to coming out of the single market. I do not think that is a debate we can usefully have at this point. Of course, we will do everything we can to retain as much frictionless access to the single market as possible. It is a very important market for many industries. However, other markets are important as well and we need to develop them. That is very much a part of the industrial strategy.

The noble Lord, Lord Mendelsohn, referred to life sciences. I absolutely confirm that they are important. The pharmaceutical, med tech and biotech industries are extremely important. British research is absolutely at the forefront of world research in cell and gene therapy. As far as Japanese investment is concerned, we will do everything we can to encourage inward investment from Japan and other parts of the world. The automotive industry would be only a pale shadow, were it not for the big Japanese investments that came here in the 1980s. We fully recognise that and are working very closely with Toyota, Nissan and Honda to ensure that they remain and continue to invest in the UK. The advanced manufacturing unit at Warwick is doing extraordinary work in automotive and advanced manufacturing, and the Green Paper contains a commitment to develop an institute for battery technology. Finding a way to store energy economically and efficiently would give us a huge competitive advantage as we develop the industrial strategy. However, this is a Green Paper; it is out for discussion for the next three months. I was asked about the timing. The consultation period will last for three months. The plan is to produce a White Paper by September, which will feed into the Autumn Statement. That is the broad timing. I look forward to engaging with many noble Lords as we develop the Green Paper into a White Paper over the next six months.

5.38 pm

Lord Howell of Guildford (Con): My Lords, if this is feedback time, as I gather it is, will my noble friend accept from me the feedback that our energy policy is in a terrible mess and certainly not working for everyone? Our energy costs are still much too high compared with those of our competitors. Our costs of carbon reduction per tonne are much too high and reliability is severely compromised, certainly in the next two or three years. Therefore, will he take back to the authors of the Green Paper that if we can get an energy policy that is far more efficient, works for everyone and combines affordability, reliability and low-carbon targets much more effectively than now, we will make some progress with this strategy?

Lord Prior of Brampton: I completely agree with that. It is made very clear in the Green Paper that we must have a low carbon energy policy, but an affordable energy policy. Affordability is critical. It is no good going to Port Talbot or Scunthorpe and telling steel workers there that they must bear the cost of a green

[LORD PRIOR OF BRAMPTON]
energy policy with their jobs. We have to be able to put high energy industries into a competitive position, particularly within Europe.

Lord Kinnock (Lab): My Lords, I commend the relatively short, three-month consultation on the Green Paper. Do Government intend to take responsive rapid action to that consultation, not so much in the form of a White Paper, but with effective implemented action? That is a matter of the greatest possible urgency, given the seriousness of the situation in our manufacturing industries particularly. For instance, will the Government heed today's all-party report on forging a future for the British steel industry, emulate the examples shown by other European Governments, and act effectively on energy costs, business rates, and procurement, to ensure a real, new vitality for the steel industry, avoiding the possibility of a lingering death for this crucial British foundation industry and its 575 companies? Without effective steel, a strategy is much more a hope than the prospect of a reality. I would greatly regret that, but I hope that is a point of urgency in the mind of the whole Government.

Lord Prior of Brampton: I am pleased that the noble Lord thinks that three months is a good short time for the consultation to take place. We are not standing still over that time; we are going ahead, as he knows, at Hinkley, with the new runway at Heathrow, and with the £170 million committed to institutes of technology.

I entirely agree with the noble Lord. I have a long-standing and emotional commitment to the British steel industry. When I joined British Steel in 1980, I think we were producing 17 million tonnes of steel per year, so times have changed over the past 20 or 30 years. We are not in the business of propping up failing industries, but we are certainly in the business of supporting competitive industries like the steel business.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, there is no point in having skills if we give away industrial capacity. The Government will know very well, because I have raised it several times, that there is deep concern about the lack of Government commitment to maintain Britain's only standalone helicopter production facility in Yeovil. I have asked the Government repeatedly, here and elsewhere, to use the opportunity of the industrial strategy to make it clear that they wish to see that preserved. Everything else is mentioned here: Airbus, Rolls-Royce, Bombardier, Boeing, BAE Systems, GE Aviation, GKM, Solihull, Loughborough—all points north and east, but not a word about helicopters, or the commitment that we now need. Does the Minister realise how much disappointment, and indeed anger, there will be in the Yeovil community for that? Will he give a commitment that in the so-called refresher industrial defence policy that is about to be published this very dangerous omission will be corrected?

Lord Prior of Brampton: My Lords, I was not aware of the omission to which the noble Lord has drawn my attention. I think I am meeting someone from Yeovil in the helicopter business tomorrow, as it happens.

Certainly, we will be using procurement. One area in which we have not been as clever as they have been in America, for example, is using defence procurement and other parts of government procurement to support competitive British industries. I will investigate the omission to which he has drawn my attention with regards to helicopter manufacture at Yeovil, and will try to understand why that is the case.

Lord Elystan-Morgan (CB): My Lords, for many years successive Governments assiduously and conscientiously pursued what they called policies of regional development. Will the Minister undertake, despite all the difficulties and complications that now exist, that such policies will not be ruled out of court in the situation in which we now find ourselves?

Lord Prior of Brampton: My Lords, the current jargon is to use "place" instead of "regional policy", and place plays a large part in this industrial strategy. The issue was raised by the noble Lord opposite about the objectives. It is a very good point, and one I should have addressed earlier on. What are the objectives of the industrial strategy? I have in mind a decent working man in a place like Hartlepool, who ought to be commanding a decent wage of £30,000 to £35,000 a year, who is currently working for £7.50 an hour picking stock in a warehouse. That will be the true measure of whether this industrial strategy is a success—whether we can bring back decent, well-paid, skilled jobs to all parts of the country.

Lord Kirkhope of Harrogate (Con): My Lords, I thank my noble friend very much for that presentation. I welcome this Green Paper, and I bear witness as someone from the north-east of England originally, and now from Yorkshire, to how the north of England has had to adapt to technology and to the changes in de-industrialisation and engineering over many years. I ask my noble friend about the support of the Government, not only in financial terms, which is suggested by their contribution to technology institutes of £170 million, as he has mentioned, but also in their enthusiasm, which has often been lacking in many Governments, towards those who pursue careers in engineering, innovation and new technology. That is what we need—more encouragement and acceptance, as other European countries do to a lot of their own subjects. Let us be more enthusiastic while we work on this Green Paper in the consultation process. That would be most helpful. Does my noble friend agree?

Lord Prior of Brampton: I agree 110% with that. For generations we have downgraded people who do technology, engineering, and the like; whereas we have paraded people who do PPE at Oxford, and the like. We have got it slightly wrong. We should do anything we can to encourage young people to go into technology, engineering, natural sciences and the like. Of course, the changes in technology that we are witnessing now, and will continue to witness over the next 10 years, will fundamentally change our society, whether in artificial intelligence, in robotics, in cell and gene therapy, or in battery technology—this is the future. The more we can encourage people to go into these technological

areas and also encourage them to be entrepreneurial at the same time, that will be good not just for them but for our economy as a whole.

Lord Soley (Lab): I welcome the further endorsement of Heathrow's expansion. As the Minister will know, the Government keep saying it quietly, so I hope it will happen. But my question really relates to the wider aerospace industry. It is an incredibly important part of British industry, with very advanced technology—the second most advanced in the world, and still the second or third largest in the world generally. What troubles me, and what troubles me about other industries such as the car industry, is that increasingly parts are exported and re-exported. I wonder how much thought in this Green Paper is going to be given to the complexity of arrangements not just with Europe—but obviously with Europe at the moment—in terms of exports and re-exports in order to produce a finished product.

Lord Prior of Brampton: The noble Lord is referring, I think, to the integration of supply chains, which have now become very global. Certainly, that is particularly true in areas such as satellite technology. Having easy ways of trading with other countries with non-tariff barriers is critical to that. Space technology is exactly the kind of industry that the UK should be fully a part of. It is interesting—you look around the world, and the USA is clearly leading in many of these areas, but if you look at other countries you often find that our technology is very strong. That is not to be complacent. Look at Israel, Switzerland, or Singapore—and look at Ireland, which has done a fantastic job in attracting many of the world's best companies. If they can do it in southern Ireland, why can we not do it in Northern Ireland, or in the north-east, or the north-west?

Lord Hennessy of Nympsfield (CB): I add my welcome to this, the ninth industrial strategy since I have been on this earth. In the debate on the Autumn Statement that we had before Christmas I suggested that we were waiting for the eighth, but the noble Lord, Lord Mandelson, got in touch with me and said that I had forgotten his, for which I profoundly apologise. I read them all recently, in the build-up for this great day, and worries about productivity, which the Minister has stressed already, are at the heart of all of them. Can the Minister identify—in his own view, not a collective one—where the magic is in this Green Paper that was absent from all the others? What is there in this Green Paper that will bedazzle economic historians in the 2050s at the foresight the Government showed this day?

Lord Prior of Brampton: That is a good question, and I am sure that the answer will emerge over the next three months of consultation. To be realistic, there is no magic in these things. If you look around the world at countries which have got their industrial strategy right, whether it is Germany and technical education, Singapore and advanced manufacturing, or Switzerland and advanced pharmaceuticals, I am not sure that there is any magic. It is a combination of great research, great technical skills, efficient capital markets and an efficient competition policy. Actually, the UK has not done that badly. Let us not do ourselves down too

much. If you look at science, between Oxford, Cambridge and London it is fantastic—absolutely world-class—and we do world-class things in many parts of the UK. However, on the noble Lord's point, we need to refine this industrial strategy over the next three months, and the six months until the White Paper comes out, so that we are absolutely clear about what really makes a difference. That takes us back to the objectives that the noble Lord, Lord Mendelsohn, mentioned earlier on. We must have very clear objectives.

Lord Scriven (LD): My Lords, pillar 9 is about driving growth across the whole country, which is welcome. However, it will take more than words—it will take actions. What change will be made in infrastructure investment where, at present, on the DfT figures, investment in transport infrastructure right up until 2021 will be £1,870 per head in London and only £280 per head in the whole of the north? Based on this strategy, how will this change?

Lord Prior of Brampton: I cannot answer that directly now, but if I can, I will consider it and write to the noble Lord. However, the total commitments for rail infrastructure investment—I cannot tell him exactly which part of the country relates to—is £88 billion, for example, so we are looking at a massive infrastructure investment in rail. I hope that I do not have the decimal point wrong on that figure but, if I have, I will write to him. We are looking at a massive investment in physical and digital infrastructure. The critical thing is that we use that purchasing power to direct it towards great British companies which are investing in quality and in their workforce.

Lord Cormack (Con): My Lords, does my noble friend agree that any industrial strategy that is to be successful must not neglect the rural economy—farming, horticulture, and the service industries? Would it therefore not be deeply unfortunate if, during the next six months, as we develop our strategy, we inadvertently undermine many of our rural industries by the swingeing increase in business rates that threatens them? Will my noble friend please bear that carefully in mind?

Lord Prior of Brampton: We will certainly bear that in mind. Clearly, the rates of tax, whether that is corporation tax, business rates or any other costs to business, are critically important. I take on board his comments about the importance of the rural economy.

Baroness Donaghy (Lab): My Lords, I am glad that the Minister seems to be enjoying his new brief, and I welcome the new Green Paper and its wish list. However, I am a bit concerned about research and development. The same announcement as that in the Green Paper was made last autumn—they are identical—and that is in the context of a 50% cut in research and development since 2010. Therefore, to announce an increase when there has been a real cut over a period of five years seems to be not a good start to the discussion on research and development. The Minister himself has said how important research and development is. Will this be a real increase, and will it be sustainable?

Lord Prior of Brampton: My Lords, that is a very good question. My own view is that it is one of the great, long-term, sustainable, competitive advantages we have. When John Kenneth Galbraith went to India in 1948 to give advice on setting up a pharmaceutical industry there, he was asked, “How do we do it?”. He replied, “Build a university and wait for 200 years”. There is some truth in that. We have some great universities here, which are a source of huge, long-term, competitive strength.

Lord Stoddart of Swindon (Ind Lab): My Lords, there may be nothing magical about industrial strategy, but it is important that that strategy is not obstructed by bureaucracy. I hope that we can be assured that there will be no bureaucratic obstruction of the plans.

To return to the question of electricity, if we are to have a successful strategy, it is essential to have cheap electricity for industry. At the moment, we are faced with the building of a power station at Hinkley Point, which will charge £95 per megawatt, and the Swansea Bay scheme, which will cost £90 per megawatt. What will the Government do to ensure that these prices do not affect industrial ability?

Lord Prior of Brampton: I hope that I can assure the noble Lord that we will not obstruct—or rather, we will try not to obstruct—the industrial strategy. I am reminded of that old lie, “I’m from the Government—I’m here to help you”. I keep in mind that we will try not to build in too much bureaucracy. We have an ambition to reduce the cost of red tape by £10 billion over the course of this Parliament. Of course, electricity prices are critically important, particularly to industries such as the steel industry and indeed to all energy-intensive industries, so that will be very much part of the industrial strategy, as it emerges over the next three months.

Lord Marlesford (Con): To follow on from what my noble friend Lord Howell and the noble Lord, Lord Stoddart, said about energy policy, how can the Government quote Hinkley Point as an example of affordable energy policy when it will cost £20 billion to construct but with a level of subsidy for its output which, at the end of its 40 years of life, will raise that £20 billion to £100 billion? That is paid by the consumer, whether industrial or domestic, and the cost of a gas-fired station with the equivalent output over the same period would be £3 billion.

Lord Prior of Brampton: I should make it clear that I was not quoting Hinkley as an example of our affordable energy policy but as an example of our infrastructure policy. We need to have a mix of different energy sources.

Higher Education and Research Bill

Committee (5th Day) (Continued)

5.58 pm

Debate on Amendment 187 resumed

Lord Lucas (Con): My Lords, to pick up on the recently finished speech of the noble Baroness, Lady Wolf, I thoroughly agree with the three main points she made. First, producing a mixed indicator, as the Government propose, would not be useful to students or others looking at the quality of a university or a course. It would be like composing a meal out of mincemeat, cornflakes and cleaning fluid. Each of those things is useful in its own right, but mix them together and they have no function. Keep them separate, as the noble Baroness advocated, and you get some very useful data on which students can judge in their own terms the quality of a university.

Secondly, let these things be criterion-referenced. We have a real problem at the moment in GCSE—we are saying that every child should get English and Maths, but we are making that impossible, because we make these exams harder as students do better. About 30% are required to fail in order to meet the requirements of Ofqual. We have to be careful about this when we are looking at a bronze, silver or gold indicator. If we do not make these indicators criterion-referenced, we are saying that, whatever happens—however well our universities do—we will always call 20% of them bronze. In other words, we will put them into an international students’ “avoid at all costs” category. That seems a really harmful thing to do. If these criteria mean anything—if there is a meaning to any of the elements going into the TEF—we should be able to say, “We want you to hit 60%.” Why not? Why do the criteria have to be relative? They do not mean anything as relative criteria. They must have absolute meanings and they must be absolute targets.

Thirdly, this really adds up. The noble Lord, Lord Liddle, made it clear that gold, silver and bronze indicators—this big step change between the three grades—are not suited to a collection of imprecise measures. You do not know whether an institution that you have placed towards the bottom of silver is actually bronze or, worse, whether something in bronze is actually in the middle of silver. It is not that exact. You have to do what the Government do elsewhere in education statistics—for example, in value added on schools—which is, yes, to publish a value, but publish a margin of error too. That way, people get to learn that you might be saying: “This is actually 957 on your scale of 1,000, but the error margin is somewhere between 900 and 1,010.” You get used to the imprecision, to understand that this is not precise, so you can put a proper value on the information you are being given.

Lord Watson of Invergowrie (Lab): My Lords, I am speaking to the proposal, in the name of my noble friend Lord Stevenson, that Clause 25 should not stand part of the Bill.

That clause refers to the Office for Students taking over HEFCE’s current administrative responsibilities to deliver the TEF on behalf of the Secretary of State. I say in passing how disappointed I am that so many in your Lordships’ House, whom I thought would come to hear this debate on TEF metrics, have now departed. Perhaps that was not the reason they were here after all. Those of us who are ploughing through the Bill until all hours of the night realise that this is an

important topic. The fact that we have had so many speakers on it is a clear reflection of that.

As the Minister will be aware, there is widespread concern across the sector at the use of proxy metrics, including statistics on graduate earnings, in an exercise that was supposed to be about teaching quality. On the face of it, there is some logic to the metrics. It is difficult to imagine an excellent course, the teaching, support and assessment for which the students think are rubbish, and that a large proportion of the students do not complete; or that hardly anyone who completes it manages to find employment or get a place on a postgraduate course.

Where metrics are used, they have to be much more securely evidence-based than those suggested. Last week in Committee, our Amendments 196 and 198 would have obliged the Office for Students to assess the evidence that any proposed metric for assessing teaching quality is actually correlated to teaching quality, and ensured that, prior to making that assessment, the OfS consulted those who know first-hand what is needed to measure teaching quality: academic staff and students. The Minister did not comment on that point, so it remains one on which I should like to hear his opinion. The importance of ensuring the statistics used are reliable and evidence-based cannot be overstated. They must earn and retain the confidence of the higher education sector—and that involves academics, students and administrators.

In her Amendment 201, the noble Baroness, Lady Wolf, seeks to ensure the quality of the statistics used by the OfS, and this should be a basic requirement. I support my noble friend Lord Lipsey in questioning the validity and value of the National Student Survey. The survey merely asks students about their perceptions of teaching at their institution. By definition, these perceptions are subjective and cannot involve comparing institutions. I heard what the noble Lord, Lord Willetts, said, when he suggested that similar institutions could be compared in terms of their ethnic make-up and students' economic background. That kind of benchmarking sounds improbable at best because, even if suitable comparators could be found, the question is, how would the outcome be weighted?

It sounds as though gold, silver and bronze categories would be created before the metrics had even been measured. As I said, that sounds improbable to me, and I agree with the noble Baroness, Lady Wolf, that benchmarking is surely not the answer. Linking institutions' reputations to student satisfaction is likely to encourage academics to mark more generously and, perhaps, even avoid designing difficult, more challenging courses.

With academics increasingly held accountable for students' learning outcomes, students' sense of responsibility for their own learning—something I thought was a core aspect of higher education—will surely diminish. We are now entering an era where students dissatisfied with their grades can sue their universities. Improbable as that sounds, only last week the High Court ruled that Oxford University had a case to answer, in response to a former student who alleged that what he termed “boring” and “appallingly bad” teaching cost him a first-class degree and the opportunity of higher earnings.

This may be the shape of things to come. Last year, nearly 2,000 complaints were made by students to the higher education Ombudsman, often concerning contested degree results. Nearly a quarter were upheld, which led to universities being ordered to pay almost £500,000 in compensation. Does anyone seriously believe that the introduction of the TEF metrics will lead to a reduction in such complaints?

Metrics used to form university rankings are likely to reveal more about the history and prestige of those institutions than the quality of teaching that students experience there. The Office for National Statistics report, on the basis of which the TEF is being taken forward, made it clear that they were told which metrics to evaluate, leading to the conclusion that these metrics were selected simply because the data were available to produce them. It is widely acknowledged that students' experience in their first year is key in shaping what they gain from their time at university, yet the focus of the proposed metrics, of course, is mainly on students' experiences in their final year and after graduation.

The ONS report was clear that the differences between institutions' scores on the metrics tend to be narrow and not significant. So the majority of the judgment about who is designated gold, silver or bronze will actually be based on the additional evidence provided by institutions. In other words, an exercise that is supposedly metrics-driven will in fact be decided largely by the TEF panels, which is, by any other description, peer review.

Although the Minister spoke last week about how the TEF would develop to measure performance at departmental level, the ONS report suggested that the data underpinning the metrics would not be robust enough to support a future subject-level TEF. Perhaps the Minister can clarify why he believes that this will not be the case—the quality of courses in a single university tend to be as variable as the quality of courses between institutions. As I said in Committee last week, this would also mean that students' fees were not directly related to the quality of the course they were studying. A student at a university rated gold or silver would be asked to pay an enhanced tuition fee, even if their course at that university was actually below standard—a fact that was disguised in the institution's overall rating.

Learning gain—or value added—has been suggested as an alternative, perhaps better, measure of teaching quality and is being explored in other countries. At a basic level, this measure looks at the relationship between the qualifications and skills level a student has when starting their degree programme, compared to when they finish—in other words, a proper, reliable means of assessing what someone has gained from their course of study.

The BIS Select Committee report on the TEF metrics published last year recommended that priority should be given to the establishment of potentially viable metrics relating to learning gain. I hope the Minister will have something positive to say on that today, or, failing that, on Report. We do not believe that the metrics as currently proposed are fit for purpose; more importantly, nor do many of those within the sector

[LORD WATSON OF INVERGOWRIE]

who will be directly involved with the TEF. That should be a matter of some concern for the Minister, for his colleague the Minister for Universities and Science, and indeed for the Government as a whole.

Viscount Younger of Leckie (Con): My Lords, when we last met, and as the noble Lord, Lord Lipsey, said, we had a useful and wide-ranging debate on the TEF, and I value a further debate on this important subject.

The Conservative manifesto committed that we will,

“introduce a framework to recognise universities offering the highest teaching quality”.

During last Wednesday’s debate, I was pleased that, as the noble Lord, Lord Watson, noted, all noble Lords who spoke were in favour of improving teaching quality and of having a teaching excellence framework in some form.

Before discussing the specific issues raised today, I should like to clear up what appear to be some misapprehensions about how the TEF will operate. Before doing so, I should say that I will write to the noble Baroness, Lady Wolf, who raised a number of detailed points. I think it is best if I address those specific points in another letter. I should reassure noble Lords that I have just signed a letter relating to our previous day in Committee, and that should arrive on their doorsteps shortly.

It is important that when we discuss the TEF we do so in the context of the framework that has been set out, in detail, by the Government. To be clear, this framework has been designed over the past year and a half with the sector, through two consultations, and using the input of experts such as HESA and the ONS.

First, the TEF is not only—not even primarily—about the NSS, as I think the noble Lord, Lord Lipsey, acknowledges. The NSS is just one of three principal sources of metrics data being used, and we have explicitly said that the NSS metrics are the least important.

Secondly, the TEF is about much more than metrics. Providers submit additional evidence alongside their metrics, and this evidence will be given significant weight by the panel. The work of the panel will be driven as much by judgment as by metrics, ensuring that the distinctive character of institutions, as well as the diversity of missions and approaches across the sector, are recognised in the ratings awarded. Furthermore, final decisions on TEF ratings will be taken by a peer review panel, not by Ministers or civil servants.

We also consider it vital that judgments are based on a combination of core metrics, with additional and qualitative evidence, wedded together by expert peer judgment. It is for providers to determine what and how to teach, and excellent teaching can take many forms. However, great-quality teaching, defined broadly, increases the likelihood of good outcomes. In our consultation, over 70% of those who responded welcomed our approach to contextualising the data and provider submission.

I reassure noble Lords that we are not naive about the use of metrics. Chris Husbands, the TEF chair, has noted that the approach that the TEF takes is realistic about the difficulty of assessing teaching quality. He said:

“It does not pretend to be a direct audit of the quality of teaching. Instead, it uses a range of evidence to construct a framework within which to make an assessment—looking at a range of data on teaching quality, learning environments and student outcomes”.

Turning to Amendments 187, 197 and 190, that is why the development of the TEF, including metrics, is a phased process of development. Our consultation on the metrics included a table of the potential unintended consequences and our proposed mitigations. We will continue to collaborate and work with the sector to make further improvements, learning lessons from the initial, trial year. The aim is to instil and gain the confidence of the sector, and I believe we have made a very positive start. As Dame Julia Goodfellow, president of Universities UK, said:

“The government’s response to the Teaching Excellence Framework consultation demonstrates that it has consulted and listened to the university sector”.

I am concerned that some of the amendments in this group add a level of process which could reduce the incentive to make further changes to the scheme or the metrics by requiring that they are laid before Parliament as they change. This reduction in flexibility is not required by other schemes supported by many noble Lords, such as the research excellence framework.

I now turn to amendments to prohibit the use of the National Student Survey. We are listening carefully to concerns on the NSS, but we cannot ignore the only credible, widely used metric that captures students’ views. We are not using the general satisfaction ratings in the TEF; rather, we are using specific questions related to teaching quality. My noble friend Lord Willetts highlighted that point. However, as the noble Lord, Lord Lipsey, acknowledges, we recognise the limitations of the NSS and have taken steps to mitigate these, including directing TEF assessors not to overweight the three NSS-based metrics and making them aware that NSS scores can be inversely correlated with stretch and rigour. Looking at three years-worth of data will mitigate concerns about the effects on small providers. It will also help to address the concerns of the noble Lord, Lord Lipsey, about spikes created by a non-response. The need for care when interpreting results for small providers has been drawn to the attention of the TEF assessors. However, overall the panel will be encouraged in its assessment to reward and recognise quality wherever it finds it, without being bound by guideline distributions of gold, silver and bronze.

6.15 pm

On the standards that the OfS will apply in using statistics, I reassure noble Lords that the statistics and metrics are, and will continue to be, published—as are details such as where statistics have been combined to create indicators—without legislative duties forcing this, as the underlying purpose of the TEF is to provide students with better information about their chosen providers.

I hope that this debate has been of some use to noble Lords and that it has provided some reassurance about our collaborative approach to metrics and assessment. However, in wishing to attract participants to the TEF, it is not in our interest to impose metrics that lack credibility or to see information handled

other than with the highest standards of professionalism. I believe we have already put suitable mitigations in place, without legislation, to ensure that that is the case.

The TEF addresses an unacceptable information gap in the provision of higher education, using clear ratings to inform students and incentivise excellence. It will support the propagation of good practice across the sector without stifling innovation. It will also provide clear benefits to UK businesses by ensuring that graduates enter the workplace with the skills and knowledge that can be provided only by excellent teaching.

I should like to address some points—raised notably by the noble Baroness, Lady Lister, and my noble friend Lord Lucas—that focused on the gold, silver and bronze ratings. The general gist of the noble Baroness's question was whether the bronze rating would be considered less valuable. As I said in the previous debate, the TEF ratings assess the quality of teaching over and above the high-quality baseline that we expect providers to attain. Even to be able to apply for the TEF, providers must have passed this baseline—and, by the way, many do not. However, we are not complacent about the risk of miscommunication, and we are working very closely with the British Council and others to ensure that the TEF ratings are communicated effectively internationally, emphasising the high overall quality of the UK provision. We will have a joint communication plan with them in place by the time the TEF ratings are published.

The noble Baroness, Lady Lister, asked how often the assessment would take place. I think the implication of her question was: if a provider happened to be rated as bronze, how long would it be before that rating could change? I reassure her that a TEF lasts for three years but providers can reapply the following year if they are unhappy with their award and can be reassessed. I hope that provides some reassurance on this matter, not only for the noble Baroness but for the Committee.

My noble friend Lord Lucas, supported by the noble Baroness, Lady Wolf, spoke about percentages, the implication being that there were quotas. I reassure them that, when it comes to the spread of how providers are rated, there is no quota. For example, the 20% figure that was mentioned is not a quota. It would be up to the assessors to decide what percentages of bronze, silver and gold would be awarded. Benchmarking has the support of the sector and I would be concerned about removing this contextualisation, with the disadvantages that could have. For example, providers that take a large number of students with low prior attainment might be disadvantaged. I should like to focus on this point in my next letter to clear up any misconceptions.

With that, I ask the noble Lord to withdraw his Amendment 187.

Lord Watson of Invergowrie: My Lords, the Minister said there are no quotas, but unless my memory fails me, when we discussed the TEF, he said he thought that gold and bronze would have roughly 20% each and the rest would be what he termed “in the middle”.

I understand that they are not firm quotas, but it seems that the Government have a fairly clear idea of what they expect the outcome to be.

Viscount Younger of Leckie: I will have to check *Hansard*, but I believe I was speaking about the current system and how it is working now. I should stress that there is no quota and it could well be that these percentages are different when operated under the TEF. There is no particular expectation. I believe I was answering the question about how it might be likely to be very different.

Baroness Lister of Burtersett (Lab): I thank the Minister for answering my third question, but I had two other questions specifically on the measurement of teaching quality. Can the Minister answer them in his next letter, which we are so eagerly awaiting?

Viscount Younger of Leckie: Yes, of course. I reassure the noble Baroness that I will add her points and I will look at *Hansard* again closely on the issues that she has raised and address them.

Lord Blunkett (Lab): Would the Minister be kind enough to ask his staff to include me in his letters? Although I have not spoken in this debate, I would be very grateful if he could include me in the communication.

Viscount Younger of Leckie: That is easy to answer and of course I will include the noble Lord in my reply.

Lord Patten of Barnes (Con): Can my noble friend briefly tell us what one calls a university not rated as gold, silver or bronze? What category is it in? How do you define it? Is it “tin”? Is it “unsatisfactory”? How do you describe it?

Viscount Younger of Leckie: I will include my noble friend in my letter and I will clarify that. The TEF is voluntary, so there will probably be some providers who are outside the TEF. I will follow that up and write a full letter that will include my noble friend.

Lord Jopling (Con): On this same point, what has caused the problem is the Minister saying last Wednesday that,

“a bronze award is clearly seen as a badge of high quality, just as it will be in the TEF”.—[*Official Report*, 18/1/17; col. 276.]

Following on from my noble friend's question, would it be helpful to the Government and the Minister if we were to table an amendment on Report to insert some grades below the bronze level?

Viscount Younger of Leckie: I answer my noble friend by saying that much of this has been addressed in all the consultations that have taken place. We believe that we have come up with the right approach. The consultation included a number of ways in which the ratings could be used and we have come up with this approach. One idea proposed a rating system

[VISCOUNT YOUNGER OF LECKIE]

with 10 criteria and another proposed four. We believe that this is the right approach, having consulted the sector.

Lord Lipsey (Lab): My Lords, I thank all noble Lords who have taken part in this very good debate. I also thank noble Lords who resisted taking part, because I will not be terribly late for my favourite event of the year, the Gold Medal Showcase at Trinity Laban, where our musicians compete at a level you would not believe if you were not in the room.

First, I want to refer back to the debate that I was having with the noble Lord, Lord Willetts, where there was a contribution from my noble friend Lady Blackstone. It became practically academic at one point and I am reminded of Henry Kissinger's remarks about why academics' debates generate so much heat. The answer is because there is so little at stake. There is much more at stake in this one than in that one but, being of an academic disposition, as is the noble Lord, Lord Willetts, I did want to refresh my memory of the ONS report. He pointed out that the quote I used included the word "raw". He used that to suggest that it was not as critical as I thought. However, the ONS said it straight; it said that "the differences between institutions at the overall level are small and are not significant". No doubt we can debate further in the common room afterwards.

This debate about the ONS and the RSS, seems to lend powerful force to some of the amendments in my grouping this afternoon. One of them calls for a statistical inquiry into the validity of the NSS and the noble Lord, Lord Willetts, and I could spend happy hours giving evidence to the statistical inquiry. In the end, this is not a matter of opinion on whether it is a good survey, it is a matter of fact. Facts need to be established and we should not be moving into a lower world where expert opinion no longer counts. That is the route to the forms of degeneration we are seeing throughout the world.

If I might be allowed one more minute, I should like to address the remarks of the Minister. We have been listening to the Minister throughout this debate and I have found his remarks this evening very helpful. Indeed, he made two crucial and valuable points. First, he made it perfectly clear that the submissions made by institutions—I hope I am summarising correctly—and the general case that their teaching is good, is more important than the metric based on the NSS. This is of great importance and deals substantially with many of the fears that have been bugging me. It is very easy for numbers to trump words, because they seem concrete, real and true and words can seem less so, but what he has said—I am sure the panel will take it very seriously—is an extraordinarily important breakthrough.

I am also glad about what the Minister said—though he was a little elliptical—about the distribution of awards between gold, silver and bronze. It will be very helpful if the number of institutions that fall into the bronze category is smaller than has sometimes been suggested and is confined to those institutions where there are well-attested problems. We do not want a fifth of our universities categorised as bronze, shunned

by students in later years and deprived of the extra resources they need to improve their performance. If a few outliers are so categorised, so be it. That may be necessary for a successful TEF, but it is important that the numbers be kept down and I took the Minister to hint that they were.

There is one more thing that I would have liked him to say—and I do not mean in my fantasy world, where everything that the noble Baroness, Lady Wolf, and I said was made real. I would have liked him to say that, in view of the concerns about the soundness of the TEF, we are going to postpone—not end—the link between the TEF and fees, but there are some weeks between now and Report. There is some time for bodies such as the ONS to reflect on our debate this evening and perhaps give us further advice on their opinions of the metrics. There is also some time for Ministers to understand that, when they show flexibility on how this policy should be implemented, it is not weakness; it is strength, because it will lead to a stronger TEF that works in a way that every noble Lord who has spoken wants it to work. I beg leave to withdraw my amendment.

Amendment 187 withdrawn.

Amendments 188 to 198 not moved.

Clause 25 agreed.

Amendments 199 to 201 not moved.

Clause 26: Performance of assessment functions by a designated body

Amendment 201A not moved.

Clause 26 agreed.

6.30 pm

Schedule 4: Assessing higher education: designated body

Amendments 202 to 206 not moved.

Amendment 207

Moved by Lord Lucas

207: Schedule 4, page 81, line 42, at end insert "and that no class of registered higher education providers is unrepresented, and that all individual registered higher education providers have had a voice in who is chosen to be representative of them,"

Lord Lucas: My Lords, in moving Amendment 207 I shall speak to the other amendments in the group. The amendment covers a point I have made before—that it is essential that the whole sector should be represented in these organisations, not just the bits that the old universities like.

Amendment 392 would extend the Secretary of State's access to information to anything they may be required or interested to know under any enactment, rather than just under the Bill.

Amendment 395 would appoint HESA—I suspect it is HESA being talked about at this point—to take an interest in people who intend to become students, not just people who become students, because a lot of the data they produce will be used to inform people as to whether to pursue a course, which is not really of much interest to those who have already taken that decision. It is important that HESA should focus on the students-to-be as much as on people who are already students.

Amendment 400 is an alternative to Amendment 207. I do not blame the current HESA regarding the provisions of Amendment 401. It is a trap that UCAS has fallen into of putting money and its constituent institutions ahead of the interests of students. This is a difficult thing with all such bodies, such as Ordnance Survey and others: the money tends to become the focus of what they are doing. It needs government to pull them back to focus on the interests of the country as a whole and, in this case, of students in particular. As long as the Office for Students has power to keep a body on the straight and narrow in this regard, I shall be quite satisfied that the Bill does not need this additional wording.

The anti-competitive conditions in Amendment 403 again look at the way UCAS has become a constraint on the way individual universities reflect students. Anti-competitive behaviour should always be subject to the very closest scrutiny by government to justify it. I would like to know that the OfS can keep its eye on that.

Amendment 407 goes with Amendment 395. I beg to move.

Baroness Goldie (Con): My Lords, I thank my noble friend for drawing attention to a range of concerns relating to how the designated bodies will operate. I offer my assurance that we share the intention that legislation must support these bodies to be responsive to the needs of current and prospective students, and representative of the whole sector. I am happy to discuss these amendments further when we meet—although, given my state of health, I quite understand if he wishes to postpone that pleasure.

The role of the designated data body is to provide reliable and robust data on the sector for students, prospective students, the OfS and the sector itself. It will gather and make available source data, but it will not to be the sole source of information. The designated body functions most closely resemble those currently carried out by the Higher Education Statistics Agency—a sector-owned body that collects and publishes official data on higher education. I should clarify that the role currently under discussion is not related to the current role of UCAS. The designated body functions do not extend to running an admissions service. I reassure my noble friend that it is absolutely the Government's intention that the interests of prospective students will be taken into account in the new system. The Bill already allows for this.

Amendments 398, 401 and 403 would create additional conditions for the designated data body to put the interests of students above that of higher education institutions and the commercial interest, and to ensure that data collection is not anti-competitive. The Government

support the broad thrust and intent of the amendments, but believe that the current drafting is sufficient. The new data body will have a duty to consider what would be helpful to students and prospective students. However, it would not be in the spirit of co-regulation to direct the order of interests of the body.

I assure my noble friend that there is no intention to give the designated body a monopoly over data publication. We have a wide range of organisations involved in providing information for students, including specialist careers advice services aimed at mature students and career changes. We would not want any reduction in this choice for prospective students. While the Bill gives the designated body the right to receive information from providers, it does not give the body any right to prevent providers sharing those data with other organisations.

On Amendments 207 and 400, the Bill already requires that the persons who determine the strategic priorities of the designated data and quality bodies represent a broad range of registered higher education providers. The quality and data bodies are designed to be independent of government, so it would not be right to prescribe the make-up of a board in the way these amendments do. Rather, the bodies should have the ability to take a view on the mix of skills they require for the challenges they face.

The Government have confidence that they have the right balance here. In these circumstances, I therefore ask my noble friend to withdraw Amendment 207.

Lord Lucas: My Lords, I am very grateful for the answer my noble friend has given me and for her offer of further conversations if there is anything, on reflection, I think she has not covered completely. I beg leave to withdraw my amendment.

Amendment 207 withdrawn.

Amendments 208 and 209 had been withdrawn from the Marshalled List.

Amendment 210 not moved.

Amendment 211 had been withdrawn from the Marshalled List.

Amendments 212 to 213A not moved.

Schedule 4 agreed.

Clause 27: Power of designated body to charge fees

Amendments 214 and 215 not moved.

Amendment 216

Tabled by Baroness Wolf of Dulwich

216: Clause 27, page 17, line 22, leave out subsection (3) and insert—

“() The amount of a fee payable under subsection (2)(a) by an institution or provider—

- (a) must be calculated by reference to costs incurred by the designated body in the performance by the body of functions under section 23(1) in relation to the institution or provider, and
- (b) may not be calculated by reference to costs incurred by the designated body in the performance of any other functions or in relation to a different institution or provider.”

Baroness Brown of Cambridge (CB): My Lords, I speak on behalf of the noble Baroness, Lady Wolf of Dulwich, who is unwell. She does not intend to move this amendment and Amendment 217 but—if I have permission to add one sentence—they are about the costs of the regulatory structure. The same wording arises later in the Bill on the Office for Students. We will have a chance to discuss this on Amendments 420, 421 and 423.

Amendment 216 not moved.

Amendments 217 and 217A not moved.

Clause 27 agreed.

Clause 28: Power to approve an access and participation plan

Amendments 218 to 225 not moved.

Clause 28 agreed.

Clauses 29 and 30 agreed.

Clause 31: Content of a plan: equality of opportunity

Amendment 226

Moved by Lord Addington

226: Clause 31, page 19, line 22, at end insert—

“() In preparing, revising or implementing the provisions of a plan which relate to equality of opportunity, the governing body may take regular advice from bodies representing minorities nominated by the Equality and Human Rights Commission, about appropriate steps to improve ethnic and gender diversity representation and representation of an appropriate range of disability groups.”

Lord Addington (LD): My Lords, in moving Amendment 226 and speaking to the other amendments in this group in my name and those of my noble friend and the noble Lord, Lord Stevenson, I draw the Committee’s attention to matters to do with disability. There is not much in the Bill focused on this, except for access. When we talk about access, getting those with disabilities through the university system must be a fairly high priority, as they are a large group. Indeed, it is reckoned that 20% of the school population have a special educational need, many caused by a disability. So to draw a little attention to it is justifiable at this point.

I feel a little mean bringing this again to the Minister but we are still waiting for guidance about what universities are supposed to do about their changed and enhanced

responsibility for dealing with those with disabilities. I am sure most of the Committee will have heard my speech on this on a previous day, but we have a major shift in that responsibility. Effectively, there are four bands reckoned to be a disability, although we cannot discuss it that clearly at the moment. Those in the first two are now the responsibility of universities. The guidance which was supposed to tell universities what those duties are and what is supposed to happen has still to be published, and we are now into the second term of the new regime. Indeed, when I asked a Written Question on this three months ago, the Minister said they were waiting to get the thing published. It is not his responsibility but I am afraid the person with the ball gets the tackle; it is just the way it falls. We need some guidance about what the Government’s thinking is, so a series of probing amendments is appropriate at this point.

The amendments are really attempts to extract information. At the heart of Amendment 226 is an attempt to find out what is going to happen. I do not defend the wording that closely; at this stage the debate is more important than the actual wording of the amendment. Amendment 227 looks to a precedent set within the rest of the education sector and brought forward in regulations last year, when the initial teacher training facility accepted that it must take on a higher degree of knowledge and expertise in dealing with special educational needs. The vast majority of the students who go into our university sector will come through the school system. If you have a degree of teaching, preparation and help for them at one level, merely dumping them out at the other side is something that we should not be doing, particularly as the university is supposed to be picking up this activity. Okay, it is only the bands judged to be of less severity, but if the lecturers—those doing the teaching at higher, university level—do not have some knowledge, they are going to make mistakes in their job of implementing this. The school system has proven to us that it is quite possible to have a duty and insufficient knowledge to carry it out. Let us avoid that here; let us get something in place.

6.45 pm

The last of the amendments in my name, although the wording may not be the most elegant ever produced, is Amendment 235, inspired by the fact that we can make mistakes when implementing across the board in those various bits of the education sector as a whole and we can make changes or create systems which have perverse incentives in them. It is probably now appropriate for me to refer to my declaration of interests. I am president of the British Dyslexia Association, I am dyslexic myself and I also have a financial interest as chairman of the company Microlink. It was decided that in order to get DSA for technical support in computing, you have to come up with a £200 initial contribution. Evidence shows that this has led to a situation where, despite having a high number of identifications, we have lower take-up rates. This affects people who have been identified as needing help to get good degrees, or even to complete their degree: they need technical support so they do not have an unfair disadvantage, usually help in word processing and in

assimilating information. You now have to pay for technical packages which are out there and have been out there for many years, and people are not taking them up. The £200 may not seem a lot to us, but at the initial part of a course it seems to act as a disincentive. There are students who will not achieve at a maximum level and are at higher risk of failing the course—probably the worst result, all round—because of this.

The Student Loans Company has an increasing role to play in administering this. I suggest we look at something like working this £200 into the student loan debt. We have something specific from the dyslexia world. The Committee may not be aware that if you have had an assessment as a dyslexic before you are 16, you have to have another one—this is only for dyslexia; it is very specific—to make sure you are entitled to this support. No other disability has this: I am under the impression that no other disability group has to do this again. Why does this matter? Because it costs £500. Effectively, dyslexic students will have a £700 up-front fee to make sure they get the help they are entitled to, that will enable them to complete their degree and mean that they are more employable in later life, when we actually have a duty to educate them and get them there in the first place. This is a ridiculous perverse incentive and it should be removed. I may have sprung this on the Minister, but the timing on this issue meant that I could not get a briefing to him in time, but I hope that the Government will start to address issues such as this.

That is one group where there are perverse incentives built in by historical cock-up. Surely we have a duty to start looking at this in the round. We have a situation where an entire section of the population does not know what is going to happen and we have not started to address some of the historical anomalies that are out there. Surely we should be doing slightly more. I beg to move.

Baroness Brinton (LD): My Lords, my name is attached to the amendments submitted by my noble friend and I have one that I believe complements his amendments. I remind your Lordships' House of the amendment on the role of the Director for Fair Access and Participation, when we were debating—and I used as an illustration—the responsibility of the director for ensuring that the responsibilities regarding disabled students were being appropriately delivered by institutions.

It is worth reminding ourselves, going back nearly two years to when the Government began their consultation on the cutting of funding for disabled students' allowance and transferring some of the funding to institutions, that at the time this was heralded a great thing for better targeting disabled student support. Many of the specialist organisations that work with disabled students provided evidence to the contrary at that consultation. The National Deaf Children's Society gave a case study of Isla, a young woman at the University of Edinburgh who asked the disability office repeatedly before she arrived for support. The case study says:

"She arrived early for lectures and asked tutors to wear the loop-system microphone, but found that microphones rarely worked or tutors forgot to use them. In a laboratory session she asked to be allowed to sit near the front so she could lipread, but the tutor was not supportive".

Isla said:

"She said to me, 'Well, you'll just have to sit through it for this tutorial, this lab, but for the next time I'll have you down the front'. Next time I went in, she still hadn't changed it. I was raging. I was like really angry".

The case study continues:

"As time went by, Isla realised that she was missing out on most of the content of her course. She dropped out at Christmas".

Isla said:

"We had a couple of big papers coming up. I had started them. I had no idea where I was going with it. I e-mailed my tutor and said, 'Look, I'm not coming back. I can't. I can't hear anybody, so I can't'. He said, 'I'm sorry to hear that'. That was it".

That may be one example but I know from my time working in an institution some years ago that a lecturer refused to wear a microphone so a deaf student could hear, on the grounds that she might record the lecture and so infringe his personal copyright. I am pleased to say that the university dealt with that matter expeditiously. Putting the responsibilities on universities and reducing funding cause problems. That is why I support the comments made by my noble friend that we are now two terms into the new system and there is no clear guidance for institutions. That is deplorable and lies at the hands of the Government.

I want to go back a step from that to our responsibilities as a state. The United Nations Convention on the Rights of Persons with Disabilities is very clear about the responsibilities that we have as a state and as education institutions to provide support for students. It notes a:

"Lack of disaggregated data and research (both of which are necessary for accountability and programme development), which impedes the development of effective policies and interventions to promote inclusive and quality education".

It also notes that there are:

"Inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for the inclusion of students with disabilities, interministerial coordination, support and sustainability".

I worry that we are moving into that world at the moment where we do not quite know what is going on between institutions and the department. But the department has already handed over the responsibility for the support of disabled students to institutions.

The convention goes on to say at paragraph 12(i):

"Monitoring: as a continuing process, inclusive education must be monitored and evaluated on a regular basis to ensure that neither segregation nor integration are taking place, either formally or informally".

Isla's story is segregation writ large. Later on the convention talks about implementation at a national level. This is the responsibility of the Government, even if they choose to devolve the power down. Paragraph 63(d) speaks of:

"A guarantee for students with and without disabilities to the same right to access inclusive learning opportunities within the general education system and, for individual learners, to the necessary support services at all levels".

Paragraph 63(g) speaks of:

"The introduction of accessible monitoring mechanisms to ensure the implementation of policies and the provision of the requisite investment".

[BARONESS BRINTON]

Finally, on my personal favourite topic of training, paragraph 73 says:

“Authorities at all levels must have the capacity, commitment and resources to implement laws, policies and programmes to support inclusive education. States parties must ensure the development and delivery of training to inform all relevant authorities of their responsibilities under the law and to increase understanding of the rights of persons with disabilities”.

With the introduction of the new system, there are some real concerns among student assessors about the arrangements for professionals under the new quality assurance framework for the non-medical helper support funded through the DSA. Higher education providers are reporting that it can be difficult to find interpreters for sign language due to the new requirement for freelancers and agencies to have to register with the DSA-QAG. This is an important issue and we are already getting comments, such as this anonymous quotation from a discussion forum of student assessors trying to help deaf students before Christmas:

“Already running into problems finding support that meets QAG requirements – I’m already starting to draw a blank for some students who need e.g. specialist note-taker, language support tutor as agencies – despite listing this in their range of support on the QAG site – are saying they can’t recruit people who meet the required qualifications (as set by QAG). Anyone else having this problem? Any possible solutions on the horizon?”.

The silence from the department is deafening. Unfortunately, the impact for students in our system means that it is not working. That is why I repeat my earlier statement, when we discussed the role of the Director for Fair Access and Participation, that there must be a specific role for monitoring support for students with disabilities. These are probing amendments, but they pick up the point about monitoring and evaluation to ensure that our students are not deserted by this nation state in contravention of the United Nations convention.

Baroness Lister of Burtersett: My Lords, I support these amendments and would like to speak briefly about the very important points that have been made. For a number of years I chaired the disability and additional needs committee at Loughborough University, and was very aware of the importance of adequate support for disabled students and how difficult it is when that support starts breaking down. I am very out of touch with it now but I was shocked by what was said about the guidance, and I hope that the Minister will be able to give a firm assurance that there will be no further delay in issuing that guidance.

I have a broader point to make about equal opportunities, as some of these amendments go beyond disability. The staff body is as important as the student body. I am prompted to say that by a report, which I think I read last week, about the complete absence of senior black staff in universities. If there are no senior staff and very few lecturing staff, and all the black members of staff are cleaners or porters, what kind of signal does that send to young black people who might be thinking of going to university, if they see those institutions as purely white ones? When we talk about equality of opportunity and access for students, we must bear in mind what is being done in relation to staff in the examples and role models that are being provided.

The Archbishop of York: My Lords, the amendment is asking the bodies concerned to seek advice from the commission and those who advise that tells them it would be good to do it this way. Because of its permissive nature, I hope the Minister will see this as helping. As somebody from a minority ethnic group, I have always benefited from the human rights commission. The advice that I have just mentioned is not intrusive; it is a good thing. Universities should hold before themselves, in all their aspects, a mirror, to see whether their leadership, in different places, reflects the nature of the university. Noble Lords know that the Church of England has finally overcome the question of women as bishops in the representative route, but we still have a big job in terms of minority ethnic bodies. Given what was said in the Stephen Lawrence inquiry, I feel it is quite appropriate. However good they are, institutions need to be aware that, within their set-up, they could unwittingly be discriminating against people. The amendment, which is permissive and not difficult, simply asks for bodies to give advice to improve gender diversity as well as ethnic groups. I hope we all would say that that is good advice.

7 pm

Lord Stevenson of Balmacara (Lab): I thank all noble Lords who have contributed to this interesting debate. The metaphor of holding up a mirror to current practice and making sure that what is reflected is not a distortion of what is happening on the ground is very powerful. The noble Lord, Lord Addington, has done excellent work in this area and is an inspiration to us in insisting that we look at these points and think harder about how policies are going to be developed and how monitoring and training will support them. We owe him a great debt of thanks.

The noble Baroness, Lady Brinton, took the argument away from the specific question of what is happening in the Office for Students and how things should be done, and looked at it in the context of our responsibilities under the UN convention. That is very important. In reading out her quotation, she pointed out that the UN does not have a problem with “must”. Our parliamentary draftsmen shy away from “must” and always insist on “may”. The convention clearly says “must”, so there is no way of ducking this responsibility. The Government are responsible for policy, monitoring, training, funding and development; for ensuring that the project is capable of reflecting correctly what we do; for ensuring that there are none of the perverse incentives to which the noble Lord, Lord Addington, referred; and for ensuring that we can operate in an appropriate way for a civilised society, caring for all students and making sure that access is available to all.

Our Amendment 236 is of the “change ‘may’ to ‘must’” type. I thought that, as I was not getting very far with “must”, I should try “should”, but the intention is exactly the same. This is something the OfS should—that is, must—do. It should not just identify; it should also give advice on good practice. If we do not work together, we will never achieve this aim.

Viscount Younger of Leckie: My Lords, I am grateful to noble Lords for raising important issues relating to access and participation plans and disability.

This Government are deeply committed to equality of opportunity, and I agree with many of the comments made by the noble Lord, Lord Stevenson. That is why Clause 2 introduces a duty on the OfS to consider equality of opportunity in connection with access and participation in higher education. This applies to all groups of students. No such duty applied to HEFCE.

In order to be approved, access and participation plans will need to contain provisions to promote equality of opportunity. This makes clear our commitment to this important consideration. Questions were raised by the noble Lord, Lord Addington, and the noble Baroness, Lady Lister, about where we are on guidance on disabilities. I hope noble Lords have read my letter of 18 January, but I confirm, as I confirmed in that letter, that I expect this guidance, for which noble Lords have been waiting for some time, to be published imminently. I also reiterate my offer to meet the noble Lord to discuss this issue further.

Amendment 226, tabled by the noble Lord, Lord Addington, and the noble Baroness, Lady Brinton, seeks to specify that governing bodies of institutions may take advice from bodies nominated by the Equality and Human Rights Commission in developing the content of their access and participation plans. I support the intention here. We expect higher education providers to consult to help ensure that their access and participation plans are robust. I listened carefully to the sobering anecdote about a student experience from the noble Baroness, Lady Brinton. This is the very issue for which we are seeking solutions. We are in agreement about that. Indeed, OFFA currently sets out its expectation that universities consult students in preparing access agreements, and we anticipate that this will continue for access and participation plans. Given the autonomy of institutions and the wide-ranging support already available—for example, the Equality Challenge Unit supports the sector to advance equality and diversity for staff and students—I believe it is unnecessary to place this requirement in the Bill.

Amendment 228, proposed by the noble and learned Lord, Lord Wallace, seeks to include providing training for staff in awareness and understanding of all commonly occurring disabilities. Ensuring a fair environment and complying with the law are matters which providers need to address in meeting their obligations under the Equality Act 2010. This amendment would mean including a level of detail not consistent with the other, broader provisions and may overlook other underrepresented groups. For these reasons, I believe this amendment is unnecessary.

The noble Baroness, Lady Brinton, and the noble Lord, Lord Addington, proposed Amendment 229, which would mean that provisions requiring institutions to specify the support and advice they provide for students with disabilities may be contained in regulations about the content of an access and participation plan. We absolutely agree with the principle behind this amendment. The Equality Act 2010 imposes a duty to make reasonable adjustments for disabled persons, which includes an expectation to consider anticipatory adjustments. In addition, the Equality and Human Rights Commission has a supporting role in providing advice and guidance, publishing information and undertaking research. Given the wider context, this

amendment would introduce a level of detail into the Bill that is inconsistent with the other broader measures. It may also risk being seen to overlook other underrepresented and disadvantaged groups.

The new clause proposed in Amendment 235, tabled by the noble Lord, Lord Addington, and the noble Baroness, Lady Brinton, would require the OfS every two years to commission a review of the support for students with disabilities or specific cultural needs. This is an interesting proposal, and I remind the noble Lord and noble Baroness that the Bill will require the OfS to produce an annual report covering its delivery against all its functions. Critically, this includes the duty regarding equality of opportunity set out in Clause 2.

Baroness Deech (CB): Will the Minister clarify what is meant in Amendment 235 by “cultural needs”? I understand religious needs, but I cannot think of any cultural needs that have to be attended to. We certainly do not want to see universities providing, for example, gender segregation.

Viscount Younger of Leckie: It is a generic term. In my next letter, I will address that point. I am certain that it requires a proper and full answer.

Amendment 236 seeks to ensure that the OfS “should” identify good practice and give advice to higher education providers. Let me reassure the noble Lord that we expect this to be a key function of the OfS. HEFCE and OFFA already do this as part of their existing roles, and we expect that will continue in future. We believe that the Bill as drafted will deliver the policy intent on the issues raised, so these amendments are unnecessary. I appreciate the fact that noble Lords have raised these issues, and I ask the noble Lord to withdraw Amendment 226.

Lord Addington: My Lords, I thank the Minister for his reply and thank the most reverend Primate the Archbishop of York for pulling me up and reminding me about a bit of the amendment that I wrote myself, so I should have referred to it. I am glad to hear that the guidance is coming out. I have not received the letter yet, but it does not really matter. The fact that the guidance is coming is good. The fact that we have been waiting for it for this long is not. We are going to get it half way through an academic year, and in the vast majority of cases it will not be possible to implement it until next year. In certain cases, we are not preparing but patching up. We need to look at some of these issues in more detail. In fairness to the Minister, he was hearing about some of the specific points for the first time today. I look forward to arranging a meeting to see how this issue is progressing. I hope that bouncing between the Minister’s incredibly busy diary and my diary will be slightly more successful.

There are groups who do not know what is going to happen. They have been let down and have bad practices. I hope we can have clarifying amendments at the next stage, rather than confrontational ones, so we can find out exactly what is going to happen. At the moment, we are repairing trust and making sure this works slightly better—in a way we all thought the law was supposed to be working.

Viscount Younger of Leckie: My Lords, before the noble Lord sits down, can I clarify a slight misconception? The noble Baroness, Lady Deech, asked a question about cultural needs, which I attempted to address. In fact, it was the noble Baroness, Lady Brinton, who raised the concept of cultural needs, not the Government. I am very happy to discuss this with the noble Baroness, Lady Brinton, outside the Chamber.

Lord Addington: I think it was actually in my amendment. I am not wedded to this. It was a probing amendment. If the Minister does not like those terms, it does not matter to me at all. I beg leave to withdraw my amendment.

Amendment 226 withdrawn.

Amendments 227 to 229B not moved.

Amendment 230

Moved by Lord Stevenson of Balmacara

230: Clause 31, page 19, line 43, at end insert—

“() requiring the governing body of an institution to take, or secure the taking of, measures to enable students to undertake courses on a part-time basis where appropriate.”

Lord Stevenson of Balmacara: My Lords, I think we can be brief on this one. It is a continuation of the debate that started two or three days ago to try to put flesh on the bones of the ideal which the Government say they have—and we certainly share—which is that higher education in future should be less regimented and less dominated by the three-year traditional degree taken full-time by students who come straight from school. We should try to open up the provision that is available in higher education, and made by higher education providers, to ensure that equal parity is given to those who wish to study part time, and in particular mature students who very often need to be more flexible in what they do. At the moment, they are disappearing too fast from the statistics, and we need to try and get them back.

This issue has been raised before in terms of the hierarchy of government policy in relation to the Office for Students, and is now down at the level of access and participation plans. The amendments seek to ensure that the governing bodies of institutions can and will take measures to enable flexible provision and allow students to undertake part-time courses, particularly to suit those who may be mature. I beg leave to move.

Baroness Garden of Frognal (LD): My Lords, I have tabled Amendment 237 in this group, which complements the words of the noble Lord, Lord Stevenson. With the collapse in part-time student numbers, this would ensure that the Office for Students has a duty to ensure that equality of opportunity is not neglected for those whose only opportunity to study is via part-time provision and at a later stage in life. It would also provide an assessment as to whether the Government's new initiatives, such as the extension of maintenance loans to part-time students, are having the desired effect of boosting current numbers.

We remain concerned throughout the Bill that the opportunities for mature and part-time students should not be neglected. Putting them in the Bill will ensure that their contribution to higher education is fully considered.

Baroness Goldie: My Lords, the Government agree that part-time education, distance learning and adult education bring enormous benefits to individuals, the economy and employers. Our reforms to part-time learning, advanced learner loans and degree apprenticeships are opening up significant opportunities for mature students to learn.

As part of the Bill, the OfS must have regard to the need to promote greater choice and opportunities for students, and to encourage competition between providers where it is in the interests of students and employers. By allowing new providers into the system, prospective students can expect greater choice of HE provision, including modes of provision, such as part-time and distance learning, which can increase opportunities for mature learners.

As was noted during our debate on 11 January, we know that in 2014-15, 56% of students at new providers designated for Student Loans Company support were over the age of 25, compared to 23% at traditional higher education providers. This is alongside the other practical support that the Government are already giving for part-time students, including providing tuition fee loans where previously they were not available. We have recently completed a consultation on providing, for the first time ever, part-time maintenance loans and we are now considering options.

7.15 pm

I understand the sentiment behind Amendments 230, 232 and 237. The Government agree that it is very important for the OfS to have regard to the need to promote choice and opportunities for all students, including those who wish to study part time or are mature learners. Our approach is designed so that providers and the OfS can respond to changing demands and circumstances.

Currently, the Secretary of State issues guidance to the Director of Fair Access on widening participation. In the latest guidance, issued in February 2016, we asked the director to provide a renewed focus on part-time study, for example by including good practice on this in his guidance to institutions. In future, the Secretary of State will be able, through Clause 2 of the Bill, to issue guidance to the OfS. We would envisage that the Secretary of State will continue to issue guidance on priorities in the area of widening participation. This approach through guidance is more flexible and ensures that the OfS can respond to emerging issues and priorities. I therefore ask the noble Lord, Lord Stevenson, to withdraw his amendment.

Lord Stevenson of Balmacara: My Lords, I am grateful to the Minister—I am sorry she is struggling to get through. It calls, I think, for an early night. We should make sure that she gets tucked up in bed with a good scotch—I perhaps should not say these things—in order that she recovers and comes back on Wednesday

in good form. I listened to her very carefully and think she has reached out to us on this point. I beg leave to withdraw the amendment.

Amendment 230 withdrawn.

Amendment 231 had been withdrawn from the Marshalled List.

Amendments 232 and 233 not moved.

Clause 31 agreed.

Clause 32 agreed.

Clause 33: Review of decisions on approval or variation

Amendment 234 not moved.

Clause 33 agreed.

Amendment 235 not moved.

Clause 34: Advice on good practice

Amendment 236 not moved.

Clause 34 agreed.

Clause 35 agreed.

Clause 36: Power of Secretary of State to require a report

Amendments 236A to 237 not moved.

Clause 36 agreed.

Clauses 37 to 39 agreed.

Amendment 238 not moved.

Amendments 239 and 240 had been withdrawn from the Marshalled List.

Clause 40: Authorisation to grant degrees etc

Amendment 241

Moved by Viscount Younger of Leckie

241: Clause 40, page 23, line 6, leave out paragraph (b)

Viscount Younger of Leckie: My Lords, in moving these government amendments, I look forward to potentially hearing contributions from the noble Baroness, Lady Garden, and the noble Lords, Lord Storey and Lord Stevenson, about the amendments that they have proposed in this group. However, I believe the amendments we have tabled will have a similar effect to that which their amendments seek to achieve. The Bill is not as clear as it could be on exactly what types of providers can apply for what type of degree-awarding powers,

and what awards this then entitles them to make. I believe this is why noble Lords tabled Amendments 242 and 243.

The simplest way of dealing with the issues at play here is for me to explain the purpose of the government amendments. We listened carefully to the discussions in the other place and, as the Minister for Universities and Science promised, we have reflected on and re-examined how Clause 40 may have been read as impacting on the further education sector. Although there are over 30 government amendments in this group, most of them are consequential and there are really just two main areas that we seek to address. First, we want to remove any doubt that institutions within the further education sector can continue to apply for powers to award foundation, taught and research degrees. We believe that the amendment to Clause 40(1)—whereby what was subsection (1)(b) has been removed—will achieve this. Under that amendment, the definition in Clause 40(3) of a “taught award” clarifies that this may include a foundation degree. Removing what was Clause 40(1)(b) should help to remove any impression that providers in the further education sector that obtained powers under this route could not go on to obtain powers also to award higher-level degrees. As before, a further education provider must also be a registered higher education provider before it can apply for authorisation to grant awards under Clause 40.

Secondly, these amendments should remove any doubt over which providers can award foundation degrees. While we wish to retain the current position where only higher education providers that are also further education providers may apply for powers to solely award foundation degrees, it should nevertheless continue to be the case that institutions that can award taught degrees should also be able to award foundation degrees. It remains the Government’s policy that a provider that wishes to be authorised to award foundation degrees only should be required to provide a satisfactory progression statement. We believe it is important that the provider in question can demonstrate that it has in place clear progression routes for learners wishing to proceed to a course of higher-level study on completion of the foundation degree. The amendment to Clause 43 is therefore to ensure that, were a variation of a provider’s powers to result in it being left with the powers to award only a foundation degree, that provider would need to be able to satisfy the Bill’s requirements in respect of a progression statement. I beg to move.

Lord Storey (LD): My Lords, I thank the Minister for his comments. I am speaking to Amendment 243 in this group. We welcome the government amendments. I agree very much that there needs to be clarity. There is a need to ensure that certain procedures within the Bill are applied fairly and proportionately and accommodate smaller providers of higher education such as further education colleges. It is also the case that the recently published BEIS post-16 skills plan includes proposals for colleges to make their own technical education awards, and it is important that there is joined-up thinking in this area. Unlike universities, colleges that offer foundation degrees are currently unable to provide both a foundation degree and a

[LORD STOREY]

certificate of higher education to provide a flexible level 4 qualification option for students. The amendment would remedy this.

Lord Stevenson of Balmacara: My Lords, I am grateful to the Minister for introducing his raft of amendments. He is right that on the area we are talking about we meet in the middle. I am glad that his amendments, which outnumber ours by about 100 to one, were tabled, because what we had tabled would certainly not have been sufficient to achieve what he has outlined.

It is good that this is being done in pursuit of a vision of higher education provision that is inclusive rather than exclusive and which is open to many institutions to offer the various types of degrees and qualifications that they think is appropriate, with the aim, as picked up today in earlier amendments, that other modes of study, such as full-time and block release, are not excluded in any tally. With that will come the responsibility to ensure an effective credit accumulation system that allows those who have credits banked in the various styles and approaches that different institutions have to cash them in, as it were, against other higher education provision, to ensure that they arrive at a satisfactory conclusion with the degree that they have been studying for through this flexible route.

I have three worries that I wonder if the Minister could respond to in the short time available before we must break for the dinner business. Maybe this will mean that yet another letter will emerge from this process, and I have no objection to that. The first is that we have heard announcements today about various different types of institution that will focus on technology and technological achievement. These are to be welcomed, but it is not clear that provision has been made for that in the Bill. The Minister may not have been able to adapt the thinking announced today into the mode that would apply to the Bill, but I would be grateful if he could confirm whether or not it is the Government's intention to try to bring forward anything that might be a consequence of the proposals made today. I agree that we are in a three-month consultation period but the Bill will last a lot longer, and there may not be another higher education or even further education Bill along in the next year or two. It would be a pity to miss the bus, as it were, on this occasion, so some clarification at least about the thinking would be helpful. We would certainly wish to work with the Minister if there were some suggestions about changing the framework here, although maybe he will be able to confirm that that is not the case.

Secondly, the question about who has what powers to do what is confusing. I want to assert what I think is the intention behind this term, and if the Minister is able to confirm it then so much the better. I also have a question embedded in this, which is where I will end. The intention of these amendments, as it was in our proposals as discussed in Amendments 242 and 256A, is twofold. First, it is to remove any doubt that institutions in the FE sector can apply the powers to grant taught and research degrees in addition to foundation degrees, as in the current system. Secondly, it is also to remove any doubt that institutions that are not in the FE sector,

and which have been granted degree-awarding powers, can also award foundation degrees—in other words, institutions can provide the whole suite of qualifications.

However, it also seems to be the case that the Government are trying to say that only an institution in the FE sector can apply for the powers to award just foundation degrees, which seems perverse. If the Government accept my opening premise that we are trying to open up the system to make it more flexible, why is it only in the FE sector that you can find these foundation degrees? Is there something special about them that restricts Oxford University, Edinburgh or anyone else with the ambition and the wish to try to make as seamless a proposal for students wishing to enter university as possible to be prohibited from offering a foundation degree because they are not in the FE sector? That seems odd and slightly against what the Minister was saying as he introduced the amendment.

There seems to be a proposition buried in the amendments: that we are opening up everyone to offer the sort of courses that allow any student—full-time, part-time or mature, of any persuasion, type or arrangement—who wishes to come forward for degrees to be able to do so in the way that has the fewest institutional barriers. This particular restriction, that only FE providers can offer foundation degrees if that is all they want to offer, seems to go against that. I look forward to hearing from the Minister.

Baroness O'Neill of Bengarve (CB): My Lords, I am beginning to feel like a broken record but I am still very unclear on what an “English higher education provider” is. I understand that it is meant to be an inclusive category, and that may have its merits. I have now read the *Introduction to the Higher Education Market Entry Reforms*—which I find a slightly angled title, let us say—and the factsheet on degree-awarding powers.

To put it very simply, I am still not clear what there is to prevent entryism into this market by institutions that we would not normally think of as higher education providers or teachers. I shall give some examples. I have hesitated to do so far thus far because one does not wish to spoil the cheerfulness that attends the thought of new providers. However, let us imagine that a large-scale publisher—this is not at all an implausible way of expanding—sets up a wholly-owned subsidiary that offers degrees in England. I do not mean degrees in publishing but, rather, degrees of various sorts, as is profitable. Are they able to become an English higher education provider by that route?

Let us be a little more far-fetched. Suppose the Communist Party of China thought, “A bilingual university in London to which we can send people and where we will have very good access for our highly intelligent and well-trained academics would be an extremely good thing”. It too would then be providing higher education in England. Because in each case the institution is a wholly owned subsidiary, its students would qualify to receive tuition grants. However, I am not clear whether, if such institutions go bankrupt and the parent company is outwith the jurisdiction, there is any chance of recovering the assets of the one-time university.

Finally, let us imagine that it is neither of the above, but so-called Islamic State that seeks to set up a university. That might rather appeal to it. What is to prevent that? We need to know about the governance of these institutions. The fact that they are providing education in England just tells us that this is one of their markets; it does not tell us about the standard of governance.

7.30 pm

Lord Stevenson of Balmacara: The noble Baroness is campaigning vigorously and with her usual persistence on a very interesting point. The letter dated 23 January that was delivered just as we were sitting down to enjoy ourselves this afternoon—I think we are going to have to start numbering them so we can keep track of which letter is which—has a little section on this, to which I think she was referring. Can the Minister possibly explain what this means?

“It is the Government’s policy that a provider that has a physical presence in England, and that is delivering courses in England, can be an English higher education provider even if it is delivering other courses in another country, provided that its activities are principally carried on in England. There has never been an agreed measure for identifying where the majority of a provider’s activity might be. But there are a number of sensible measures (or combinations of sensible measures) that should make it reasonably clear, including the number of students studying courses in each country, and/or where the provider has its administrative centre(s)”.

With the greatest respect to the Minister, this is just throwing more marbles on to the road for our poor horses to trip up and fall over on. I am not going to quote the stuff about massive open online courses, which has been raised by the noble Baroness and is an issue, because that is completely bonkers.

Viscount Younger of Leckie: I appreciate the contributions from noble Lords in the very short debate after I introduced the government amendments. As we are now proposing that a foundation degree award is covered by the definition of a taught award in Clause 40(3), this puts holders of foundation degree-awarding powers in the same position as holders of taught degree-awarding powers—which I assume was the intent behind noble Lords’ amendments. In addition, we plan to set out in guidance the relationship between degree-awarding powers and powers to award other higher education awards such as certificates of higher education. I hope that this will help to further clarify the position for providers. We anticipate that this guidance will be subject to consultation. I do not wish to dwell on Amendment 256A any further, as we have covered the argument in our discussions on the previous group, where I trust that my noble friend Lady Goldie offered some reassurance.

However, I will address a small number of the points raised. The noble Lord, Lord Storey, raised some issues about the post-16 skills plan and how this joins up with our proposed reforms. I confirm that we are carrying out two reform programmes, in higher education and technical education at the same time, which he is probably aware of and which gives us the best opportunity to ensure that they are complementary and for young people to benefit from the changes as soon as possible. This is not about diverting people

from academic education into technical education or vice versa; we simply want everyone who can benefit from a tertiary education—whatever that might be and whatever their talents lead them to—to have the chance to do so.

I will address the points raised by the noble Lord, Lord Stevenson. One point focused on the clarifications of our framework in relation to these amendments, while another was on the responsibility of powers. I think it is best to write a letter on that. I was interested in the points raised about entryism by the noble Baroness, Lady O’Neill, particularly on the position of overseas providers who might want to come in. The noble Lord, Lord Stevenson, has received the letter I have just written, in which I thought that we had addressed those issues, but I suggest that we have a meeting with the noble Lord and the noble Baroness, and indeed any other noble Lord who might wish to join in, to offer full and final clarification.

Amendment 241 agreed.

Amendments 242 and 243 not moved.

House resumed. Committee to begin again not before 8.35 pm.

Iran: Human Rights *Question for Short Debate*

7.35 pm

Asked by Lord Clarke of Hampstead

To ask Her Majesty’s Government what assessment they have made of the current human rights situation in Iran.

Lord Clarke of Hampstead (Lab): My Lords, I thank the Minister and those noble Lords who have put their names down to speak for being present for this short debate. I and many others think this is a very pressing issue for us to address as a nation.

The appalling human rights situation in Iran continues to deteriorate, with the authorities there increasing the pressure on political prisoners, prisoners of conscience and activists, and at the same time increasing the number of executions and public hangings. Reports during this last month include mention of continuing barbaric punishments, as has been the case for so many decades. The punishments include amputation of limbs, public hangings and public floggings. It is clear that the condemnatory resolution of the United Nations General Assembly adopted on 19 December is being ignored by the despotic rulers in Tehran. We should not be surprised by the mullahs adopting the position that they always have; they have been doing it all these years. There have been 60 or more resolutions in various United Nations committees and councils, but every one of them is ignored by those people in Tehran.

Two weeks ago, the United Nations special rapporteur for human rights in Iran, Ms Asma Jahangir, stated her alarm over the health of several prisoners of

[LORD CLARKE OF HAMPSTEAD]

conscience in Iran who have been on a prolonged hunger strike contesting the legality of their detention. She also expressed deep concern over the continuous detention of human rights defenders in the country, who she said have been tried on the basis of vaguely defined offences and who were heavily sentenced following trials marred by due process violations. Ms Jahangir urged the authorities to immediately and unconditionally release all those who had been arbitrarily arrested, detained and prosecuted for exercising their rights.

The hopes of the international community that things would improve, raised when the so-called moderate Hassan Rouhani took over the presidency in 2013, were quickly dashed. The following year he was saying that executions were, “God’s commandments” and, “laws of the parliament that belong to the people”.

He quickly appointed Mostafa Pourmohammadi, one of the main perpetrators of the 1988 massacre of political prisoners in Iran, as his Justice Minister—a murderer.

It is well worth recalling what was said at the 71st session of the UN General Assembly last October. Speaking about the increase in executions in Iran, the special rapporteur said:

“The right to life is still under heavy assault in Iran today”.

Iran continues to execute more individuals per capita than any other country in the world. Human rights organisations estimate that between 966 and 1,054 executions took place in 2015 alone—the highest rate in over 20 years. At least 420 executions were reportedly carried out between January and October 2016. More recently, since 1 January, there have been 40 executions.

The authorities continue to execute juveniles, showing their contempt for the commitments they have signed up to in the case of juveniles. The ratification of the Convention on the Rights of the Child by the Iranian regime is itself testament to the disregard they have for human life, even if it means killing children.

I recognise the efforts made by our own Government, as they have given support to the various calls for an end to the evils of the mullahs’ regime. This evening I call clearly on the Government to join other nations in calling for those clearly identified as being responsible for the 1988 massacre of the 30,000 victims to be tried in the International Court of Justice. The international community has a duty to speak out against those who callously and wantonly condemned the 30,000 human souls to death.

While the political bickering between the various factions in Tehran goes on, especially following the death of Rafsanjani two weeks ago, and becomes more intensified, the Iranian people, particularly the younger generation with its desire for fundamental freedoms and civil liberties, continue to pose the greatest threat to the ruling theocracy. The protests inside the country continue with little or no coverage by media outlets in the West. During 2016, thousands of popular protests and rallies took place in spite of the repressive security measures by the authorities to prevent such expressions—just expressions of a desire for human rights and a people wanting to see an end to the theocratic and inhumane rulers in Tehran.

Many of the gatherings of protesters start off with a call for an end to the appalling living conditions endured by many. Protests about poverty and unpaid salaries grow quickly to loud calls for an end to the regime, the release of political prisoners and an end to the widespread corruption and oppression in that country.

The president-elect of the National Council of Resistance of Iran, Mrs Maryam Rajavi, has proposed a 10-point plan. There is not time this evening for me to go through the 10 points but I am confident that the Minister and the Government are aware of Mrs Rajavi’s 10-point plan. It seeks nothing more than what we take for granted in our lives: the right to speak out and the right to protest. I am not being critical in any way of what has gone on, although I could say something about the lack of effort when the nuclear deal was being done, when human rights were not even mentioned by the negotiators. However, I do not hold the Minister responsible for that.

It is now 30 years since a young man came into my office in Clapham and showed me pictures of young men hanging from gibbets—impromptu gallows, cranes similar to those used four months ago in the football stadium when they executed those people. It is 30 years since he showed me those pictures and it stays in my memory and always will—to see young men dangling in the air because they had dared to speak out about that in which they believed.

I also remember the young lady with whom some years ago I had a telephone link from Camp Ashraf. She was a young girl of 16. We got on quite well considering her English was good and my Farsi was absolutely rubbish. I went home and said to my wife that it had been a wonderful evening, being able to speak to a young lady suffering with lots of people in Camp Ashraf. About three weeks later I asked my colleagues in the National Council of Resistance of Iran how she was getting on and heard the terrible news that she was among the 50-odd people massacred in one of the raids on Camp Ashraf—raids perpetrated by the Iraqi Government on behalf of the mullahs in Tehran.

Many expressed great joy and relief when last year the successor to Ashraf, Camp Liberty—if ever anything was misnamed it was Camp Liberty, which was in my view a concentration camp—finally closed and the residents were taken in by the Albanian authorities. The world owes a great deal to Albania because, in contrast to all the other nations which ignored the problem, it took people in and gave them a new life, ending the uncertainty, the living in fear and the daily persecution that they had suffered.

The international community continues to be misled by the Iranian authorities. Witness to this feeling is the so-called Iranian nuclear programme agreement. The discussions on that agreement do not include the dreadful human rights record. We shall regret that.

You could speak about the number of people and go on and on. Only today we saw the news of somebody’s appeal having been rejected, so a young mother will be deprived of her family life for another five years. In asking the Government this Question, all I can say is: please, pursue those responsible for historic crimes against humanity. It may just have some effect on these people who rule by fear and oppression.

7.45 pm

Lord McInnes of Kilwinning (Con): My Lords, I am grateful to the noble Lord, Lord Clarke, for bringing this important matter before the House, and for giving the Minister the opportunity to update the House on progress that the Government are making in trying to improve human rights in Iran. It is a great privilege to follow the noble Lord, Lord Clarke, after his heartfelt and commanding speech on the human rights being abused in Iran.

It is a great shame that we still need to debate this subject this evening. I am sure that after July 2015 many of us hoped that not only would diplomatic relations be properly re-established, but that the Iranian Government would have time to reflect properly on the egregious human right abuses taking place in Iran. These result in a great stain for such a great country that, for two millennia, was known for its pursuit of civilisation. It is important that we distinguish between the great Iranian people and the current apparatus of the state. The two are very different. As the noble Lord, Lord Clarke, has already said, the people in Iran crave improvement in their human rights and are prepared to put their lives at risk to protest against abuse of those human rights.

Any passing interest in Persian or Iranian history would tell your Lordships that the Iranian-Persian civilisation was based on the diversity that any great state or nation requires. Yet we see under the current state apparatus that diversity is viewed as a threat rather than something to be celebrated. Each religious minority is picked upon and forced from the public sphere. Jews are forced to keep a low profile or emigrate. Sufis—whose tradition was a central tenet of and came from the Shia religion—are persecuted. The Baha'i—in many ways the most oppressed religious minority in present-day Iran—are pursued from the public sphere. Christians, whether Armenians, Assyrians or converts meeting in house churches, are again forced to keep a low profile and suffer discrimination. Ethnic minorities—Arabs, Azeris, Kurds—find it difficult to gain access to higher education. All these groups are minorities, but minorities that add up to a majority overall in the Iranian state, a state where gender and sexuality are the determinants of how the state views one, judges what one is worth and determines the punishment one must face if going beyond what is expected in the public or private sphere.

It would be easy for those from that state apparatus in Iran to claim that we are nothing more than cultural imperialists who fail to understand the religious and cultural context of human rights in Iran. How, though, can that be the case when Iran signed the Geneva Convention in 1957, when President Rouhani himself was elected on a platform of reform, and when the Iranian parliament discusses the need to reduce capital punishment and the use of the death penalty but the state apparatus refuses to allow the restoration of human rights throughout the country?

That state apparatus has enforced a false theology that does not reflect traditional Shia Islam or the diversity that existed under various regimes in the past. As the noble Lord, Lord Clarke, said, in the past five years we have seen a massive increase in the use of

capital punishment, reaching a peak of over 1,000 deaths in 2015. The UN rapporteur reported in March 2016 that 160 juvenile offenders were on death row. That is despite a change in 2013 to the penal code to discourage judges from sentencing juveniles to the death sentence.

Torture, flogging and stoning to death have become, and remain, key elements of the penal code. This is the very torture, as executed by the then state apparatus through SAVAK, which was an important component in creating the circumstances of the 1979 revolution in the first place and it continues. In the last month, concern has been raised by the UN special rapporteur on human rights; and the Supreme Leader, Ayatollah Khamenei, has been written to by his uncle, who reprimanded him on the poor human rights record for those imprisoned for involvement in the green movement. In the last 24 hours we have seen the danger of the failure of the Iranian state to recognise dual nationality, in the case of Mrs Zaghari-Ratcliffe. When the Minister responds, will she address this issue in particular?

I also hope that the Minister will be able to reassure the House that the Government will continue the excellent work for human rights that they have pursued directly with the Iranian Government on a bilateral basis and through the United Nations. While we will inevitably be drawn first to those suffering in Iran who have a connection to the United Kingdom, we must not forget the ordinary Iranians, whose only wish is to enjoy the same human rights as their ancestors were able to enjoy under so many different regimes in the past. The UK has a unique place in being able to speak for these people. For too long Iran was able to use diplomatic isolation as an excuse to avoid scrutiny. That can no longer be the case. As we move forward, I ask that her Majesty's Government use all avenues open to them to improve human rights in Iran.

7.52 pm

Lord Carlile of Berriew (Non-Aff): My Lords, I congratulate the noble Lord, Lord Clarke of Hampstead, on obtaining this debate and opening it so well. He and I have made common cause on these issues for many years. There are not many opportunities to debate them and we are fortunate tonight to be able to do so in the presence of the noble Baroness, who is a senior Foreign Office Minister and who will, no doubt, be willing to answer a number of the questions put in the course of the debate. It has also been an absolute pleasure to follow the noble Lord, Lord McInnes, who gave a lot of colour to the historical aspects. These make the issues we are debating so depressing, because abuses in Iran have gone on for so long.

I hope that the House will indulge me for a moment in reflecting on the fact that I am speaking for the first time from this Bench. I hope it is proper for me to thank the House authorities, the Convenor of the Cross Benches and his staff for their guidance so that my move to this Bench could be made in compliance with the customs and practices of your Lordships' House and with as little fuss as possible. I thank colleagues in this House for their courtesy in a difficult time, and I include in that members of the Liberal Democrat group which I left to come to this Bench.

[LORD CARLILE OF BERRIEW]

Policy towards Iran has changed with the relaxation of the United Kingdom's previously severely critical approach towards the regime. It is a matter of judgment whether one believes the asserted commitment to the deal designed to inhibit the proliferation of nuclear weapons and their development in Iran. In so far as trust has been reposed in the Iranian theocratic regime, I hope that this is justified, though personally I doubt it. I would welcome hearing from the Minister what evidence there is to corroborate whatever confidence our Government have in the integrity of the regime on the nuclear issue or, for that matter, any issue. I have followed Iranian affairs quite closely for a number of years and I have seen absolutely no evidence to support the view that the regime is truthful. Indeed, it appears to be as unfamiliar with the concept of truth as it is with the concept of trust.

One of the benchmarks of trust is the attitude of the Government concerned to human rights. There is a Government with a plainly threadbare approach—even a scorched-earth one—to human rights. There is international evidence in abundance, not least from the United Nations, to support that view. Others in this debate have already spoken about this human rights record. I will provide six headline points, though I could have made 66. First, trials take place in Iran without legal representation, even in capital cases. That would be unbelievable about any modern state if it were not, unfortunately, true. Secondly, defendants are convicted, and lose their appeals, without being told the charges they face. The concept of appealing against a conviction and losing the appeal without ever even seeing the charge is just an abomination in the modern world. Thirdly, children are subject to the death sentence, which can be carried out when they reach 18 years old—well outside international human rights norms and treaty requirements. Fourthly, in a gruesome peculiarity of their law, girls in Iran can be sentenced to death at nine years old, whereas boys can be sentenced to death at 14. Obviously, no juvenile should be sentenced to death in any state—it is barbaric—but the extraordinary disparity between boys and girls is one of the many examples of a total disregard by the Iranian Government of international obligations, juristic norms and equality of the sexes.

Fifthly, Iran imposes its laws and violence wherever it can spread its influence. The noble Lord, Lord Clarke, referred to Camp Ashraf. The Iranian Government have been responsible for multiple missile attacks at that camp and its successor, Camp Liberty, on innocent, unarmed and in many cases elderly refugees from Iran to Iraq, killing many. I have been to Albania and spoken to many of those refugees and the story they have to tell justifies the use of the word horrific. The role of Iran in Syria is extremely questionable at best. My sixth point is: who is in charge of justice in Iran? As the noble Lord, Lord Clarke, said, the Justice Minister is Mostafa Pourmohammadi, who was instrumental in the 1988 massacre of no fewer than 30,000 political prisoners. Justice in Iran is supervised by a war criminal. How on earth can we pay any credence to a Government who have a war criminal as their Minister of Justice?

I turn briefly to some specific cases, specifically those of the dual nationals Nazanin Zaghari-Ratcliffe

and Kamal Foroughi, which have been mentioned already. Mrs Ratcliffe has been taken away from her family; she has a two year-old who was not allowed to leave Iran to live with her father, Mr Ratcliffe, in the United Kingdom. Without going into the facts further, I ask the Minister whether the Government can confirm that they have not only been protesting against what has happened to Mrs Ratcliffe but calling for her release in their discussions with their Iranian counterparts. It is extremely important that that should be done. Failure to call for her release may indeed be a misuse, at least, of administrative action. I ask whether the Foreign Secretary will make a public statement calling for Nazanin Zaghari-Ratcliffe and the 77 year-old Kamal Foroughi to be released.

I remind your Lordships that Kamal Foroughi is a British Iranian serving an eight-year sentence in the notorious Evin prison in Tehran on charges of espionage and possession of alcohol. He was arrested in 2011 and kept in solitary confinement, then convicted at an unfair trial at which he was not properly represented. He did actually see the charges brought against him—the day before the trial. The authorities have barred him from legal advice and much contact with his family, and he has been denied consular assistance. According to Iranian law, a prisoner can be released after serving a third of their sentence, yet he has been in prison for more than five years. That is typical of the arbitrary and inexcusable way in which these cases are treated. Again, I ask the Minister whether she will take up this case and call for his release.

My final point is that the 10 recommendations in the UN special rapporteur's report of 30 September 2016 have been ignored. What are the UK Government going to say and do about that?

8.01 pm

Lord Judd (Lab): My Lords, I am grateful for the opportunity to speak in the gap. I am a member of the All-Party Parliamentary Group on Human Rights, and I was determined to get here to say a word in support of my noble friend Lord Clarke, who has been a long-standing champion on this issue, and whom I salute without reservation in that context.

It is true that apparently, so far, progress is being made on the nuclear issue. We cannot discount that because to succeed on the nuclear issue will have immense human consequences in terms of the dangers that would otherwise be there. It is also essential to recognise that there are large numbers of courageous people within Iran who are doing their best to stand up for decency and the things that matter. We must be careful that, in criticising from outside, we do not undermine their effectiveness as they bring pressure to bear. They are very brave people indeed.

I want to underline what has already been said. The human rights record remains deplorable. Iran is one of only four countries in the world to conduct some executions in public. Hanging is, of course, the most common means—and very questionable forms of hanging, too—although recently we have also heard of shootings. The number of executions in 2016 was unbelievable: between 400 and 500. Amendments to the penal code

allow judges to use their discretion not to sentence children to death, but they still execute children when they reach 18.

Many detainees accused of capital offences, as the noble Lord, Lord Carlile, underlined, are denied access to legal counsel during the investigative phase when in detention. Indeed, in February 2016 the entire adult male population of a village in southern Iran was executed for drug offences—and this news came from the Vice-President for Women and Family Affairs in Iran itself.

Prison conditions, and the treatment of prisoners in solitary confinement, are indescribably bad—and sometimes, in solitary confinement, amount to torture. We must be firm. It is no good believing that we can have a lasting, effective relationship with Iran if we prevaricate. We must leave the Iranians in absolutely no doubt that their conduct on human rights is totally unacceptable.

8.04 pm

Baroness Northover (LD): My Lords, I know that the noble Lord, Lord Clarke, has had a long interest in Iran, as have a number of other noble Lords and our colleagues in the other place. The noble Lord, Lord Clarke, has given us a very disturbing account, as have other speakers. I know that there is an almost constant presence in Parliament of an organisation that flags to parliamentarians its case in relation to Iran.

I pay especial tribute to someone not speaking tonight: the wonderful noble Baroness, Lady Afshar, whose wisdom on the subject of her home country is, in my view, second to none in this House, and whose debate on the subject in December I read with great interest. Unlike some noble Lords, she welcomed the lifting of sanctions on Iran, for the benefit of the Iranian people. Nevertheless she herself pointed out:

“I fear that in my own birthplace I would be put in prison and maybe the UK Government would not be able to help”.—[*Official Report*, 8/12/16; col. 945.]

Like others, she is very concerned about the abuse of human rights in Iran. She pointed out that Iran signed the Geneva Conventions in 1957 and voted in favour of the Universal Declaration of Human Rights. Nevertheless, as has been said, we hear of acts of torture, and the extraction of apparent confessions without a lawyer present. The noble Lord, Lord Carlile, made the point that trials may be carried out without legal representation.

Amnesty International notes that the rights to freedom of expression, association and peaceful assembly, as well as freedom of the press, remain heavily curtailed in Iran, with hundreds of activists, journalists, human rights defenders, women's rights advocates, trade unionists, lawyers, student activists, and members of ethnic and religious minorities being detained and given increasingly harsh prison sentences. The noble Lord, Lord McInnes, spelled out so many groups who are vulnerable in Iran. In December's debate the noble Lord, Lord Collins, flagged the especial vulnerability of LGBT people. It was shocking to read what the noble Baroness, Lady Kennedy, said in that debate about what she described as the “wretched” situation of Shirin Ebadi, the human rights lawyer who was

given the Nobel Peace Prize and who is now unable to return to her country, or continue her work and family life there.

In August 2015 the Ministry of Information and Communications Technology announced the second phase of “filtering” of websites deemed to have socially harmful consequences, and the authorities continued efforts to create a “national internet”. In June 2015 a spokesperson for the judiciary said that the authorities had arrested several people for “anti-revolutionary” activities using social media.

Amnesty has also recorded the execution of at least 73 juvenile offenders between 2005 and 2015, including at least four in 2015. According to the 2014 report of the UN Secretary-General on the situation of human rights in Iran, more than 160 juvenile offenders remain on death row.

Another issue raised by Amnesty is prisoners' access to medical care. It reports that political prisoners, including prisoners of conscience, are denied adequate medical care—a key human right under international law. In some of the cases there is also evidence that that denial is being used as a means to extract “confessions” from political prisoners or to intimidate or punish them.

Then there are the cases that we have already heard about, of the British-Iranian nationals. One whom my right honourable friend Tom Brake has been supporting is Kamal Foroughi, to whom the noble Lord, Lord Carlile, also referred. Another who is particularly in the public eye at the moment is Mrs Zaghari-Ratcliffe, whose specific case I will raise at Oral Questions on 2 February, and whose appeal against her five-year sentence has been declined, as we heard yesterday. I note recent ministerial engagement in this case. Can the Minister confirm to the House that the Government have asked for Mrs Zaghari-Ratcliffe's release? The noble Lord, Lord Carlile, also made this point.

There has, of course, been much international engagement over Iran's nuclear programme. As the Foreign Secretary himself said, we know that conflict in the Middle East, especially in Syria, owes much to proxy conflict between Iran and Saudi Arabia. However, the noble Baroness, Lady Ashton, when she was the EU's High Representative for Foreign Affairs and Security Policy, surely did much commendable work in helping bring Iran back into the global fold. We are now in uncertain times with the election of Donald Trump, who has made his opposition to the deal with Iran very clear. Might we hope that Iran might address some of the issues we have mentioned today as it seeks not to be sanctioned and ostracised once again? It may well hear the lack of sympathy for the regime expressed in this debate. That may mean that Iran should be looking to improve its record on human rights. The UK Government must not hold back in defending their citizens when they are caught in the Kafkaesque situation in which they now find themselves.

8.11 pm

Lord Collins of Highbury (Lab): My Lords, I, too, thank my noble friend for initiating today's debate and keeping these issues very much in the public arena. His record on standing up for the rights of oppressed

[LORD COLLINS OF HIGHBURY]

people throughout the world is second to none. Certainly, his record in doing so as a trade unionist is one of which I am particularly proud.

As the noble Baroness, Lady Northover, said, it is just over a month since we last debated Iran and its human rights record. Sadly, little has changed apart from one significant change which has been referred to in the debate—namely, the developments in the case of Mrs Zaghari-Ratcliffe. We heard only yesterday that a court in Iran has rejected an appeal against her five-year prison sentence, originally handed down in September by a revolutionary court. Although official charges were never made public, she was accused of allegedly plotting to topple the Government in Tehran. According to her husband, the appeal was dismissed in a secret hearing of an Iranian revolutionary court on 4 January, but announced only yesterday. He added again that the precise charges against her remain secret, although apparently two new accusations were made at her appeal. One was that she had been head of recruitment for the BBC's Farsi service when it was launched in 2009. The other charge, apparently, was that she was married to a British spy.

Monique Villa, the chief executive of the Thomson Reuters Foundation, said that Mrs Zaghari-Ratcliffe had never worked for the BBC Farsi service and that her husband,

“is not a spy but a reputable accountant”,

and that she is fully convinced of Mrs Zaghari-Ratcliffe's innocence.

As was mentioned in the last debate, we have heard that the Prime Minister raised strong concerns about the case directly with the Iranian President in August. Have any further representations been made at the level of Heads of Government? Can she confirm whether the UK Government have called for Mrs Zaghari-Ratcliffe's release in all discussions with Iranian counterparts?

As we have heard in the debate tonight, the problem is that Iran does not recognise dual nationalities, meaning that those detained cannot receive the consular assistance and access that we would normally expect with British citizens. As we have also heard in the debate, other dual nationals are in prison in Iran. We need better to understand what the Government will do to represent our country's citizens who are deserving of our fullest support. I hope that the noble Baroness will outline those actions tonight. I also hope that she will support a meeting between the Foreign Secretary and the families of Mrs Zaghari-Ratcliffe and Kamal Foroughi to update them on exactly what action the United Kingdom Government have taken to date and on their upcoming plans.

In the last debate, the noble Baroness, Lady Goldie, reminded us that since the UK reopened the embassy in Tehran in 2015 and upgraded our diplomatic ties to ambassador level, we have seen the relationship between the two countries grow stronger. In addition to the FCO designating Iran as one of its human rights priority countries, the noble Baroness assured the House then that the Government were using the improved relationships as best they could to urge respect for human rights. As we have heard in the debate, the key

to bringing Iran back into the international community, with all the obligations and responsibilities which that entails, was the Iran nuclear deal. The new, improved diplomatic relations with Iran have also enabled a dialogue not possible before on tackling security concerns around al-Qaeda and Daesh.

Whatever the gains of such an improved relationship, they must not be at the expense of our responsibility—as my noble friend Lord Judd said—to challenge Iran's obligations under international law on human rights. We need to hear from the Minister, as the noble Lord, Lord Carlile, suggested, what steps the Government are taking in our improved relationship to highlight abuses of human rights. The Foreign Secretary has made it clear that he is determined to ensure that human rights remains a key element in the United Kingdom's foreign policy. We need to understand that engagement works and we need to make clear our position. We must not make concessions on human rights.

As my noble friend Lord Clarke highlighted, sadly the truth is that, since July 2015, opponents of the regime have continued to be executed, religious minorities continue to be persecuted and, as I said in the last debate, LGBT communities have been victimised and murdered with impunity. The additional challenge, highlighted by the noble Baroness, Lady Northover, now faced by the Government is that in the US presidential campaign President Trump repeatedly dismissed the joint comprehensive plan of action and the nuclear deal. In the forthcoming meeting with President Trump, which the Prime Minister will be undertaking shortly, I hope that the questions of human rights in Iran are raised, along with the role of engagement and improved diplomatic relations in addressing them. Our responsibility is to remind our longest standing and strongest ally of the needs to uphold those international obligations. As we have heard in the debate, following the United Nations General Assembly's adoption of the resolution on human rights in Iran at the end of last year, and the earlier renewal of the mandate of the UN special rapporteur, we need to ensure that that pressure is constantly maintained. What representations have the Government made to the Iranian authorities to allow greater access for the UN rapporteur to undertake their duties properly?

We have heard that there are no fair trials, certainly not to international standards of fairness. The regime persistently attacks and harasses lawyers—and this is something I want to highlight—who act in defence of political activists or those fighting for minorities. At the end of the day, we need—and this is a responsibility of all of us in this House—to ensure that we expose those constant violations and that everyone fully understands exactly what is going on in Iran.

8.20 pm

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): I congratulate the noble Lord, Lord Clarke of Hampstead, for securing this debate. The fact that it is the second on Iran this year does not mean that there are too many. It is important that this House holds both the Government of this country and the Government of Iran to account

on the issue of human rights and how we press the Government of Iran to improve their responses on human rights.

First, I intend to set out our assessment of the human rights position in Iran, and then I will turn to the consular cases, which are much in people's minds and hearts at this moment. The human rights situation in Iran, as noble Lords have made clear, continues to be of serious concern—certainly of serious concern to the British Government. It is clear that the Government of Iran could and should do more to improve the rights and freedoms of its citizens. The United Kingdom has consistently pressed Iran to improve its human rights record, both through bilateral engagement and with our international partners, including through the UN and the EU. We continue to do so. This is vital to ensure that human rights in Iran continue to be given prominence in discussions, and also to maintain pressure on Iran to abide by its international obligations. Last year we strongly supported the renewal of the mandate of the UN special rapporteur and, in December, we welcomed the UN General Assembly's adoption of the Resolution on Human Rights in Iran. I am pleased that the resolution passed with an increased number of votes in favour—in part due to UK lobbying efforts.

The noble Lord, Lord Collins, raised the specific issue of what the Government have been doing to follow up on the matter of support for the UN special rapporteur. We continue to call on Iran to allow the UN special rapporteur access to the country to carry out the mandate and for Iran to move towards ending the death penalty, providing equal rights for women, and ending discrimination against ethnic and religious minorities. Those are indeed the areas of concern that have been raised by noble Lords.

First, on the continued and extensive use of the death penalty, the British Government are firmly opposed to the death penalty, in all circumstances and in every country. We regularly raise this issue with Iran, bilaterally and through action with the international community. We are also, as noble Lords have said, particularly concerned about the number of executions of individuals who were minors when convicted, which continues despite Iran being a signatory to international conventions that prohibit juveniles being sentenced to death.

The noble Lord, Lord Clarke, among others, raised the issue of alleged executions in 1988. What I can say is that at the moment the UK is in the position of having very little corroborated evidence of the reported massacre of political prisoners in 1988. I certainly hear what noble Lords have said. I have in the past expressed at the Dispatch Box that if there was corroborated evidence, we would be able to take action. At the moment, the Iranian Government have repeatedly denied that it took place, although noble Lords have graphically set out what they and certainly many people believe took place.

The treatment of women in Iran is another important area of concern. The special rapporteur's October 2016 report highlights continuing unequal treatment of men and women. It is absolutely clear that women continue to face discrimination—travel restrictions being one example. Married women need the consent of their husbands to leave the country. They cannot obtain or

renew a passport if their husbands refuse to sign the required paperwork. This is surely completely unacceptable in the 21st century.

Like the noble Baroness, Lady Northover, we too are concerned by continuing restrictions on freedom of expression. Dissent is not widely tolerated, and the Government control the majority of newspapers, as well as TV and radio channels. They systematically block access to information and restrict free speech on the internet. Last month, restrictions were placed on the most popular social media platform, Telegram. The most followed users now have to seek official permission to operate. There have also been reports of Telegram channels being hacked by the Iranian cyberpolice. If true, this is a clear attempt to silence and intimidate independent voices within the country. The UK, along with our EU partners, has already placed sanctions on the Iranian cyberpolice following reports of other hacking activity carried out by them.

Sadly, as my noble friend Lord McInnes set out so clearly this evening, the Iranian state also continues to discriminate against certain religious groups and minorities. That includes continuing persecution of followers of the Baha'i faith. Last November, many businesses owned by followers of the Baha'i faith closed temporarily to observe their holy days. The Iranian authorities' reaction was permanently to close down 100 of these businesses. This discrimination is completely unacceptable. An inclusive, free and fair society is in the best interests of everyone in Iran. I was pleased to join other distinguished panellists for a discussion on this very subject at a UK Baha'i community event last year. Christians face similar types of discrimination. There have been reports of house church leaders and Christian converts being arrested or harassed by security services, and of Church property being confiscated. These actions by the Iranian authorities are not commensurate with a free and open society and they must stop. The UK has clearly and repeatedly made known our views on this.

The noble Lord, Lord Collins, referred in particular to the issue of LGBT rights in Iran, and I am pleased that he did so. We are profoundly concerned by the continued persecution of lesbian, gay, bisexual and transgender people in Iran. We repeatedly call on Iran to fulfil its international and domestic obligations to protect the human rights of all Iranians, including members of those communities.

On UK dual nationality consular cases, like many Members of this House, the Government are, of course, deeply concerned for the welfare of several UK-Iranian nationals currently detained in Iran. The Iranian Government do not recognise dual nationality, and on that basis continue to reject our repeated requests for consular access. In answer to my noble friend Lord McInnes, who properly raised this matter, the consequences of that is that it hobbles every opportunity to be able to learn exactly what charges are being faced, what the evidence is and how we can best help people—or even how we can meet them. That does not stop us asking, but it certainly gives the Iranian Government the opportunity to block our efforts.

My right honourable friend the Prime Minister and my right honourable friend the Foreign Secretary have both raised our concerns with their Iranian counterparts.

[BARONESS ANELAY OF ST JOHNS]

In answer to the noble Lord, Lord Collins, the Prime Minister has not raised these matters subsequently, other than on one occasion last year, but they were raised by the Foreign Secretary again this morning and on multiple occasions by our ambassador in Iran. When my noble friend Tobias Ellwood met the Deputy Foreign Minister responsible for consular issues in Tehran last week, he reiterated our request for consular access to all detained British Iranian dual nationals. He also requested that detainees receive appropriate medical treatment and access to lawyers.

I recognise that this is such a very difficult time for all the families of detainees, let alone for the detainees themselves. The FCO is in regular contact with the families and we will continue to provide support. Tobias Ellwood has met family members and reassured them that the Government are making every possible effort and that we will continue to raise these cases with the Iranian Government at every possible opportunity.

On the condition of Mrs Zaghari-Ratcliffe, naturally we were hugely disappointed to hear the outcome of Mrs Zaghari-Ratcliffe's appeal. Tobias Ellwood called Iranian Deputy Foreign Minister Ravanchi earlier today to express our concerns at the outcome. FCO officials are in regular contact with Mr Ratcliffe and have met him in person on multiple occasions since Mrs Zaghari-Ratcliffe's arrest in April last year. Tobias Ellwood met Mr Ratcliffe on 28 November to discuss her case. He will meet Mr Ratcliffe again shortly to provide an update on his—that is, Tobias Ellwood's—visit to Tehran on 18 January this year. FCO officials are also in contact with Mrs Zaghari-Ratcliffe's family in Tehran and Tobias Ellwood met them during his visit to Tehran. Consular officials stand ready to assist Mrs Zaghari-Ratcliffe's family with any support they require. We also stand ready to assist Mrs Zaghari-Ratcliffe's family to bring her daughter Gabriella back to the UK should they wish to do so.

I was asked particularly about the matter of calling for release. The noble Lord, Lord Carlile, who is learned in law, will know that, as of yet, the process of appeal is not yet finalised. The family have yet to reflect on whether they wish to take any further legal action—that is, if further legal action is possible. We stand ready to support them in consideration of those matters. As is the case in this country too, one does not call for release until one is aware of the circumstances of evidence and proof and, finally, of the disposal of the case. That is all so obscure because of the judicial system in Iran—perhaps the court system might be a better way of describing it—which provides great uncertainty to those who are within it, both during the process of trials and subsequently.

We are also very concerned for Mr Foroughi's health and we have raised this with the Iranian authorities. Indeed, my honourable friend Tobias Ellwood raised this case with the Deputy Foreign Minister just last week in Tehran. Throughout all this, it is vital that we continue to uphold the human rights of all the citizens in Iran with our international partners. We must never forget—and this Government do not forget—that the nuclear deal has within it an ability to hold Iran to

account that is separate from the matters of the dual nationals. We will not forget them and, I know, neither will this House.

8.32 pm

Sitting suspended.

Higher Education and Research Bill

Committee (5th Day) (Continued)

8.35 pm

Amendment 244

Moved by **Baroness Brown of Cambridge**

244: Clause 40, page 23, line 6, at end insert—

“() The OfS may not authorise a provider to grant research awards under subsection (1) unless it has first consulted—

(a) UKRI; and

(b) such other persons as it considers appropriate.”

Baroness Brown of Cambridge (CB): My Lords, this amendment stands in my name and that of my noble friend Lady Wolf. It leads a group of amendments that concern the powers of the OfS, under Clause 40, to authorise higher education providers to grant degrees. This is an important group of amendments, including things as diverse as probationary degree-awarding arrangements and ecclesiastical licences, as well as the focused area covered by the amendments in my name—that of powers to grant higher and research degrees. I would like to talk about that very specific area and I want to make two points.

First, the expertise in relation to the specific requirements for higher and research degrees lies most strongly with the research community, which is more closely and obviously linked to the research councils and UKRI than to the OfS. Indeed, research councils have significant experience of research degree success criteria, as they provide much of the PhD funding in UK higher education institutions and have established the very successful doctoral training centres.

Secondly, the majority of the OfS's work with new providers will relate to undergraduate provision of various forms by a diverse range of providers, many of whom will not offer, or aspire to offer, research or higher degrees. Therefore, this will be a relatively niche activity and perhaps quite a rarely used power for the OfS.

For those two reasons, it seems to me that it would be both valuable and appropriate for the Office for Students to be required to draw on the expertise in UKRI, and indeed to reach a joint agreement with it when granting powers towards higher and research degrees.

Amendments 244, 264A and 485B in this group, as well as Amendment 509, relate to the OfS and UKRI being required to work together to grant higher and research degree-awarding powers—something that appears logical and uncontroversial, and I ask the Minister to consider including this in the Bill. I beg to move.

Lord Norton of Louth (Con): My Lords, I have Amendment 251 in this grouping. In opening, I stress that I do not have a problem with alternative providers in HE. I chair the Higher Education Commission and we are presently undertaking an inquiry into alternative providers. They are numerous and the nature of their provision varies enormously. I heard from some of them earlier this afternoon. Some cater to thousands of students, others to a small number in what are essentially niche subjects.

What is important is that arrangements are in place to protect students. Last week we discussed the provision for student protection plans. At issue here is the giving of degree-awarding powers and the need to ensure that such powers are conferred on bodies that have the proven capacity to maintain the required standards of a UK degree, and to do so for as long as they have such powers.

There is considerable concern about provision for “probationary” degree-awarding powers. If a probationary period is to mean anything, it is that the continuation of degree-awarding powers is not guaranteed at the end of the period. What happens at the end of the three-year probationary period if such powers are not continued? What happens to students still at the institution? What worth attaches to the degrees of those who have already graduated? Furthermore, what is the risk to the UK HE brand if probationary degree-awarding powers are conferred on bodies with no established track record of delivering high-quality education? My amendment seeks to protect the position of students and of the HE brand, by ensuring that the OfS may not authorise a provider to grant degrees, unless the provider has validation arrangements in place.

I appreciate that confining the provision to validation by existing HE institutions runs the risk of imposing uniformity, with established institutions not being too keen on validating innovative teaching methods and possibly not fully appreciating the value of the alternative provision. The way round that is to ensure that there is an independent validating body. Clause 47 enables the Secretary of State to authorise the OfS to be the validator of last resort, but I recognise the problem of allowing the regulator to have such a power. It is not a power that should be vested in the regulator. I would rather see an independent body, akin to the old CNA, created. That deserves serious consideration. I thus favour amending this clause along the lines of Amendment 251 and the other amendments in this group, along with the later removal of Clause 47 and its replacement by a provision that would create a body equivalent to the old CNA. That, to my mind, would inject the necessary protections while not deterring new entrants to the field.

Lord Kerslake (CB): My Lords, I speak in favour of Amendments 251, 252, 259 and 260. In doing so, I very much echo the thoughts of the noble Lord, Lord Norton of Louth. These amendments would remove the probationary powers provisions and put a higher test before universities could award degrees. I tabled these amendments because the Government have seriously underestimated the risk to the reputation of the university sector in what they are doing. Collectively, we need to

safeguard this reputation and to require that the OfS or a separate body—as has just been proposed—has the necessary confidence that the organisation to which it is granting degree-awarding powers has the capability to do this on an enduring basis.

I ask noble Lords to put themselves in the position of a student, either in this country or abroad, who comes across the word “probation”. They might wonder what the word means and look at the dictionary here. What the dictionary says is that it relates,

“to a process of testing or observing the character or abilities of a person who is new to a role or job”,

or,

“relating to the release of an offender from detention subject to a period of good behaviour under supervision”.

I venture to suggest that not many students would be reassured by that definition and by the prospect of undertaking a degree at the end of which it would be possible for the whole institution to be found inadequate in its requirements, which must be a possibility under the very definition of these provisions. The term “probationary” is wrong and the concept of “probationary” is wrong. We should, instead, insist that anybody in a position to award degrees is able to do so with an enduring capability. This is a crucial point and it is unfortunate that we are coming to it so late in the evening, because I believe it to be fundamental.

The question your Lordships might ask is: what problem is trying to be solved? I am strongly in favour of new market entry and improving the validating process where it needs improving, but where is the body of evidence that justifies the introduction of probationary degrees? I cannot find it. I have looked carefully at the documents produced on Friday by the Minister, which were very helpful. Page 7 of the factsheet on the validation process refers to “anecdotal evidence”. I suggest that we as the House of Lords should not take our decisions on the basis of anecdotal evidence.

8.45 pm

I also raise the question of whether there are any factual consequences of the current validation process. Here, I turn to the other document we received. Page 1 says:

“The role of incumbents in the current system also risks limiting innovation. Providers may be hesitant to validate courses that do not conform to their usual modes of delivery, entrenching existing models of higher education”.

Here is the point:

“For example, new providers wanting to offer accelerated degrees may find that established providers that mostly deliver traditional, full-time, three-year degrees are not prepared to validate their courses. We can see this happening already: the share of undergraduate students in English HEIs doing typical full-time first degrees has increased from 65% in 2010/11 to 78% in 2014/15”.

I do not think anybody who understands the higher education sector properly would think that that shift to full-time degrees is the consequence of validation. It is entirely a consequence of the way funding works for students. The evidence we have is either anecdotal or, in relation to any facts quoted here, fundamentally wrong.

This part of the Bill is deeply flawed. It needs to be rethought and reviewed fundamentally.

Lord Murphy of Torfaen (Lab): My Lords, I shall speak to two amendments in my name, which are probing amendments. Since they refer to the awarding of ecclesiastical degrees by the Holy See, I am bound to declare my interest as the holder of a papal knighthood.

I will say a word about church universities. The Catholic Church has 16 higher education institutions, including five universities, which are classified as church universities. These are part of the so-called Cathedrals Group. There are 16 universities in the United Kingdom with Catholic, Anglican and Methodist foundations. All are based on ethical principles. They are rooted in their local communities and in Christianity. They have a common commitment to social justice. An example of that is St Mary's University, Twickenham, with its Centre for the Study of Modern Slavery.

Some 5% of all UK students—about 100,000—study in such universities. That is the equivalent of the total number of higher education students in Wales. They are specially connected to teaching. Some 30% of all primary and 16% of all secondary teachers have been trained in church universities. Roughly half of all those students in this country studying theology and religious studies are in church universities.

My amendments refer specifically to Roman Catholic ecclesiastical degrees. These are academic degrees—bachelor's degrees; licentiates, which are equivalent to master's degrees; and doctorates—recognised by the Catholic Church. They are used throughout the world, particularly with regard to philosophy, theology and canon law. They are often necessary qualifications for office within the Church throughout the entire world. The Holy See is a full member of the European education area and in this country two faculties which award degrees from the Holy See in philosophy and theology are at Heythrop College. In this country they are awarded in parallel with degrees; at Heythrop it is in parallel with degrees from the University of London.

Legislation in 1988 criminalised the awarding of degrees which did not have the authorisation of an Act of Parliament or a royal charter. Any degrees which did not have those foundations after 1988 were in fact criminal. Heythrop College of course, because it was founded before 1988, was exempt from that legislation, but the reason for these probing amendments is that the future of Heythrop College is in some doubt and, were it to close, the faculties which offer philosophy and theology would have to be transferred to other higher education institutions run by the Catholic Church and, under current legislation, would therefore be illegal. These two amendments would allow those degrees to be awarded if the Minister, when he replies, is gracious enough to accept them.

Baroness Garden of Frognal (LD): My Lords, in the absence of the noble Baroness, Lady Wolf, who is unable to introduce it herself this evening, I shall speak to Amendment 269, to which I have added my name. I support all the amendments in this group that have already been spoken to. This amendment creates a new clause which confirms the role of the Advisory Committee on Degree Awarding Powers within the designated quality body to provide independent, expert advice before degree-awarding powers and university

title are conferred, or creates a committee of the Office for Students which fulfils much the same function as the current Advisory Committee on Degree Awarding Powers where no body has been designated. This provides independent, expert scrutiny and advice to the OfS.

The Bill amends the Further and Higher Education Act 1992 to give the newly created Office for Students the ability to give and remove institutions' degree-awarding powers and to award or remove the use of university title. This power currently sits with the Privy Council, which acts on the basis of guidance and criteria set out by the department for business, with advice from the Quality Assurance Agency. It is important that any new higher education providers awarding their own degrees, or calling themselves "university", meet the same high requirements as existing universities. Appropriately robust market entry standards serve the interests of students by minimising the risk of early institutional failure or the need for intervention by the OfS, and we are not reassured that this is currently the case in the proposals put forward by the Government. Of course, we support new providers in the system, but we need particularly to scrutinise the fast-track private providers, as proposed in the Bill.

We propose a new clause legislating for a degree of independent oversight of the OfS in awarding degrees and university title to provide checks and balances on these very important decisions. In practice, this would require the OfS to take the advice of an independent specialist committee within the designated quality body or, where no quality body is designated for the OfS, to set up a statutory committee along the lines of the existing Advisory Committee on Degree Awarding Powers. I look forward to hearing the Minister's response to the various amendments in this group.

Baroness Warwick of Undercliffe (Lab): My Lords, I strongly support the comments made by the noble Lords, Lord Norton and Lord Kerslake. I preface my contribution to this debate by reiterating my concerns about the Government's proposals to make it easier for alternative providers to award degrees and subsequently to achieve university title. I have not been reassured by any of the Minister's explanations or by the detailed letters he has so courteously sent us during our debates over the last two weeks. The Government want to further diversify the sector. Yes, we need to reach potential students with different offerings and different types of courses, and in parts of the country that are poorly served. Of course, I support that, but not at the risk of selling these students a pig a poke.

There are enough examples from the States in particular which should give us pause for thought. There is one very familiar name, which I will not mention, but the closure of one of the largest for-profit providers, Corinthian Colleges, has left 16,000 students without certificates or degrees. The risk that the same could happen here does not seem even to be acknowledged by the Government. The Government's commitment to diversifying the sector will be undermined by introducing this additional risk for students, because the loss of reputation will send a very negative ripple across the whole sector and abroad.

Students are at the heart of the Bill, yet it is students who will suffer if private providers that are going to be given the benefit of the doubt with probationary DAPs cannot deliver, or go under. A recent QAA report highlighted the importance of new entrants working closely with existing providers through the well-established validation procedures. On the whole, these validation arrangements have worked very well and we have not been offered any convincing evidence to the contrary. Indeed, my noble friend Lady Cohen, whose university has successfully gone through this process, said that it worked well and that they learned a lot from it. Of course, if the Bill can improve these validation relationships for the benefit of students, so much the better.

I can understand that potential entrants to the market are frustrated that they have to prove themselves against strict criteria. But it is surely far better for students, and probably in the long term for the providers themselves, that there are high standards for entry which minimise the risk of institutional failure. Why do we need to fast-track? It is not as if we are desperately short of universities. There are around 130 well-established institutions; nor are we short of alternative providers. Nobody seems to know the exact figure, although I hope the Bill's provisions on registration will correct that. The DfE thinks that there are about 400 which receive some sort of taxpayer funding. A much smaller number has been awarded degree-awarding powers. So far these providers have made a limited contribution to diversity. They are focused largely on law, business and finance, and BPP, we were told, is going into nursing. They are mostly in London and the south-east, rather than in the so-called cold spots, where provision is limited or non-existent. That is scarcely surprising as they need to be in the more lucrative markets to satisfy shareholders of the business's viability. I do not see that that is changing, even if these new arrangements are introduced.

Finally, who really benefits from probationary DAPs? It is not students, who are essentially paying to be guinea pigs for a new provider; but possibly not even new providers, who may find the label "probationary" more of a challenge when recruiting students and staff than they might as new institutions with robust validation arrangements. I urge the Government to think extremely carefully about this. In doing that I support Amendments 251, 252 and 259.

The Lord Bishop of Durham: My Lords, my friend the right reverend Prelate the Bishop of Portsmouth is unable to be in his place this evening, but in his place I bring before your Lordships Amendment 268A. I endorse all the general comments made by the noble Lord, Lord Murphy of Torfaen, about the Cathedrals Group of universities. While I am not armed with the expertise, his amendments appear to make sense for the particular purpose.

I am sure that almost all noble Lords in the Committee are aware that the Archbishop of Canterbury has possessed the power to confer degrees since the Ecclesiastical Licences Act 1533. Certainly the landscape of higher education has changed in the almost 500 years since then, when the only other English degree-awarding institutions were Oxford and Cambridge. The Higher

Education and Research Bill that we are rightly considering so carefully is very welcome in recognising that changing landscape and legislating to ensure that the sector continues to evolve as successfully as it has done so far.

Amendment 268A deals with a particular corner of that landscape and it may help to indicate briefly how this power is exercised. Lambeth degrees, as they are often informally called, are now issued in one of two distinct ways. The first is following examination or thesis, under the direction of the Archbishop's Examination in Theology, usually referred to as the AET. Since 2007, the AET has been offered as an MPhil research degree, with the opportunity to extend to a PhD. These research courses are offered at a level that meets QAA requirements but at a reasonable cost and with user-friendly access. Although allocated research supervisors will be fully qualified to offer guidance and criticism, the emphasis is on individual research, requiring a high level of self-motivation and commitment to study. Students on the AET have access to the Office of the Independent Adjudicator and although, as one document rather charmingly puts it,

"the Archbishop is not a university",

this provision is included within the current HEFCE register.

9 pm

The second is the awarding of higher degrees—often, though not always, doctorates—in a range of disciplines to those who have served the Church in a particularly distinguished way and for whom an academic award would be particularly appropriate. They can be awarded in divinity, law, arts, medicine or music. It could therefore be said that in addition to the scholarly merit required of a possible recipient, they have an honorary character. Indeed, some past and current Members of this House have been recipients; for example, the noble Lord, Lord Sacks, was awarded a doctorate of divinity in 2001.

While originally conveyed by the Act of 1533, the Archbishop's power to award degrees was recognised following the Education Reform Act 1988, within the relevant statutory instrument—for connoisseurs, it is the Education (Recognised Bodies) Order 1988, no. 2036—and under the Further and Higher Education Act 1992, to which Amendment 268A refers.

Lambeth degrees are not given lightly—surely no degree is lightly awarded—and they are regarded as a great honour by their recipients. Archbishop Justin—the most reverend Primate the Archbishop of Canterbury—places great emphasis on the rigour of the AET, and he is not alone in his belief that the course makes a valuable contribution to theological research. The AET enables those from all backgrounds among the Anglican communion around the world, who may not have access to the privilege of studying for an English degree any other way, to do so, and diversity among the small group of students who study for the AET is rightly valued highly.

As an example, in Durham we are currently hosting a highly gifted young Burundian while he undertakes research for a Lambeth PhD. He is on the staff of the newly founded Bujumbura Christian University in Burundi. On his return there, he will play a significant role in its development. His research is in the ethics of

[THE LORD BISHOP OF DURHAM]

entrepreneurial business development in a developing nation. Currently, only 3% of Burundians study at a higher education institution, so his involvement in developing a new one is significant for the nation as a whole. The Lambeth degree process is thus serving the poorest and neediest nations. It is of real significance and needs to be maintained.

This is simply a saving amendment, and I hope that the Minister will say whether it is the Government's intention to adopt this amendment or to offer one of their own to the same effect on Report in order to ensure that this long-standing, beneficial and, indeed, unique provision is explicitly respected in the Bill. If the Minister is unable to be so definite, perhaps he might be willing to arrange a meeting before Report to discuss how best the necessary provisions can be made.

Lord Lucas (Con): My Lords, I rise briefly to support my noble friend Lord Norton's amendment, which would be the ideal. Certainly, we have to move away from where we are in this. I do not find the idea of validation by the OfS satisfactory, with all its conflicts of interest, but universities which set and mark their own degrees are used to that sort of conflict. This sector seems plagued with such conflicts, but I would rather do without them. We have to get to a point where universities acting as validators are not permitted and are in some way controlled by the OfS—if we do not have the arrangement that my noble friend proposes—so that they do not indulge in competitive behaviour in the way that they have in the past. It is an extremely unsatisfactory process at the moment. Validation can last for three years only. That is not in the interests of students. They must have longer-term arrangements with the universities and the universities must be held to them, if that is what we are to go on with.

One can look at examples such as the London College of International Business Studies—a 150 year-old institution, one way and another—which has its degrees validated in Switzerland. It has gone to the altar three times with UK universities, each time being left in the lurch, although it got a QAA pass in the course of one of them. It is now engaged to the Open University and has high hopes of it. I wish it good fortune, but that is not a fair way of asking an organisation to get degree-awarding powers. There has to be good behaviour and consistent behaviour on behalf of the universities.

We also need to solve the problem facing Cordon Bleu. It is an institution operating in 20 countries, awarding degrees in most of them, and extremely highly respected. It cannot come to the UK because, under the validation arrangements currently in place, the validating institution gets a complete licence to use the validatee's IP to do whatever it wants. Indeed, we have seen one of Cordon Bleu's competitors pillaged in that way by a UK university. All its IP was taken and used to run that university's own degrees. That cannot be permitted as a relationship between someone seeking validation and someone offering it.

Whatever we do, we must improve where we are. I am not particularly impressed by what is in the Bill at the moment, but I very much hope that between us we can reach something that will support the entrance

of good organisations to degree-awarding in this country in a way that takes account of their quality and the good reasons that they have for thinking they might be allowed to award degrees. However, as others have said, the legislation must absolutely protect the reputation of degrees in this country. We cannot have a situation where substandard organisations get to award degrees.

Lord Stevenson of Balmacara (Lab): My Lords, this has been a very interesting debate. It has shone a light in strange places that I did not think we would ever get to. As a not very good Scottish Calvinist, I am probably the least able to contribute to the debates that were organised by my noble friend Lord Murphy and the right reverend Prelate. However, they make good points and I hope the Minister will be able to help to move that debate forward.

I do not like the idea that my noble friend Lord Murphy's institutions have to act illegally but be forgiven in the courts when they are finally taken account of. We should get ahead of the game and try to sort this out.

We started with the question of how research awards needed to be done jointly between UKRI and the OfS, if that is the body. This is something we will come back to, so it is no disrespect to say that we need not spend too much time on it now, particularly as the principal proposers of Amendment 509 are missing, in one case because of fog and in the other, I think, because of Cambridge. I cannot remember which is which—your Lordships can probably guess. It is therefore probably better if we pick that up when we come back.

That leaves the central issue posed by the noble Lord, Lord Kerslake, which is how we can find a structure in a system that has institutions of the highest quality by all accounts that can provide the assurance, support and effective answers to any of the questions raised by new challenger institutions, without those challenger institutions feeling that their operations and ways of working will be squished in some sort of force majeure that will be offered by the established club.

The amendments are very interesting. The words that have been used to attack the concept of probationary degrees need nothing further from me; I think that is right. That is not the way the Government should go on this. We are looking at a way of making sure that the quality assessment—the ability to come to an enduring decision about an institution that wishes to seek degree-awarding powers—is done in a way that reflects its ability to fulfil the necessary requirements in terms of capacity, financial security, academic capacity and the rest, but does not interpose somebody else's view about what the institution should be doing on top of that.

The right reverend Prelate suggested that some of the stuff he was talking about had been going on since 1533. That puts in perspective people's worries about a four-year period during which tests are made of whether institutions coming into the system are able to cope. Certainly, my discussions, which were mentioned by others, suggested that people who had been through that process found it valuable, so it would be very stupid to throw it away without further consideration.

I went down memory lane with the noble Lord, Lord Norton of Louth, because I started my career in academic administration with CNAA. It was bureaucratic and a little heavy-handed but it worked very effectively. It is interesting that the final vestiges of CNAA still exist in the Open University. Maybe that is where we might want to look, as a future amendment suggests, before we start trying to create something that will not stand the test of time or advance higher education in the UK, and may indeed cause problems, many of which have been raised in this short debate.

Viscount Younger of Leckie (Con): I am grateful to the noble Lords for the opportunity to speak to this important group of amendments. Once again, I acknowledge the experience of noble Lords who have contributed to this short debate, including my noble friend Lord Norton, who has chaired the Higher Education Commission.

It is vital that the OfS and UKRI are empowered to work together. Hence, Clause 106 ensures that the two organisations can co-operate and share information in relation to any of their functions, including granting research degree-awarding powers. UKRI will play a key role in developing research degree-awarding powers' criteria and guidance, including for postgraduate research degrees, and it will work closely with the OfS to design the process for assessing applications and in its operation. We will make this explicit in the published government guidance on degree-awarding powers. The Secretary of State will also have powers to require this co-operation to take place if the OfS and UKRI do not do so of their own accord. UKRI will be responsible for all research funding, including postgraduate research. It will support postgraduate training and doctorates, as the research councils do now.

I do not agree that legislation is the right route to formalise the detail, due to the risk of unintended consequences. Instead, a memorandum of understanding between the OfS and UKRI will be produced. This will provide detail on how oversight of the sector's interests as a whole will be maintained, including how the two bodies will work together in respect of postgraduates.

Turning to the amendments relating to the OfS granting time-limited or probationary degree-awarding powers, the current system has protected quality successfully and, as I hope I made clear in my earlier remarks, we are not proposing a complete overhaul. Reference has been made to factsheets, and we have set this out in more detail on a factsheet specifically on degree-awarding powers and university title, which we published last week. I hope noble Lords have found it helpful.

However, I make it clear that this does not mean we should be satisfied with the status quo. Under the current regime, new and innovative providers have to wait until they have developed a track record before operating as degree-awarding bodies in their own right, no matter how good their offer is or how much academic expertise they have. To develop that track record, they are usually reliant on finding another institution to validate their provision and must negotiate a validation agreement, which can be one-sided and sometimes

prohibitively expensive. My noble friend Lord Lucas asked about validation arrangements. I agree with his points about the problems with validation. We will come to that in more detail in a later debate, so I hope he has some patience for that.

We strongly believe that the sector needs to have at its heart informed student choice and competition among high-quality institutions. This incentivises institutions to raise their game, with the potential to offer students a greater choice of more innovative and better-quality courses. The noble Lord, Lord Kerslake, claimed that the shift to full-time undergraduate degrees was not due to validation and a lack of innovation. I quote to him Paul Kirkham, who he may know is vice-chair of Independent Higher Education:

"I can see essentially only one 'product' in the higher education world that has real currency—the three year, full-time, on-campus undergraduate university degree, almost exclusively priced at a single point. This is a high cost and inflexible approach that, with in excess of 50% of the population wishing to engage, cannot be the only solution".

Our plans for probationary degree-awarding powers mean that high-quality providers do not need to rely on incumbents and can be permitted to award degrees in their own name from the start—subject to close supervision.

9.15 pm

However, let me reassure noble Lords, including in particular the noble Lord, Lord Kerslake, that quality is absolutely still paramount. In order to become eligible for degree-awarding powers, including probationary powers, all providers will have to register, and we expect this to be in either the "approved" or the "approved (fee cap)" category. This will ensure that all applicants meet high market-entry conditions, which we see as including quality and financial sustainability, management, and governance criteria.

In order to access probationary degree-awarding powers, we plan that providers will also need to pass a new, specific test to demonstrate that they have the potential to meet the full degree-awarding power criteria by the end of the three-year probationary period. We fully expect probationary degree-awarding power holders to be subject to appropriate restrictions and strict oversight by the OfS in order to safeguard quality. We expect this oversight to be not unlike the support of a validating body—except that new providers will not need to ask a competitor to do this.

My noble friend Lord Norton asked what would happen to students if a provider loses their probationary degree-awarding powers. We expect all providers with degree-awarding powers, including those with probationary degree-awarding powers, will have a student protection plan in place. This will set out plans to ensure that students can complete their course and obtain their degrees, or to provide alternatives if for any reason that is not possible. I think this was made quite clear in the Committee, but I should say again that it would be highly unusual if an institution with probationary degree-awarding powers failed, and it would have gone down a long process to get to that point. It is not expected to happen, particularly as we are setting out such stringent criteria at the beginning of that process.

[VISCOUNT YOUNGER OF LECKIE]

I stress that giving degree-awarding powers on a time-limited and renewable basis is not new, and it is already the case that alternative providers and further education providers are granted those powers on a six-yearly renewable basis. We intend that all degree-awarding powers are granted on a three-year, time-limited basis in the first instance, with the opportunity for all to progress to indefinite degree-awarding powers—but subject to satisfactory performance. This will be the same for all providers.

Turning to Amendment 269, as now, we would expect an independent committee to play a vital role in the scrutiny of applications, bringing to bear its unique and expert perspective on the process and enabling the OfS to draw on its expertise.

Briefly, I thank the right reverend Prelate the Bishop of Portsmouth—and the right reverend Prelate the Bishop of Durham, who spoke on his behalf—and the noble Lord, Lord Murphy, for tabling Amendments 268A, 338ZA and 338ZB. I know that my officials have already been discussing some of these issues with the most reverend Primate's office, and rather than trying to respond to these amendments today, I offer to meet the noble Lord and the right reverend Prelates to discuss specific issues in more detail outside the Chamber. I hope that will be helpful, rather than going into all the arguments this evening.

We will continue to listen carefully to your Lordships' concerns. We are fully committed to maintaining quality, but at the same time, we want to ensure that there is a clear and simple route for new, innovative and high-quality providers to enter the market. I hope that by spending some time answering the questions, I have provided some reassurance to noble Lords on this important subject. In the meantime, I ask the noble Baroness, Lady Brown, who spoke on behalf of the noble Baroness, Lady Wolf, to withdraw Amendment 244.

Lord Kerslake: I just wanted to come back on this issue of the shift in proportion between full-time and part-time degrees. Could the Minister confirm that the significant cause of that shift is the falling off of part-time degrees and that that is related not to the issue of validation but to the change around funding arrangements? We must be clear about the causes of changes here, or we are likely to find the wrong solutions.

Viscount Younger of Leckie: There can indeed be quite a full debate on the causes of the changes and I hope that in previous debates I have acknowledged the changes in the marketplace. Our aim as a Government is to address these changes. I think that we are all on the same page on that. I am happy to speak to the noble Lord, Lord Kerslake, further on that particular issue—in other words, concerning the issues that are leading up to our reforms.

Lord Norton of Louth: My noble friend has dealt with the point about a body that is awarded a degree-awarding power on a probationary basis and then does not have that power granted at the end of the probationary period, where for current students a student protection plan would be in place. However, if

it is a degree-awarding body it may have already awarded degrees. What value does he think would attach to those degrees?

Viscount Younger of Leckie: Again, I can speak to my noble friend outside the Chamber, but surely there is no change to the current situation. In an extreme position where a provider fails, a student who has a degree from that failed provider would have to take that with him or her. There is surely no change and no reflection in terms of what we are trying to do here.

Baroness Brown of Cambridge: I thank the Minister for his detailed answer, and the other noble Lords for their important contributions to this debate. I feel slightly embarrassed as the leader of the one of the most specific areas of amendments to be the person responding on behalf of all those who have contributed.

I thank the Minister for his assurance that it will be explicit in the public guidance about UKRI and the OfS that they must work together in the area of research degrees and that this will feature in the memorandum of understanding on how they work together. That is extremely positive. I should still like to see in the Bill that they must work together rather than that they can work together. However, I thank him for his assurance that this will be explicit in guidance.

I am sure that the right reverend Prelate and the other noble Lord who spoke about the ecclesiastical issues will be happy with the agreement to meet the Minister to take those key areas forward. There is still a significant concern in the Committee, which I share, about the probationary degree-awarding powers, protection for students and whether the evidence is that it is the inability to find a validation partner that is stopping innovation in the system. I am delighted that the Minister has offered further meetings to continue this discussion. I am sure it will come up again as we discuss the validator of last resort, and may well also come up on Report. However, in the light of the detailed response from the Minister and the offers of meetings, I beg leave to withdraw the amendment.

Amendment 244 withdrawn.

Amendment 245 had been withdrawn from the Marshalled List.

Amendments 246 to 250

Moved by **Viscount Younger of Leckie**

246: Clause 40, page 23, line 9, leave out “, research awards or foundation degrees” and insert “or research awards”

247: Clause 40, page 23, line 11, leave out “, research awards or foundation degrees” and insert “or research awards”

248: Clause 40, page 23, line 12, leave out “, research awards or foundation degrees” and insert “or research awards”

249: Clause 40, page 23, line 15, after “degree” insert “(including a foundation degree)”

250: Clause 40, page 23, line 24, at end insert—

““foundation degree only authorisation” means authorisation under subsection (1) to grant taught awards where foundation degrees are the only degrees which the provider is authorised to grant.”

Amendments 246 to 250 agreed.

Amendments 251 and 252 not moved.

Amendment 253

Moved by Viscount Younger of Leckie

253: Clause 40, page 23, leave out line 25 and insert—

“(4) An order under subsection (1) which would give a provider foundation degree only authorisation may be made only if—

(a) the provider is an English further education provider,”

Amendment 253 agreed.

Amendments 254 to 256 had been withdrawn from the Marshalled List.

Amendment 256A not moved.

Amendment 257 had been withdrawn from the Marshalled List.

Amendment 258

Moved by Viscount Younger of Leckie

258: Clause 40, page 23, line 32, leave out “41(3)” and insert “41(2)”

Amendment 258 agreed.

Amendments 259 and 260 not moved.

Amendments 261 to 263

Moved by Viscount Younger of Leckie

261: Clause 40, page 23, line 40, leave out “, research awards or foundation degrees” and insert “or research awards”

262: Clause 40, page 24, line 3, leave out “, research award or foundation degree” and insert “or research award”

263: Clause 40, page 24, line 7, leave out “, research award or foundation degree” and insert “or research award”

Amendments 261 to 263 agreed.

Amendments 264 and 264A not moved.

Amendment 265

Moved by Lord Lisvane

265: Clause 40, page 24, line 11, after “instrument” insert “with the approval of the Secretary of State”

Lord Lisvane (CB): My Lords, the amendments in this group which stand in my name and the names of my noble and learned friend Lord Judge, my noble friend Lady O'Neill of Bengarve and the noble Lord, Lord Norton of Louth, do three things. Amendment 265 would require the Secretary of State's approval before the OfS could make an order authorising the grant of degrees. What is proposed in the Bill would replace the powers conferred upon the Privy Council by Section 76 of the Further and Higher Education Act 1992. Indeed, I like Amendment 266, tabled by the noble Lord,

Lord Stevenson of Balmacara, even more than I like mine, as his would maintain the status quo. I do not like the idea of delegating law-making powers to bodies other than Ministers. The Delegated Powers Committee noted that such delegations were not unprecedented. For example, I am aware of a delegation under Section 42 of the Wildlife and Countryside Act 1981, and under the Communications Act 2003. However, the existence of precedents does not necessarily make the principle acceptable. When powers are delegated to Ministers, those Ministers are within the reach of Parliament. Under the Bill, the OfS will be, for practical purposes, beyond Parliament's reach.

The series of amendments starting with Amendment 277 and ending with Amendment 298 deal with the power to vary or revoke authorisations. They take this power away from the OfS and would give it to the Secretary of State. Amendment 511 would make any SI made by the Secretary of State subject to the affirmative procedure. Those would still be Henry VIII powers, and unwelcome on that account, but they would at least be exercised by Ministers. The Delegated Powers Committee, of which I am a member, said in its 10th report of this Session that:

“There is nothing on the face of Clause 43 which limits the way in which the OfS is able to exercise the powers, leaving it wholly to the discretion of the OfS when and in what circumstances the powers should be exercised”.

The committee recommended that the powers should be subject to parliamentary scrutiny and that the affirmative procedure should apply. That would be achieved by these amendments.

Amendment 301 would remove the possibility of a decision on appeal being remitted to the OfS by the First-tier Tribunal, and this issue arose in the group of amendments led by Amendment 142 which we considered last Wednesday, when I argued that such a provision could allow the OfS to be in effect a judge in its own cause. The Minister promised me a written explanation of a similar power in Clause 20, which he has now provided with his letter today. The heart of his explanation is that this power to remit allows the OfS to remake its decision with the benefit of the tribunal's judgment. He also confirmed that remitting a decision does not rule out a further appeal. I am very grateful for this explanation, which entirely meets the points that I made on that specific provision.

The second clutch of amendments in this group begins with Amendment 344 to Clause 53 and ends with Amendment 360 to Clause 55. The purpose of these mirrors those to Clause 43 but here the subject is the revocation of authorisation to use the title of university, which would no doubt follow the withdrawal of degree-awarding powers as provided for in Clause 43. Once again, the issue is the ability of the OfS to revoke such an authorisation by order, even if it was provided for in an Act or a royal charter. As with Clause 43, this is—if I may employ the expression—Henry VIII on stilts, however improbable a mental picture that may conjure up. As with Clause 43, I do not believe it is acceptable to delegate to the OfS such significant law-making powers in the sector which it is to regulate.

In two of his now growing series of helpful letters—those of 21 December and 11 January—the Minister told us that the Bill does not allow the OfS to take

[LORD LISVANE]

away royal charters. However, it seems to me that the powers given to Ministers by Clause 110, to amend or revoke provisions of a royal charter, are merely consequential upon a decision taken by the OfS. So if the OfS is the prime mover, the fact that it is the Minister who has to exercise that power is a distinction which may not be a practical difference. To complete the picture, Amendment 512 would make Clause 53 SIs made by the Secretary of State subject to the affirmative procedure, again as recommended by the Delegated Powers Committee. I beg to move Amendment 265.

9.30 pm

Lord Watson of Invergowrie (Lab): My Lords, I shall speak to Amendment 266, in the name of my noble friend Lord Stevenson, which I am pleased to hear that the noble Lord, Lord Lisvane, liked. Indeed, given the comprehensive manner in which he opened the debate, I have little to add.

Clause 40(10) provides for the OfS's power to make an order authorising degree-awarding powers to be exercisable by statutory instrument. As the noble Lord, Lord Lisvane, said, it is unusual, to say the least, for the power to make statutory instruments to be conferred on organisations or people other than Ministers. I hope the Minister can explain to noble Lords why this departure from accepted practice is justified.

Amendment 266 would require the statutory instrument first to be approved and made by the Privy Council as an Order in Council. Many universities have degree-awarding powers that were awarded by the Privy Council, so the question for the Minister and the Government is: why take that away? In this amendment we are not asking the Minister to do something; we are asking him not to do something. We say that there have been no examples of universities clamouring for change, so why not leave things as they are?

My noble friend Lord Stevenson will speak in more detail about the Privy Council on a later group, but I want to stress now that it is an independent body, completely impartial and well respected. That is something not to be cast aside lightly. This is the established process for introducing new universities, and the current system has worked well over many years. We do not believe the case for such a radical change as handing all powers to the OfS has been made, but if the Privy Council is to be replaced, its replacement should be as rigorous as the Privy Council, and at least capable of building a reputation as strong as its reputation. The OfS cannot as things stand, and may not ever, achieve that status. It is essential to ensure scrutiny by the Privy Council of the power to grant awards.

The noble Lord, Lord Lisvane, as a member of the Delegated Powers and Regulatory Reform Committee, understandably quoted from that committee's report on this part of the Bill. He commented, I think, on paragraph 30; I want to highlight what the committee said in paragraph 28, commenting on Clause 43, which enables the OfS by order to vary or revoke degree-awarding powers. Although exercised by statutory instrument, these powers would not be subject to parliamentary scrutiny. The DfE had sought to justify this to the committee, but the committee's response was unequivocal. Paragraph 28 says:

"We are not in the least convinced by the Department's reasons. We do not believe that the requirement for detailed consideration by the OfS, and the existence of a detailed procedure including rights of appeal, are incompatible with an order under clause 43 being subject to Parliamentary scrutiny ... There is nothing on the face of clause 43 which limits the way in which the OfS is able to exercise the powers, leaving it wholly to the discretion of the OfS when and in what circumstances the powers should be exercised. We therefore recommend that the powers should be subject to Parliamentary scrutiny and that the affirmative procedure should apply".

There is nothing I can add to that—an opinion reached after due deliberation by a committee with no political axe to grind. I imagine the Minister may feel more than a little uncomfortable at the fact that he and his department are effectively ignoring the judgment of noble Lords. They do not deliver such verdicts lightly, and I believe that the Minister and his team need to revisit the report and reconsider their position on the manner in which the OfS is to be permitted to act on varying or revoking institutions' degree-awarding powers.

Viscount Younger of Leckie: My Lords, my noble friend Lady Goldie has asked me to apologise to the Committee as she has succumbed to her bad cold and I will be in the hot seat for the rest of the evening.

I entirely agree that we need to ensure that the processes around the award, variation and revocation of degree-awarding powers and the award and revocation of university title are sound and fit for purpose. I will explain why we believe the Bill does just that. However, we will continue to listen and reflect on whether there are further improvements that we can make to these processes. I say that at the outset.

I shall deal with the amendments to Clause 40. At the moment, we have a lengthy process for the award of degree-awarding powers, which involves the Privy Council seeking advice from the department, which in turn seeks advice from HEFCE and the QAA. This is unduly complex, and through our reforms we are seeking to streamline the process without lowering standards. This is why, under our plans, the OfS would run the whole process from application through to award. Decisions on degree-awarding powers would be taken by the OfS, as an independent, arm's-length body, on the basis of published criteria set out in guidance, and should be made after having consulted relevant bodies such as the designated quality body. It is therefore only logical that the OfS would also make the order that grants degree-awarding powers. Adding the Secretary of State or Privy Council approval would, under the new regime, have little benefit other than complicating the process.

I turn to the amendments that would ensure that orders varying or revoking degree-awarding powers and revoking university title have to be made by the Secretary of State, who would also deal with the processes of variation and revocation. Giving order-making powers to persons and bodies other than the Secretary of State or the Privy Council is not unprecedented—for example, Ofcom has order and regulation-making powers. The OfS, as an independent regulator, is best placed to make an assessment as to whether degree-awarding powers or university title should be awarded, varied or revoked. It will have much better insight into the provider in question and

the sector as a whole than the Secretary of State ever could. Therefore, our intention is that these decisions are taken by the OfS on the basis of published criteria set out in guidance, the detail of which the department intends to consult on.

Let me provide some further reassurance that these powers are not intended for everyday use. We intend that the OfS and the new quality body will work with providers to address any emerging problems early on. Removal of degree-awarding powers or university title is therefore likely to be a rarely used, but necessary, safeguard for quality in the system. In addition, the OfS would always, in accordance with its general duties listed in Clause 2, have regard to important factors, which includes the need to promote quality. These are additional safeguards to ensure that the OfS's powers are not abused. Any decision to subsequently revoke degree-awarding powers or university title will be regulatory decisions. We think it is right that they should be taken by the regulator, not a Minister. However, we recognise the significance of these powers and have therefore made sure that there are appropriate safeguards in place. These are set out in Clauses 44, 45, 54 and 55. They include the OfS having to notify the provider of its intentions and to give reasons; the OfS having to give the provider a chance to respond and take account of that response before making a decision; and, as the Committee will know, a right of appeal to the First-tier Tribunal. This safeguards against any undue interference with the institutions' autonomy. We believe that an appeal to the First-tier Tribunal provides for the most independent review of a case.

I address a point raised by the noble Lord, Lord Lisvane, about providers with royal charters. I will explain how the process would work in that case. We do not envisage a scenario where the use of powers in Clause 110 would result in the revocation of an entire royal charter which established the institution. The Secretary of State can amend royal charters where appropriate so that the charters operate smoothly, but only where they reflect any changes made by the OfS to degree-awarding powers or university title contained in the royal charter—for example, a revocation of university title. This is not a general power to amend but must be linked to changes made by the OfS in relation to degree-awarding powers and university title. Importantly, I reassure noble Lords that any amendments or revocations made by the Secretary of State would be subject to parliamentary scrutiny via the affirmative procedure, which I think, and hope, that the noble Lord, Lord Lisvane, mentioned and acknowledged. If we were to introduce parliamentary scrutiny for the orders on top of this already very strong, but also lengthy process of appeals, as suggested by Amendments 511 and 512, we would further delay the implementation of any decision, and thus potentially put students at risk. It would also introduce unnecessary complexity into the system: how would parliamentary scrutiny work alongside an appeals process and what if they reached different conclusions? Again, I emphasise that we have designed the processes in such a way that there is no need for Ministers to get involved. It will be a regulatory process, instigated by the regulator and decided by the independent judiciary.

While I understand the intention behind these amendments, I believe that the controls and protections in place are adequate and therefore the amendments are not necessary. However, as I said at the beginning, I will reflect on any further improvements that could be made. In the meantime, I ask the noble Lord to withdraw the amendment.

Lord Watson of Invergowrie: I understand that the Minister will reflect on this, and no doubt the department is preparing its response to the Delegated Powers Committee's report. I wonder whether the Minister will take the content of this short debate and feed it into that process, so that it might carry some weight in deciding the government position.

Viscount Younger of Leckie: Indeed, the noble Lord makes a good point. I am sure that will be taken into account in terms of any further improvements we might wish to make.

Lord Norton of Louth: Before my noble friend sits down, could he just clarify on the first amendment of the noble Lord, Lord Lisvane? Under Clause 40(10), the OfS can make an order exercisable by statutory instrument and,

"is to apply to such an instrument as if the order had been made by a Minister of the Crown".

Am I therefore right in believing that, under Clause 113(3), if it is a statutory instrument, it could be prayed against? If that is the case, does that not put the Minister in a difficult situation?

Viscount Younger of Leckie: My noble friend is very adroit at raising some complicated issues. I should answer the question but also go into some detail as to the different scenarios that might occur. I respect the quality of advice that he gives.

Lord Lisvane: I am very grateful to the Minister for his careful and detailed reply. The noble Lord, Lord Norton, is on to a good point there. If it is an SI Act 1946 statutory instrument, the Act contains the praying procedure. It would indeed put a Minister perhaps in rather a difficult position, having to defend the case, while having, as it were, abrogated responsibility. That is no doubt something about which we will hear, perhaps in a further edition of these exciting letters.

I do not quarrel with the proposition that the OfS will be best placed to make the assessment, but that does not necessarily mean that the OfS should be able to engage in the law-making process. I fancy that we have once again encountered what we encountered last Wednesday: two reasonable people can disagree about something without either of them being unreasonable. Issues of policy and principle arise in this group of amendments which might well benefit from being reconsidered on Report, but in the meantime I am very happy to beg leave to withdraw the amendment.

Amendment 265 withdrawn.

Amendment 266 not moved.

Amendment 267*Moved by Viscount Younger of Leckie***267:** Clause 40, page 24, leave out lines 18 and 19*Amendment 267 agreed.**Amendments 268 to 268A not moved.**Clause 40, as amended, agreed.**Amendment 269 not moved.***Clause 41: Supplementary powers with authorisation****Amendments 270 to 275***Moved by Viscount Younger of Leckie***270:** Clause 41, page 24, line 25, leave out “, research awards and foundation degrees” and insert “and research awards”**271:** Clause 41, page 24, line 27, leave out “and degrees”**272:** Clause 41, page 24, line 29, leave out “(a)”**273:** Clause 41, page 24, line 41, leave out subsection (3) and insert—

“(3) But in the case of a foundation degree only authorisation, the references in subsection (2)(c) and (d) to degrees are to foundation degrees only.”

274: Clause 41, page 25, line 7, leave out “, research award or foundation degree” and insert “or research award”**275:** Clause 41, page 25, line 9, leave out “and (3)(b)”*Amendments 270 to 275 agreed.**Clause 41, as amended, agreed.***Amendment 276***Moved by Lord Stevenson of Balmacara***276:** After Clause 41, insert the following new Clause—
“Automatic review of authorisation

(1) The OfS must consider whether to vary or revoke an authorisation given under section 40(1)—

(a) if the ownership of the registered provider is transferred,

(b) if the owner of the registered provider has restrictions placed on its degree-awarding powers in relation to another registered provider under its control or ownership, or

(c) for any other reason considered to be in the interest of students enrolled at the institution or the public.

(2) A decision taken under subsection (1) to vary or revoke an authorisation shall be carried out in accordance with section 43.”

Lord Stevenson of Balmacara: My Lords, I can be quite brief. This is a bit of a fishing expedition—I am sorry, I should recall that: it is a probing amendment. The point of it is that we have to anticipate how new providers will enter the market and what sort of form and format they will take. This is not an acknowledgement going back to the question asked by the noble Baroness, Lady O'Neill, about what these bodies are and how they are constituted, but it raises the same issues.

We already have at least one relatively new provider, whose ownership is quite clearly based outside the UK, and the question arises whether the change of ownership could raise any questions about previous decisions taken by the regulator or other body in respect of the degree-awarding powers or the register to which this institution might be attached. We do not know the answer to that yet, because the situation has not yet emerged, but it raises issues about probity and the ability of an institution to survive, if the ownership places new restrictions on it.

9.45 pm

While we are still stuck with—in the words of the noble Lord, Lord Willetts—the old trustee model, no doubt these things could probably be arranged, because the whole point of these trustee or charitable-type approaches is that they have longevity and create a stable environment. However, if we are moving to a situation where perhaps a private equity company is in ownership and it may well have different motives for operating and owning an operation, then questions arise. I look forward to the Minister's response, to see whether there is anything there that we might wish to return to. I beg to move.

Viscount Younger of Leckie: My Lords, I shall be brief as well. It remains our policy that degree-awarding powers cannot be transferred or sold. As now, if a holder of degree-awarding powers was involved in a change of ownership, it would be expected to inform the OfS and demonstrate that it remained the same cohesive academic community that had been awarded those powers originally. We need to maintain flexibility to adapt to changing circumstances, so it is appropriate that these matters are covered through guidance, in the same way that the process operates currently. I hope that with that extremely short explanation, the noble Lord will withdraw his amendment.

Lord Stevenson of Balmacara: That was a little briefer than I had anticipated, but I will look at it carefully. In the meantime, I beg leave to withdraw the amendment.

*Amendment 276 withdrawn.**Clause 42 agreed.***Clause 43: Variation or revocation of other authorisations to grant degrees etc***Amendment 277 not moved.***Amendments 278 and 279***Moved by Viscount Younger of Leckie***278:** Clause 43, page 25, line 25, leave out “, research awards or foundation degrees” and insert “or research awards”**279:** Clause 43, page 25, line 29, at end insert—

“() When applying section 40(4) and (5) in the case of such an order, the reference in section 40(5) to a foundation degree granted other than by virtue of section 41(2)(c) or (d) (honorary and staff degrees) is to be read as a

reference to a foundation degree granted other than by virtue of whatever is the equivalent of section 41(2)(c) or (d) in the case of the provider.”

Amendments 278 and 279 agreed.

Amendments 280 and 281 not moved.

Amendment 282

Moved by Lord Watson of Invergowrie

282: Clause 43, page 25, line 34, at end insert?

“() A statutory instrument containing an order under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Lord Watson of Invergowrie: My Lords, I am moving the amendment in the name of my noble friend Lord Stevenson. The amendment intends to establish the principle that a statutory instrument containing an order to revoke an institution’s authorisation to grant degrees must be an affirmative statutory instrument. We believe that such a draconian action as revocation—which in some circumstances is potentially fatal to the institution concerned—should not simply be left to the OfS to issue as a statutory instrument. I take on board the points the Minister made in respect of group 13 a few moments ago, when he talked about the OfS being an independent body. That also applies to the Privy Council, but it has been written out of the equation. It should not be possible for such a statutory instrument to be made unless a draft has been laid before and approved by a resolution of both Houses of Parliament.

In response to an earlier amendment before the dinner break the Minister stated that requiring the affirmative principle would delay a decision that had been recommended by the OfS. If that is the case in certain situations, so be it. If ever there was a case where the maxim “Better to get it right than to get it right now” applied, this is it. Depriving an institution of degree-awarding powers is sufficiently important for Parliament to have its say, and any delay that results is surely justified in terms of due process.

I made my remarks on the importance of retaining the Privy Council in the debate on the group containing Amendment 266, and I shall not repeat them. However, I shall again draw to your Lordships’ attention the fact that the Delegated Powers and Regulatory Reform Committee made a further comment on Clause 53, which impacts on this group. I will not repeat what the noble Lord, Lord Lisvane, said at that time. But the committee made it very clear that it took the view there were significant new legislative powers being given to the OfS that are not subject to any limits to their exercise, and that there should be parliamentary scrutiny with the affirmative procedure applying. I think that is a very important point to make. I know that the Minister is considering this and other aspects of the committee’s report but, in the meantime, I beg to move.

Lord Judd (Lab): My Lords, I speak to my Amendment 298A, which is on the Marshalled List. At this stage of the proceedings, as an older Member of this House, I must be allowed to make an observation.

We have gone a long way down the road I predicted. We are trying to make the best of this legislation. We are trying to engage in damage limitation, which becomes almost a cause. As an older man, I grieve at how far we have drifted from the concept of a university as an international community of scholars awarding degrees, based on the distinction of the university. This is a sad road we have taken, and we are dealing with the consequences: the commercialisation and marketing of the whole concept of universities and higher education. I have great difficulty in coming to terms with this language of markets and of students as consumers, as distinct from students as contributors to a community of scholars. It is a sad situation, but we are in the situation we are in, and we have to try and make it as acceptable as possible.

Under my last amendment, I talked about fairness, justice, transparency and accountability, and this amendment is about exactly the same theme. I talked previously about decisions not to register or to suspend, and now I want to talk briefly about why it is that there are no rights of appeal against the OfS refusing to authorise providers to grant degrees. Apparently, by this legislation, rights of appeal are allowed only when the OfS decides to vary or revoke such an authorisation. However, the decision to authorise or not in the first place is a significant decision and a significant exercise of power, which will determine whether a provider could enter the market—here I go using the word myself—or not. There seems no justification to deny a right of appeal where the OfS has decided not to grant authorisation.

There must be transparency and accountability. I absolutely understand and relate to the noble Lord, Lord Lucas, when he says that we cannot have institutions below the grade granting degrees. If we go down that road, there will be a temptation for people who are just opportunist money-makers to get into the money-making business by awarding degrees. We know this, so we have to have safeguards—of course I understand that. But I also understand the Minister when, in the logic of his position as he sees it, he says we cannot rule out the possibility that there will be newcomers to the field who will bring something new, fresh and challenging and who ought to be taken very seriously. I understand the logic of that point, and my amendment tries to take that point on board.

We cannot have an alienated public who think that there are high-handed university administrators and regulators, as well as universities themselves, making these strategic decisions without having to explain to those involved, let alone the wider public, why they have come to particular conclusions. Indeed, I can see a case for saying that, if what I advocate comes to pass, it will be a very educative experience for the public, because there will be an explanation of why a particular authorisation cannot be allowed. I think that the amendment and the principles behind it matter, and I am aware that I am becoming a collaborator in damage limitation.

Lord Liddle (Lab): My Lords, I rise to speak to Amendments 282A and 347B, which stand in my name. I declare an interest as the pro-chancellor of Lancaster University.

[LORD LIDDLE]

I am learning a lot tonight about parliamentary procedure and affirmative resolutions, and about the relationships between independent regulators, Secretaries of State and Ministers, and I congratulate the noble Lord, Lord Lisvane, on carrying out such a good exercise in educating me. The questions posed by these amendments are very important. My noble friend Lord Judd is right: if you are to have a much more liberalised system with free entry, you have to have regulation and procedures so that it operates in a fair way.

The purpose of my amendments is simple. I would like to see the OfS be under a statutory obligation to set out its reasons for all the decisions that it has taken. I would like Parliament, once a year, to be able to debate a report which looks at whether, having set out a common set of principles by which the rules should operate, the regulator sticks with it. I think that that is a necessary addition to the ad hoc business of affirmative statutory instruments, and that it would be a sensible addition to the Bill.

Lord Norton of Louth: My Lords, I have great sympathy with what the noble Lord, Lord Liddle, has just said. On the lead amendment, Amendment 282, which seeks to make such an order subject to the affirmative resolution procedure, I revert to a point that I made a few moments ago. As I read it, the order-making power in subsection (5) would presumably be subject to being prayed against. I would have thought that if any authorisation was revoked, it would be likely to be highly controversial and therefore might well trigger the order being prayed against. However, that would create the same situation, because the revocation would be by the OfS but the defence would have to be by the Minister, who would be somewhat detached from the whole exercise. I am not sure how that is addressed, and I look forward to my noble friend's comments.

Viscount Younger of Leckie: My Lords, I am grateful for the opportunity to explain the provisions on the revocation of degree-awarding powers and university title. I make it absolutely clear that these powers are not intended for frequent use, as I have mentioned before. We see them as a rarely used but necessary safeguard for quality in the system. We know that these powers are significant and that is why we have endeavoured to include strong safeguards, including a right of appeal to the First-tier Tribunal. We have listened carefully and will continue to reflect on whether there are further improvements that we can make, and we will no doubt discuss this matter further on Report.

Our higher education system is world-class and university title and degree-awarding power are valuable assets. It is the responsibility of those that have obtained these prestigious titles to uphold their reputation. However, without powers to hold such providers accountable, we risk undermining the reputation of our universities. Let us consider the impact if a university's quality and standards were to drop to a wholly unacceptable level, to the extent that it was widely known that its degrees were not comparable to others and the provider in question had done nothing to

address this. Would we really want such an institution to continue to benefit from the prestige of a university title?

10 pm

There are already circumstances where eligibility for these titles is reviewed—for instance, in the case of mergers. But introducing these refined and express powers is vital to effectively regulate the sector. They make it clear to all providers what is at stake if quality drops to unacceptable levels. We intend for the OfS and the new quality body to work with providers to address any emerging quality problems early on, as I said when I addressed some points made in a previous group of amendments. In practice, we envisage that the OfS would have imposed additional ongoing registration conditions on the provider to seek to improve the situation, which would probably have had an improvement plan in place. A revocation would therefore occur only if such interventions have failed to produce the necessary results.

I note with interest the suggestion of an annual report to Parliament, proposed by the noble Lord, Lord Liddle. I suspect that in most years it would be a rather dull report, as we do not believe the use of these powers would be frequent. However, I will certainly take the suggestion seriously and into account when reflecting about the processes more generally.

Lord Adonis (Non-Afl): My Lords, I can see that under Schedule 1 the OfS must prepare a report on the performance of its functions during each financial year in any case. Given the magnitude of the decisions to which my noble friend Lord Liddle referred, it would be a very straightforward and simple amendment to require that annual report to have regard to the exercise of the functions under this clause.

Viscount Younger of Leckie: I note the point the noble Lord, Lord Adonis, has made and that will definitely be part of our general reflection.

I now turn to the processes and safeguards. The OfS, as an independent regulator, will be best placed to make decisions on whether to vary or revoke an authorisation to grant awards or revoke a university title. However, there is a statutory process that must be followed. Clauses 44 and 54 provide that the OfS give appropriate notice to the governing body of the provider, set out its reasons why it considers it necessary to take the step of variation or revocation and must have regard to any representations made by the provider before proceeding. I agree that the OfS should be able to draw on all relevant information, including from other parties. Clause 58 enables that already.

Turning to Amendments 282 and 347A, we want to move to a system where quality, rather than the age of an institution, will be the yardstick and where the OfS has powers to vary or revoke degree-awarding powers and to revoke the university title of any institution, no matter how they were obtained. This is essential to achieve a level playing field among providers.

Amendment 282 would unlevel the playing field for revocation of degree-awarding powers. We included a right of appeal for any revocation decision because we

felt that this was the most appropriate and independent review, and that it would therefore be the best way to safeguard the interests of the provider, including its institutional autonomy. An appeal to the First-tier Tribunal is an opportunity for a provider to present evidence to support its case. It provides for a politically neutral and objective judgment of the merits of the case. I see the logic behind these amendments and we value the expertise of Parliament, as well as the important scrutiny functions. However, on matters of regulation, we believe such scrutiny and safeguards are better provided by the courts, rather than by Parliament. The regulatory framework will apply to all providers equally. If we accept this principle when it comes to other rights and obligations, I find it difficult to justify treating a provider that got its degree-awarding powers in the 1970s—such as the University of Buckingham, for example—differently from one that gets them in 2020.

Before I finish, let me briefly address the amendment of the noble Lord, Lord Judd, which would allow for appeals against unsuccessful degree-awarding power applications. There currently is no such provision and the appeals provision in the Bill has been drafted to cover scenarios where the OfS makes a decision that deprives providers of a status or powers, or imposes a monetary penalty. I can provide some reassurance: we expect that there will continue to be internal complaints mechanisms similar to those run by the QAA at present. The amendment is therefore not needed.

I am afraid there is no time to address the thoughtful points raised by the noble Lord, Lord Judd, on the path universities are travelling down. I say only that there is undeniably an important, international market where we are in the business of attracting students who realise that they have a choice. We have to be realistic and remember that.

As I said, we appreciate the need to get the safeguards right. While we feel we have struck the right balance, we will continue to reflect on any areas of improvement. In the meantime, I ask the noble Lord, Lord Watson, to withdraw Amendment 282.

Lord Watson of Invergowrie: My Lords, I thank the noble Viscount for his response and noble Lords who have participated in this short debate. It has been quite lively, with some interesting points made. On the points made by my noble friend Lord Liddle that the OfS should set out its reasons, allowing Parliament to debate its report annually, there seems to be no rational reason why that should not occur, because it does for several other regulators—although, is the OfS a regulator? That debate is continuing. I heard the noble Viscount say that he will consider that and we will return on Report, but whether the reports would be dull or refer to events that had happened frequently is not quite the point. We are all grateful to my noble friend Lord Adonis for drawing attention to Schedule 1's requirement for an OfS report and welcome the Minister's willingness to consider that before we move on to Report.

The noble Viscount—a man we are increasingly coming to recognise as the man of letters—said that Amendment 282 would “unlevel the playing field”. I am not sure whether that is a new verb added to our language, but none the less, as I understand it that

compares existing providers with new arrivals. I do not see that it would necessarily do that. He mentioned the University of Buckingham. Yes, that has been there some 50 years outwith the system, because it was not part of the mainstream for many years, but the argument we had on the new providers needs to be separated from the situation of those that have held degree-awarding powers for a long time, rather than those that have recently got them and may be deprived of them for good reason, inasmuch as it could be said they should not have had them in the first place. That may be correcting an award that was done earlier than would have been appropriate.

The internal complaints mechanism to which the noble Viscount referred also needs to be looked at again. He said in response to my noble friend Lord Judd that there is an appeal provision against the decision of the OfS to vary or revoke degree-awarding powers, but not for those trying to have those powers granted. This impacts on a discussion we had earlier when the noble Viscount used terminology along the lines of, “It's different if they're in the system”, as opposed to being outside, and that they have to be treated differently if they already have the powers, as opposed to just seeking them. There is a basic justice issue there of an individual or organisation having the right to appeal against a decision that affects them adversely. A provider without degree-awarding powers would by definition not be part of the internal complaints mechanism to which the noble Viscount referred. I do not think he has answered my noble friend's point. Again, I am sure this is something to which we will want to return on Report.

I welcome the fact that the noble Viscount has taken on board the points made. I look forward to returning to them. On that basis, I beg leave to withdraw the amendment.

Amendment 282 withdrawn.

Amendment 282A not moved.

Clause 43, as amended, agreed.

Clause 44: Variation or revocation of authorisation: procedure

Amendments 283 to 289 not moved.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, I remind the Committee that if Amendment 290 is agreed, I cannot call Amendment 291 because of pre-emption.

Amendment 290

Moved by Viscount Younger of Leckie

290: Clause 44, page 26, line 18, leave out from second “the” to end of line 20 and insert “notice of the decision must specify the date on which the variation or revocation takes effect under the order to be made under section 40(1) or 43(1).”

Amendment 290 agreed.

Amendment 291 not moved.

*Amendments 292 to 294**Moved by Viscount Younger of Leckie*

292: Clause 44, page 26, line 24, after “The” insert “order under section 40(1) or 43(1) implementing the decision to vary or revoke the authorisation may not be made and the”

293: Clause 44, page 26, line 24, leave out from “when” to end of line 26 and insert “—

(a) an appeal under section 45(1)(a) or (b), or a further appeal, could be brought in respect of the decision to vary or revoke, or

(b) such an appeal is pending.”

294: Clause 44, page 26, line 27, after “prevent” insert “the order under section 40(1) or 43(1) being made or”

Amendments 292 to 294 agreed.

Amendment 295 not moved.

*Amendment 296**Moved by Viscount Younger of Leckie*

296: Clause 44, page 26, line 29, at end insert—

“(10) Where subsection (8) ceases to prevent a variation or revocation taking effect on the date specified under subsection (6), the OfS is to determine a future date on which the variation or revocation takes effect under the order to be made under section 40(1) or 43(1).

(11) But that is subject to what has been determined on any appeal under section 45(1)(a) or (b), or any further appeal, in respect of the decision to vary or revoke.”

Amendment 296 agreed.

Clause 44, as amended, agreed.

Clause 45: Appeals against variation or revocation of authorisation

The Deputy Chairman of Committees: My Lords, I remind the Committee that if Amendment 297 is agreed, I cannot call Amendments 298, 298A or 299 because of pre-emption.

*Amendment 297**Moved by Viscount Younger of Leckie*

297: Clause 45, page 26, leave out lines 32 and 33 and insert “either or both of the following—

(a) a decision of the OfS to vary or revoke, by a further order under section 40(1) or an order under section 43(1), an authorisation given to it;

(b) a decision of the OfS as to the date specified under section 44(6) as the date on which the variation or revocation takes effect.”

Amendment 297 agreed.

Amendments 298 to 299 not moved.

*Amendment 300**Moved by Viscount Younger of Leckie*

300: Clause 45, page 26, line 40, at end insert—

“() vary the date on which the variation or revocation takes effect under the order to be made under section 40(1) or 43(1);”

Amendment 300 agreed.

Amendment 301 not moved.

*Amendment 302**Moved by Viscount Younger of Leckie*

302: Clause 45, page 26, line 42, after “decision” insert “(including the date on which the variation or revocation takes effect)”

Amendment 302 agreed.

Clause 45, as amended, agreed.

*Clause 46: Validation by authorised providers**Amendments 303 and 304**Moved by Viscount Younger of Leckie*

303: Clause 46, page 27, line 5, leave out “and foundation degrees”

304: Clause 46, page 27, line 7, leave out “and foundation degrees”

Amendments 303 and 304 agreed.

*Amendment 305**Moved by Lord Lucas*

305: Clause 46, page 27, line 8, at end insert—

“() The OfS may propose conditions on validation arrangements between two registered higher education providers in order to protect the student interest including—

(a) referring registered providers to an appointed arbitration panel to resolve disputes related to existing arrangements, and

(b) giving guidance to registered providers on existing arrangements.”

Lord Lucas: My Lords, when I talked earlier about the need to give the OfS some axis in making sure that validation arrangements work well, this was what I meant. I beg to move.

Lord Stevenson of Balmacara: That is the second speediest moving of an amendment I have heard so far in Committee. I will be almost as brief, since we have alluded to the fact, if we have not specifically mentioned it, that the answer to a lot of our problems about the validations issue, which will come up in both this and the following group, where there is a clause stand part, and the power of validation of last resort being given to the Office for Students is to pick up the fact that the CNA, of blessed memory, still exists, in rump form, in the Open University. That is where all its functions and assets were transferred—not that it had very many assets, I am sure—at the time of its dissolution, around the time that the polytechnics were given their degree-awarding powers and we abolished the binary

line, effectively. So we have a situation in which it would be possible, I think, to obtain a validator of last resort at very little cost and certainly at no considerable worry in terms of new structures or arrangements. It would certainly resolve one of the issues that is devilling the question of the powers of the OfS, and I very much hope that this amendment will be considered very carefully.

Baroness Garden of Frognal: My Lords, in the absence of the noble Baroness, Lady Wolf, I will speak to Amendment 311, in her name and mine. We support the option of identifying a central validation body. The current system of awarding bodies works well, although it is recognised that protectionist practices are sometimes adopted on both sides. We therefore agree that validating bodies should commit to competition, diversity and innovation, although that should not mean that all comers must be validated. Expertise in validation lies in the objective and impartial appraisal of an institution's capacity to deliver and maintain appropriate standards of quality and student experience.

While the precise terms of such an arrangement will be decided between the provider and the OfS, the amendment would require any such arrangement to make specific provision for the national validating body to be able to refuse to validate a qualification if it has concerns about the quality of higher education provided. There is much merit in the proposal of the noble Lord, Lord Stevenson, for using the Open University as a validator of last resort. It is a body with very wide-ranging expertise and would be a respected body for the task—much more appropriate than the Office for Students itself.

10.15 pm

Viscount Younger of Leckie: My Lords, in view of the very brief comments made by noble Lords in this extremely short debate, I shall also keep my comments short. I am happy to write to noble Lords if they feel that my comments are too short.

I understand that my noble friend Lord Lucas's amendment is born of a wish to protect students, but I reassure him that there are already strong protections in place. I also reassure noble Lords once again that

on our student protection plans our policy is to ensure that students' interests are protected if a provider's validation agreements break down.

I will comment a bit further on providers declining to validate on quality grounds. We expect that the OfS's commissioning process should be open and transparent, so that providers clearly understand what would be expected of them if they agree to extend their validation services to other registered providers in this way. In all cases we expect the commissioned provider would need to be assured of the quality of the provision that it agrees to validate. The OfS's commissioning process should therefore allow providers to decline to enter into validation agreements on quality grounds. So we believe that this amendment is not necessary. I therefore ask my noble friend to withdraw Amendment 305.

Lord Lucas: My Lords, I thank my noble friend for that brief reply. Perhaps he might enlarge on it when we meet, if not in a letter afterwards. I beg leave to withdraw the amendment.

Amendment 305 withdrawn.

Amendment 306 not moved.

Amendments 307 to 309

Moved by Viscount Younger of Leckie

307: Clause 46, page 27, line 16, leave out "or a foundation degree"

308: Clause 46, page 27, line 18, leave out "or a foundation degree"

309: Clause 46, page 27, line 21, leave out "or foundation degrees"

Amendments 307 to 309 agreed.

Amendments 310 and 311 not moved.

Clause 46, as amended, agreed.

House resumed.

House adjourned at 10.18 pm.

Grand Committee

Monday 23 January 2017

3.30 pm

Health Service Medical Supplies (Costs) Bill

Committee (1st Day)

Relevant document: 12th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, in the event of a Division in the Chamber, the Committee will adjourn for 10 minutes from the sound of the Division Bell.

Amendment 1

Moved by **Lord Warner**

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

“Duty to have regard to the life sciences sector and access to new medicines and treatments

In discharging, through the provisions established or amended by this Act, its responsibility to secure best value for the National Health Service in purchasing medicines and medical supplies, the Government must have regard to the need to—

- (a) support a flourishing life sciences sector within the United Kingdom economy; and
- (b) to ensure patients have speedy access to new medicines and treatments approved by the National Institute for Health and Care Excellence.”

Lord Warner (CB): My Lords, Amendment 1 is in my name and those of the noble Lord, Lord Hunt of Kings Heath, and the noble Baroness, Lady Walmsley. First, I welcome the Minister to his first health Bill as a Minister. I am sure that the noble Lord, Lord Hunt, will have a great deal of sympathy with his position of having copped the Committee stage of a Bill in which he had had no previous involvement, because I did exactly the same to him when I left office and left him with the Mental Health Bill—having made, of course, an extremely brilliant speech at Second Reading to introduce the Bill.

I sympathise with the Minister’s position, but that does not mean that we will not probe forcefully on a Bill that is definitely a curate’s egg which does not seem to have left the Commons in as improved a state as it might have done. I am afraid that earlier this morning I separated Amendment 1 from Amendments 2 and 4. I hope that that has not caused too much trouble. I wanted to focus in this amendment on life sciences and the PPRS scheme and on their importance.

Amendment 1 is very straightforward. At the start, the Bill lays a clear duty on the Secretary of State, in discharging the Bill’s provisions, to have regard to supporting a flourishing UK life sciences sector and ensuring that patients have speedy access to NICE-approved new medicines and treatments—a subject to which I think we will come back on a number of occasions. As I made clear at Second Reading, the Department of Health Minister with responsibility for

the pharmaceutical industry does have to balance a number of factors, and not just get the cheapest drugs for the NHS. This is what I had to do when I had those responsibilities, and the position is the same today, as I understand it. These factors involve the safety and value for NHS money of medicines, but they also involve helping the UK life sciences industry to grow and flourish and securing speedy access for patients to new drugs that have been approved by NICE.

It is clear that the Government have not done a spectacularly good job with their consultation on the Bill in showing that they understand this balancing act. They certainly have not convinced the pharmaceutical industry—hence this amendment at the start of the Bill. Suspicions have understandably been raised by the inclusion of elements in the Bill that were not in the 2015 consultation on the Bill, including enforcement powers for future voluntary pricing schemes that operate outside the statutory scheme. There is also the issue that the range of products covered by the Bill seems to have been extended, along with the disproportionately bureaucratic information requirements that have now found their way into the Bill.

We will come to many of these issues later, but I will focus here on safeguarding life sciences and the PPRS. Why is this so important? I will start with the life sciences issue. The pharmaceutical industry invests more than £4 billion a year in R&D—more than any other sector. It employs 62,000 people, with a geographical spread that is well outside London and the south-east. Pharmaceutical manufacturing employees have the highest gross value added of any high technology industry, at more than £330,000 per employee. One in four of the world’s top prescription medicines was discovered and developed in the UK. It is a very important and powerful industry for this country.

All this will be put at serious risk by Brexit, as the Prime Minister seems to recognise in the new industrial strategy that she announced today. We know the UK will lose the EMEA through Brexit, but Brexit also poses many other risks to the UK life sciences industry, which could lose market access for its products and see a flight of researchers and research. At such a time the last thing the sector needs is a piece of ill-considered legislation imposing unnecessary regulatory burdens—again, something the Prime Minister said in her industrial strategy that she wants to reduce.

As I made clear at Second Reading, I am not saying that the Government should not act to prevent the NHS being blatantly ripped off under the statutory scheme when a branded good comes off patent, as happened with Flynn Pharma and a Pfizer anti-epilepsy drug. The ABPI has never challenged action in cases of this kind. However, the broad wording of the Bill goes well beyond closing this loophole. It gives the Government the power in the statutory scheme to replace a list-price discount system with one in which a company repays the Government a percentage of net sales, with as yet no clear indication of what this level will be. The industry’s concern is that this will create a precedent that could be easily applied to the voluntary PPRS scheme. Ministerial assurances that this will not happen are simply not the same as legislative safeguards. My reading of the Bill is the same as the ABPI’s,

[LORD WARNER]

namely that this legal precedent could enable a future Government to unilaterally apply the same approach to the voluntary scheme when a PPRS period ends. This would end a negotiated way of setting prices and encouraging research and innovation that has worked well for industry and successive Governments for more than 50 years.

The second leg of Amendment 1 covers the issue of speedy patient access to new drugs. We will come to this matter later on other amendments so I will say little now, except to remind the Committee that we already have a poor record on the take-up of new approved medicines. For every 100 European patients who can access new medicines in the first year they are available, just 15 UK patients have the same access. Even when NICE has approved drugs and treatments, NHS take-up still lags behind. The first page of Friday's *Times* showed the sector's concerns, with one-fifth of new drugs being rationed and drug companies now openly saying they will no longer launch new drugs early in the UK. Whatever we do with other parts of this Bill when we come to them, I urge the Government at this time of great uncertainty for UK life sciences to put at the beginning of this Bill a statement of intent and reassurance of the kind embodied in Amendment 1. I beg to move.

Baroness Walmsley (LD): My Lords, I support this amendment and compliment the noble Lord, Lord Warner, on his comprehensive introduction of it. I have no intention of repeating everything he said. However, I have a few points. I, of course, support the Government's intention to try to make sure that the health service is not ripped off, but point out that a very large fine has just been imposed on Pfizer by the competition law regulations in relation to the case mentioned by the noble Lord, Lord Warner—so even without this Bill, that is working and we must bear that in mind.

What I am particularly concerned about is the potential effect on the life sciences sector, particularly—as the noble Lord, Lord Warner, said—in the light of Brexit. There are dangers to our markets and to our researchers. Our research is going elsewhere and researchers from other EU countries coming to us are all in danger because of the Prime Minister's determination to take us out of the single market and the customs union, which I do not believe is what the public voted for.

The particular issue that concerns me is that although we were told in some of the meetings we had that there had been consultation and there will be more consultation before elements of the Bill are implemented, parts of the industry tell us that they are very concerned that they were not consulted. They do not feel that the level of consultation before the Bill is implemented is anything like good enough. We have to support our life sciences industry. We are very good at life sciences. It is one of the things that we can lead—and have led—the world on, but we must make sure that it is not in danger.

The other point is on access to treatments—not just drugs but other treatments. I am told by GPs that rationing is already in place, either by these referral management companies—private companies—that

are being placed between the GP and his or her recommendation and the consultant, or by the consultants having pressure put on them to refuse consultation over certain patients referred to them by GPs. We already have rationing and we need to make quite sure that we are not affecting our pharmaceutical industry. We must ensure that our industries involved in research, medical implements, treatments, machines and devices and all those things that we are so good at inventing are not damaged by the Bill. It is really important that we have a statement of intent in the Bill. It will place on the Government the responsibility to make sure that they consider this terribly important sector. I have not had a chance to read the industrial strategy yet, but I would be surprised if the money follows the intent. I do not think that we will be able to look to that for any comfort, so we need this amendment.

Lord Young of Norwood Green (Lab): My Lords, I hesitate before speaking about this amendment because I do not profess any particular knowledge of this area. I have not participated before on the Bill because I have been ensconced in dealing with the delights of HS2, but I have a couple of points to make. I am certainly sympathetic to the amendment, but something the noble Baroness, Lady Walmsley, said worried me. She said that even without the Bill, action is being taken. That does not mean that we do not need the Bill.

My first point is that it took quite a while for this to be exposed. It took the campaign from the *Times* to bring this to the forefront. Surely one of the questions we ought to be asking is why this was not exposed through the audit processes of the NHS in the first place. These were not small increases: they were staggering. One epilepsy drug that started off for a few pounds went up to something like £67. They were staggering increases—so that is one question for the Minister.

There are clearly differences of opinion about how effective the Bill is at getting the balance right, and that will be tricky. I can understand that listening to the arguments today. Nobody wants to stop the innovative, essential approach of successful British drug companies. That is on one side. But on the other, we have to ensure that the health service and the cost of drugs are protected.

A letter to the *Times* on Saturday caught my attention. It talked about the importance of clinical pharmacology and focused on the safe, effective and economic use of medicines. A recent report by PricewaterhouseCoopers stated:

“Each £1 spent to hire additional clinical pharmacologists has the potential to reduce NHS costs by almost £6”.

Apparently, there are only 72 clinical pharmacologist consultants working in the NHS. The British Pharmacological Society recommends that it needs a total of 150 by 2025. Without urgent action, therefore, the impact of waste is set to increase, and that surely ought to give us cause for alarm. Again, I am only giving notice to the Minister; he might not be able to give me all the answers to these questions.

3.45 pm

Controlling the cost of drugs and trying to ensure that new drugs are available to patients is obviously key. However, we are still in a situation in which there is a vast degree of overprescribing. We still face the

serious challenge of antibiotics being overprescribed. I would welcome, in the Minister's response, an assurance that, in the round, some of these issues are going to be addressed. It seems that they are all a key part of solving the problem and ensuring that we have an effective drugs policy inside the NHS that is doing two things: encouraging the innovation of new drugs within British companies and ensuring the effective use of these drugs. There is such variation across different trusts, so looking at best practice and where we are getting good value for money is also a key part of the equation. I hope that these points have been of some value.

Baroness Finlay of Llandaff (CB): My Lords, I support this amendment. I have a real concern that the whole process of pricing and costing of drugs is very poorly understood. I was lucky enough to hear a lecture at the weekend by Jack Scannell, an economist who understands quite a lot about drug pricing. He pointed out that there are four reasons why drugs are expensive: one is cost; one is perceived value; another is power; and the fourth is the prize that they can deliver. It is all in a paper that he wrote about the four reasons why drugs are expensive, two of which he labelled as false: the cost and the so-called value. The reason is that a company will start to explore different chemical substances that might have an effect; 90% of these never progress but remain in various test tubes and are stored. One day they might be of use.

The problem then is that, even if they develop something and take it through the different trials, there are fairly arbitrary examples of where the benchmark is set in different sectors. A clear example of this came up with the drug Campath, which came from Cambridge. It was developed for leukaemia, but was found to be remarkably effective for multiple sclerosis. The drug company then withdrew the drug because it was being prescribed off-licence: it was not licensed for multiple sclerosis. It took the trials through, licensed it for multiple sclerosis under a new name—Lemtrada—and the price was much higher because the benchmark of prices for multiple sclerosis was much higher than that for drugs for leukaemia. The chemical was the same. Actually, when a drug goes out and is priced, it really is, in a way, a guess on behalf of the pharmaceutical industry at the outset.

Another problem arises that relates to the importance of having trials in this country. Trials have to be done on the population to which the drugs are going to apply. It is quite interesting that with different healthcare systems, clinicians see patients at different stages of disease, so with a late diagnosis, you might have a much larger disease burden requiring treatment than you would have had if there had been an earlier diagnosis.

If the trials are conducted in this country, therefore, within the NHS and the real care system—the real world in which these drugs are going to be used—and as near as possible on the very population on which they are going to be used, you get the most accurate results. They can guide NICE in determining how effective a drug really is.

If you have a study on a population with a very early diagnosis, and therefore a relatively low disease burden, you might get a false impression of efficacy,

which could lead NICE to believe that the drug was being actually more effective than it will turn out to be in our population. The converse is also true.

That leads me to stress the importance of supporting a flourishing life sciences sector, because we need to be developing drugs in this country, within the care setting in which they will be prescribed and for the population to whom they will be supplied. Any attempt at pricing must, importantly, not disincentivise the pharmaceutical industry to develop the 90% of drugs that go nowhere to find the 10% that will go somewhere.

I hope that the Government will take the new clause very seriously, because it signals an important intention up front in the Bill.

Baroness Redfern (Con): My Lords, I declare my interests as recorded in the register and formally welcome my noble friend Lord O'Shaughnessy as the Minister this afternoon. Although the Bill is modest in size and has few clauses, it will deliver an important role in securing better value for money not only for the NHS but for patients.

Pressures on the NHS increase year on year because of our ageing population, new technology, and development of new procedures with advanced drugs, resulting in an increase in spending over the past five years of 20%. We spend more than £15 billion a year on pharmaceutical products, and we are acknowledged by those companies to be a reference market for many other countries that do not have such a large or well-organised supply chain as we do.

Patients request access to innovative and cost-effective medicines, so the Bill delivers value for money and does not support the drug companies, which have a commanding monopoly position, to push up their prices. I am pleased to see a strengthening of the ability to collect data on the cost of medicines, medical supplies and other related products from across the supply chain, which the Bill would amend by extending the provisions of the 2016 Act.

The statutory scheme has delivered significantly lower than expected savings for the NHS, with concern as to whether competition in the market is sufficient to control prices, so with new powers to be established under the Bill, there will be opportunities for more competition for unbranded generic medicines and to apply price controls for companies that are members of the PPRS. Particularly when companies can charge unreasonably high prices for unbranded generic medicines when competition does not keep the prices down, the Bill closes a current loophole in the legislative framework.

Clause 6 requires information from more producers and companies but, importantly, any information that they supply which may be commercially sensitive cannot be disseminated beyond the prescribed bodies. We may therefore be better informed on a more consistent basis, particularly to assess whether the supply chain as a whole or a specific sector provides value for money for the NHS. The world is changing, and personalised medicine is an important development for us all—but, again, it needs to be delivered both effectively and affordably.

At all times, we must make sure that the UK is seen as an attractive place for the life science sector—research being seen as a vital component in the sustainability of

[BARONESS REDFERN]

the NHS, as we have heard from previous speakers. To balance the control of the price of medicines and innovation for pharmaceutical companies, there should not be a lack of motivation to invest in the extensive R&D that we all want. In order to stimulate continued investment, it is appropriate for the industry to see a stable marketplace here as significant and important.

If we are to create a level playing field for drug companies, should we not be trying to do the same for patients? I therefore ask my noble friend whether one measure to tackle the issue could be ring-fencing possible rebates or a percentage from the sector to invest in improving access to medicines and treatments—particularly when we read that a fifth of new drugs face rationing under tighter NHS cost-cutting plans. With a budget impact threshold, that has the potential to slam the brakes on the most effective new treatments and technologies just before they get to patients.

Finally, although we promote innovation, that is not only a priority in the NHS for the Government but for many other stakeholders in the industry. As I said, the Bill is modest in size but it carries the opportunity to ensure that this country is not left behind in access to the newest and best treatments, and that it delivers best value for money.

Lord Lansley (Con): My Lords, I am pleased to have the opportunity to contribute in Committee. I join in welcoming our noble friend the Minister to his new responsibilities on the Bill. I also draw attention to my interests as recorded in the register. I think only one of them might be regarded as specifically relevant to the Bill, although it is a company which would not benefit directly from it.

As the noble Lord, Lord Warner, said, Amendment 1 raises quite a number of issues, which we will have the opportunity to return to on further amendments. If I may be so bold, the structure of Amendment 1 would insert a clause which is really designed to express hope and intention, rather than to provide a statutory provision having any effect. Some of the other amendments would have the necessary statutory effect to back up some of the intentions encapsulated in Amendment 1, but it does no harm to realise what we are trying to do.

On the amendment's first limb of supporting,

"a flourishing life sciences sector",

it is a very apposite day as that is one of the clear intentions of the consultation on an industrial strategy. Listening to the reports this morning, it was clear that in so far as there is a focus on sectors where this country has a comparative advantage—I think we were discussing comparative advantage in the Chamber only last week—pharmaceuticals and life sciences is clearly one of those areas.

A number of noble Lords talked about the strength of our research base in this country and, as the noble Lord, Lord Warner, said, the proportion of new discoveries that have emanated from our research base is striking. It is considerably in excess of our relative importance as a market. We are only about 3% of the global market in pharmaceuticals but we have more than 10% of the new chemical entities—and as my noble friend Lady Redfern said, we often represent up to

25% of the international reference pricing. That is one of the reasons why there is a noted sensitivity on the part of the industry about its strength in the UK.

Where the life sciences sector is concerned, from my experience around Cambridge—in my former constituency and where I live—we probably have the strongest cluster of life sciences in Europe. As was raised by the noble Baroness, Lady Walmsley, when you talk to the industry at the moment its principal concern is simply its capacity to recruit and retain some of the very best researchers and staff. It is often specifically about retaining them and is all to do with the current situation relating to our future relationship with the European Union.

The sector recruits staff from all over the world, way beyond the European Union, but is only too aware of the reaction there has been among its staff—something like 15% of whom are on average from elsewhere in the European Union—to the prospect of our leaving the EU. It is one of those classic situations: if Britain had never been in the European Union, staff attracted from elsewhere within it would have come here understanding under what circumstances they came. Having had the expectation of being EU citizens enjoying access to all the British circumstances, they find the prospect that those might be taken away from them very difficult. It is very important for us to be clear about not only accrued rights but the circumstances in which people come here.

4 pm

For the industry, however, the Bill is about pricing schemes. My recollection is that, some years ago, the industry and the Office of Fair Trading did a study of the former PPRS before 2014, and quite rightly said that it did not stimulate innovation—it did not have that effect. It was one of our intentions, certainly when I was chair of the ministerial industry strategy group, to try to bring the promotion of innovation into the scope of the PPRS. That happened in 2014, in the sense that the industry did a deal to say that it would deliver to the Government through the rebate scheme the ability to control the overall drugs budget.

In return for that, two things that were very important to the industry were offered. The first was the continued ability and freedom to price its products at introduction to the market, because of the reference pricing effect that that would have. Secondly, that the Government, drawing particularly on the December 2011 report *Innovation, Health and Wealth*, would work to deliver increased access to new medicines.

From my point of view, I was always very aware of, as other noble Lords have said, the lack of access for patients in this country—in England in particular at the time—to certain medicines. Mike Richards, in his study in 2009, identified that there was a particular problem in this country relating to access to new cancer drugs. That is the reason we instituted, in 2010, the Cancer Drugs Fund, which was intended not to be sustained beyond the end of 2013. It lived within its budget until the end of 2013. The subsequent arguments that the fund bust its budget are, of course, misleading, in the sense that it was never intended to have a budget beyond the end of 2013 and was intended to be encompassed within the new structure of the PPRS.

The structure of the PPRS was designed to reflect the intention that patients should have access to the medicines that are in their best interests and that the resulting cost should be determined, essentially, between the industry and government.

In 2014, the new PPRS should have enabled that to happen, because the industry could price and the NHS could pay—but, if the overall effect was to increase the budget, it would be sorted out by the structure of the rebate, bringing that money back into the NHS. In practice, that is not how it has happened. While freedom of pricing has been sustained, access has not. It has not led, as it should have done, to a different approach with NICE and the NHS. If anything, NICE and the NHS are proceeding further in the direction that we did not want them to go—speaking as a former coalition Government Minister. We did not want them to go down the path of constantly assessing medicines, applying a threshold and recommending that the NHS should not use medicines. What we should be doing is not trying to find new ways through the budget impact of restricting access to medicines, but finding more effective ways to ensure that we pay the industry only what the new medicines are worth.

In discussing later amendments—in particular, from my point of view, Amendment 10—we will come back to the question of value. It seems to me that value-based pricing was not reflected in the structure of the PPRS this time round, but that it will be possible for us to do so in further revision of the PPRS in future. To that extent, the issues under Amendment 1 are very well raised. I do not personally support the structure by which it would be incorporated into the legislation, but I think it was very helpful to get that overall picture at this first stage.

Lord Warner: Will the noble Lord clarify something for me? The point of my amendment was, in a sense, not any particular PPR scheme but the principle of a PPR scheme, which is a negotiation between government and the industry. No one is arguing that the PPR scheme should be set in stone for ever and a day. What the industry is concerned about is that Government are getting ready to impose a system as an alternative to a negotiated system. The amendment is not meant to enshrine a particular PPRS but to encourage the idea of a negotiated deal with the sector. Does the noble Lord accept that that is a good principle?

Lord Lansley: The short answer is yes. We should aim for what is a price paid by the NHS to the industry for the medicines that it uses that is reflective of value and is designed to promote innovative medicines—that is, as we will discuss in a later amendment, those that meet unmet need or add substantially to therapeutic benefit and are not the “me-too” drugs that are very similar to existing medicines but have a slightly different method of operation or delivery. Paying for what innovation gives by way of therapeutic benefit is where we want to be.

However, the amendment is right in the sense that one has to do that alongside supporting the life sciences sector. That is where freedom of pricing at introduction is important. I have accepted the principle of a PPRS which delivers a budget to the NHS and delivers freedom of pricing to the industry. We are not legislating

precisely for the structure of the PPRS, but let us assume that those are continuing features. However, through the operation of the rebate or some other means, it seems perfectly possible to incorporate some of the criteria that will be the subject of our discussions on a number of amendments, as is reflected in the second limb of the amendment.

Baroness Finlay of Llandaff: The noble Lord referred to me-too drugs. I hope that he agrees that it is important to recognise that such drugs have often been developed in parallel. They do not take a molecule and just copy it; they develop a new molecule or delivery system, often to minimise side-effects and to maximise efficacy. But they also have a production cost behind them. They are not just copies of something previously produced and marketed differently; they have innovation behind them as well.

Lord Lansley: I understand that. There is a perfectly good argument for the benefits that are derived from incremental innovation. Not every innovation is a step change compared to what has gone before, so that is a perfectly valid point. One objective that we should arrive at, as I hope my own Amendment 10 will later reflect, is that the structure of value has to understand what those benefits might look like. New medicines will come through that are similar but are significantly better, for example in terms of compliance for patient populations, because they are administered differently. One might say, “Well, it’s a very similar drug”, but one has to look at what the overall benefit might be, which is part of the value.

Baroness Masham of Ilton (CB): My Lords, cost-effective medicines which work for patients are vital, but some orphan drugs will cost more. Why are there differences in the pricing of drugs in Scotland and England? Someone must be making a lot of money.

Lord Hunt of Kings Heath (Lab): My Lords, that is a very interesting question. The exchange between the noble Lords, Lord Lansley and Lord Warner, has been very helpful in focusing on the full intent of the amendment. As it is the first day of Committee, I remind noble Lords of my presidency of the Health Care Supply Association and GS1, the barcoding association.

The amendment is essentially about the life sciences sector and the relationship to it of the pharmaceutical and medical devices and technology industry. However, inevitably, as the noble Lord, Lord Lansley, has shown, it is very difficult not to talk also about issues to do with PPRS and access, and I suspect that those other issues will be dipped into in a number of debates.

First, let me say that the Opposition are strongly in favour of closing the loophole that the core part of the Bill attempts to do. We clearly want to see the NHS get value for money and a good deal out of price negotiations with the different parts of industry it deals with in relation to the matters covered by the Bill. My noble friend Lord Young asked some very pertinent questions. The Minister in passing raised the issue of clinical pharmacology. This is a clinical profession that most

[LORD HUNT OF KINGS HEATH]

clearly enables the health services and, indeed, Ministers to understand the true cost effectiveness and value of new medicines.

The UK is a world leader in clinical pharmacology but, because decisions about the appointment of clinical pharmacologists are made by the NHS, we are at risk of losing the whole profession. I was very disappointed that Health Education England proposed to reduce the number of training posts in its most recent consultation. We were very pleased to have a meeting with the Minister's predecessor, the noble Lord, Lord Prior, on this, and I very much hope that the Government will be prepared to have a look at it.

This debate is about the contribution of the life sciences sector to this country. Briefly reading the consultation passed today on the industrial strategy I noticed that the introduction talks about the UK benefitting from an,

"open economy: pro-competition rules, flexible labour markets, less intrusive regulation".

The question that one really wants to put, particularly as this is a sort of declaratory amendment is, if that is so, if—as the noble Lord, Lord Lansley, has suggested—the issue of life sciences post Brexit deserves a great deal of consideration, why have the Government brought what is clearly an overbearing regulatory Bill to your Lordships' House? If ever I have seen an example of gold plating, this is it. We understand the need to close the loophole but I do not understand and I do not think we really saw a case made at Second Reading for why the Department of Health is determined to intervene in this sector in such a wide-ranging way. It is interesting that your Lordships' Delegated Powers Committee has already pointed out the open-ended nature of the Government's approach.

It is impossible to look at the health of the life sciences and the health of the pharmaceutical, medical devices and medical technology industries in this country without looking at the crucial issue of access. I know the Minister's department is in denial about this and feels that access can be constantly reduced and will have no effect on investment in these sectors. I simply do not believe that that is so. The noble Lord, Lord Lansley, rightly said that this is one of the sectors that we want to protect and enhance—but I believe we are at real risk of losing its pre-eminence in this country.

I understand that the Secretary of State is shortly to go to North America to sweet talk the boardrooms of US pharma. I know the noble Lord, Lord Warner, has been there. I have been there, too. I am sure that the noble Lord, Lord Lansley, has, too. The idea that the Secretary of State will not talk about access is naive. Access is a crucial part of investment decisions by these companies in the UK. The noble Lord, Lord Lansley, referred to the proportion of new chemical entities and top 100 medicines globally that have been developed in this country. I understand that it is now down to 14%. That is healthy compared to 3% turnover, but when I was the Minister responsible we were in the 20% to 25% range. So we have a horrendous decline in the influence of the UK sector. My fear is it is going to decline even further in the years ahead.

We will come back to the 2014 PPRS agreement. Potentially, the industry would have funded the widespread use of innovative medicines in the NHS. Between them, however, the Treasury, the Department of Health and NHS England have completely messed this up. We have ended up with the worst of all worlds, in which rationing in the NHS has reached appalling levels: CCGs are making some of the crudest rationing decisions that I have ever seen.

4.15 pm

Secondly, the rebate was not as high as the department expected. That was why it did a forced negotiation with the industry in December. Part of the reason why the rebate was not as high as expected was the crude rationing that NHS England has insisted on in relation to the NHS. We have ended up with the worst of all worlds when we could have ended up with a system in which industry and the NHS agreed a way through, by which we could have funded these new, innovative medicines. I accept that the noble Lord, Lord Lansley, is right about value; that is a very important consideration.

Between 2003 and 2011, there was a significant growth in pharmaceutical industry spend on R&D in the UK. It went up to a peak of £5 billion, but by 2014 it had fallen to £4 billion. My question to the Minister is: how much further is it going to fall before the Government start to realise that what the NHS does on access to medicines is as important as the other measures contained in the industrial strategy?

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, I thank the noble Lord, Lord Warner, for his amendment and for the opportunity it has provided to have this discussion. I had a feeling that this one might lead to a wide-ranging debate that would probably go well beyond the remit of the Bill. Indeed, I had that sense when I had meetings with him and other noble Lords. I am grateful to the welcome that has been extended to me and I have been looking forward—if that is the right phrase—to having this opportunity to discuss the Bill.

It is worth stepping back for a moment as we start. I do not know whether the noble Lord, Lord Warner, will agree with the characterisation of this amendment by my noble friend Lord Lansley that it is more of a statement of intent than a concrete desire to change legislation. But, given that that is a decent characterisation, it is worth reprising what the Bill is trying to achieve. There is widespread support for many elements of the Bill.

We need to ensure that we have the right level of information to provide for three things: first, an accurate reimbursement of community pharmacies; secondly, information for price control schemes—and there are a variety of them, as we discussed—and, thirdly, the ability to get value for money and to ensure that, in relation to those instances that end up in the CMA, we are able to do something about them beforehand, because it takes a long time to get to that point. While it is important that that sort of back-stop provision is there—the big stick at the end of the road—ultimately, we do not want to get to that point, as it is an admission that we do not have the system right and have not controlled prices earlier on.

If those are the shared aims of the Bill, it is also important that we will the means. We cannot just say that we do not like these things and then not do anything about them. The question in regard to willing the means—and that is the main question about the Bill, and was so at Second Reading, when I listened as a Back-Bencher—is whether the provisions of the Bill are proportionate. That is the right question; “proportionate” can mean all sorts of things in different contexts, but it can mean proportionate in terms of the burden on firms, proportionate in terms of what it delivers in savings to the NHS, and so on. That is what sits behind many of the amendments that have been tabled by noble Lords, and we will have lots of opportunities to discuss them.

I think it is worth pointing out that the Bill does not introduce any new information requirements to the medical supplies industry, but rather clarifies the requirements and offers reassurances that provisions will be enacted only through regulation, which is a consultative process. Section 260 of the NHS Act 2006 already provides the Secretary of State with the power to make the medical supplies industry keep and provide information—the conception is that this has been extended to that industry. This power has not been used but, as we will discuss later, the instances where unjustified price rises have come about have happened in unbranded generics. That is one reason we are now acting as we are—because we did not have the power in advance. Of course, one can never anticipate all circumstances and instances in which that might happen.

I mention that only by way of a mini Second Reading debate and to reprise the purposes of the Bill and give background. It will also, I hope, give noble Lords an understanding that I know what the pressure points are and understand the balance that we have to draw between the two. As several noble Lords have pointed out, and following historical precedent, my particular policy brief does hold both the responsibility for a flourishing life sciences sector and for medicine pricing and regulation. I am acutely aware that those are two sides of the same coin and can be in tension with one another. The goal is to have a win-win situation in which the NHS gets good prices, new drugs come through the system and the life sciences industry feels that the United Kingdom is a place where it wants to do business. Pricing is one part of that, but there are lots of other factors, such as the ability to carry out clinical trials, R&D, the environment and so on.

While the Government agree with the underlying principles behind the amendment and the two arms of the legal duty, we are not convinced that a legal duty is the right approach. We recognise the vital role that the life sciences sector has in our economy. Thanks to the research and development efforts of the life sciences industry, which contributes £56 billion and tens of thousands of jobs to the UK economy every year, our understanding of diseases and the best way to treat them has improved dramatically over the past 20 years.

As several noble Lords have referenced, the Government launched today a UK-wide industrial strategy, which is a critical part of the Prime Minister's ambition to build an economy that works for everyone.

It is not about picking winners but about making sure that we play to our strengths and build on the comparative advantages that we have. I am therefore grateful for the opportunity to talk about the commitment to the life sciences industry, which I know was one of the intentions of the noble Lord, Lord Warner, in tabling the amendment, and to re-emphasise the Government's commitment.

The UK has one of the strongest and most productive life sciences industries in the world. Technology and commercial pressures are transforming the field of healthcare technology and the Government's ambition, as set out in the life sciences strategy of 2011, is to anticipate and react to these changes while building on existing strengths. Innovation, funding for scientific research, aligned regulatory systems and access to the best people and talent all have a role in supporting a flourishing life sciences sector that goes beyond the prices paid for medicines and medical supplies.

In the context of the industrial strategy that was launched today, there will be a sector-specific life sciences industrial strategy to follow in due course. That will be an opportunity to make sure that we are able to address the concerns that exists in the life sciences industry, which are not peculiar to the Bill but are around, for example, the pricing environment and Brexit, which is a continuing concern. It may not always be popular to say so but it is the view of the Government that Brexit offers a number of opportunities as well as challenges. We will be seeking to make the most of those in our own regulatory system and in how we can provide exactly the kind of fertile ground that the life sciences industry needs to flourish in this country. There is a deep commitment to making that work.

I turn now to the second arm of the duty: making sure that the Secretary of State has regard to ensuring that patients have speedy access to NICE-approved medicines. We believe that this duty is also unnecessary. As noble Lords will know, NICE technology appraisals provides robust, evidence-based guidance for the NHS on whether drugs and other treatments represent a clinically effective and cost-effective use of NHS resources. NHS commissioners are legally required to fund treatments recommended in NICE guidance, usually within three months of the final guidance. This legal requirement is also reinforced in the NHS constitution as a right to NICE-recommended drugs and treatments.

We recognise that there is a remaining challenge in encouraging practitioners to use NICE-recommended treatments. The latest data from the innovation scorecard shows that the rate of uptake and utility of new medicines recommended by NICE are increasing. I acknowledge the picture indicating that we are lagging behind where we should be, so there is no complacency on that point. We are working to improve the scorecard to make it a more effective, accessible and useful tool to identify unjustifiable variation in the uptake of innovative new products.

The Government and their arm's-length bodies are also taking forward a number of actions to improve access to, and uptake of, new medicines. The Medicines and Healthcare Products Regulatory Agency—the MHRA—has initiated an early access to medicines scheme, providing a platform to bring drugs that do

[LORD O'SHAUGHNESSY]

not yet have a licence to patients at a much faster rate than before. The scheme is making a real difference, as 25 promising innovative medicine designations and 10 positive scientific opinions have been awarded by the MHRA since the launch of the scheme in 2014. We also have the NHS test beds programme, which is supporting the testing and uptake of innovations across the NHS, and the accelerated access review, which has been published and which the Government will respond to as part of their industrial strategy.

I would also like to take the opportunity to address a number of points raised by noble Lords during this very informative and useful discussion. We will no doubt come back to these things on other amendments. We have talked about CMA fines and what we might do further upstream. There was a question mark over changes to the statutory scheme and whether there had been proper consultation. There will be further consultation on the implementation of the statutory scheme later this year, in addition to the consultations that have taken place. I should also point out that I intend to meet all the relevant industry groups, which I have not had the opportunity to do yet, to make sure that I hear first-hand about their concerns. I am endeavouring to do that in between Committee and Report so that we have the opportunity to have that personal dialogue—one that will reflect on the decisions we make today and on Wednesday about what the right approach is.

As the noble Lord, Lord Young, said, there is a case for action here. The question is always whether what we are doing is proportionate, so I thank him for that support. I was not aware of the issue about clinical pharmacology and will certainly look into it. If he and the noble Lord, Lord Hunt, would like a meeting about this to help me understand that better, I would be delighted. It is clearly an important part of having the right approach.

The work on antimicrobial resistance is being taken forward with great gusto by my colleague the Chief Medical Officer, Dame Sally Davies. She generously gave me a copy of her own book to read about that the other day—which I dutifully did, quickly, so that I could answer questions on it. We are putting forward a candidate to run the World Health Organization, Dr David Nabarro, who is deeply committed to this. We obviously hope that his candidature will be successful. I reassure the Committee that that work very much goes on.

The noble Baroness, Lady Finlay, asked about the nature of the pricing and control scheme. I am grateful to her for sharing her knowledge in a personal meeting. There is a tension between getting the right deal and disincentivising investment in the life sciences. It is always a fraught point—as my noble friend Lord Lansley said, every time we have one of these negotiations the balance is slightly different—but I am aware that it is an important balance to strike throughout.

I am grateful to my noble friend Lady Redfern for her support for the Bill and for the importance of driving value. We will have an opportunity to discuss ring-fencing shortly. I do not want to get ahead of myself on that, but we will address it. I had the great pleasure of working for my noble friend Lord Lansley

when the Conservative Party was in opposition and I know that he has been very committed for a long time to value-based pricing and getting a good deal. I am grateful for his knowledge on that. Again, we will have the opportunity to talk about those things in a group of his amendments, so I do not want to spend any more time on that.

The noble Baroness, Lady Masham, asked particularly about pricing differences in England and Scotland. I think that we will address that at a later point. There are differences in how drugs are priced according to packs versus units, the starting point and so on. The picture is quite good when you look at it in the round for particular products, but I would be delighted to discuss that with her further, if she wants.

Finally, on the questions raised by the noble Lord, Lord Hunt, I have tried to express again why we think that the Bill is necessary. The noble Lord talked about the open-ended nature of the Bill, which we will look at in amendments at the end of the process. Clearly, we do not want a declining UK sector or rationing. That involves, first, a proper life sciences industrial strategy, which we will have. I would like to think that that is not just the preserve of the governing party but something to which all parties would want to contribute. I look forward to working with noble Lords, who have tremendous experience in this area, to gain their ideas to help us with that.

We also need to drive access through the system. That is one part of an industrial strategy. It cannot be done just by diktat. We rightly put clinical decision-making at the centre of our system, but there are things that we can do beyond what we are currently doing to improve access, which I would be delighted to talk about and work on further with noble Lords as we draw out that life sciences strategy.

I apologise for the slightly long contribution, but I wanted to take the opportunity to respond to noble Lords and to set the scene. While we support the principles of the amendment on the duty, I do not believe that the aim is best achieved through having a legal duty. I ask the noble Lord to withdraw the amendment.

4.30 pm

Baroness Finlay of Llandaff: Let me thank the Minister for that comprehensive reply and for his openness in discussing things with us all. He talks about having discussions with the industry. I hope that he is aware that there is a move by the industry to consolidate into three major hubs, or potentially four. The fourth would be the Oxford-Cambridge-London axis, the other three being those in Boston, in California and in Basle in Switzerland. We are at a critical time, because a lot of change is going on—hence the motivation for so many of us to support the amendment, as we are aware that things are potentially fragile.

Lord O'Shaughnessy: I thank the noble Baroness for that point, with which I completely concur. This is obviously a big moment in time, for several reasons. Our current price regulation systems for pharmaceuticals run until the end of 2018 and, in 2019, we will leave the European Union. These things are bundled together and co-dependent; making the right decisions on each

of the factors will have a knock-on effect on the rest. I very much understand the point. As I said, my job has the tension of both responsibilities, including health, and the trick is to square the circle.

Lord Warner: My Lords, I am grateful to the Minister for his response but I was not convinced and I am not sure that the industry will be convinced. Over time, the industry is seeing the legal requirement to implement NICE being watered down by NHS England in effect introducing a cost-control system on top of the legal requirement. It is seeing the Government fixated with cost rather than innovation and patient interest. Companies are seeing their investment drop and their involvement in this country being called much more into question by their boards. That is the issue. It is not about whether the Minister can convince me or this Committee; it is whether he can convince the outside world in this sector. At the moment, I am inclined to pursue this on Report, but in the meantime I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1: Voluntary schemes

Amendment 2

Moved by Lord Hunt of Kings Heath

2: Clause 1, page 1, line 14, at end insert—

“() After subsection (1) insert—

“() In exercising functions in relation to the controls on the cost of health service medicines established under this section, the Secretary of State must ensure that any payments made by manufacturers or suppliers to whom the scheme relates which fall under subsection (1)(b) are utilised solely for the purpose of reimbursing the National Health Service for expenditure on medicines and medical supplies.””

Lord Hunt of Kings Heath: My Lords, in moving Amendment 2 and speaking to Amendment 4, I will inevitably go over some of the same ground, but I will try to make my remarks briefer than I would have done. I just want to pick up what the noble Lord, Lord Warner, said. The Government have a hell of a job to do to convince these boardrooms, which are no longer much based here. Even the two British companies essentially take global decisions. A lot of work has to be done to convince them that, in the current situation, continued and improved investment will be worth their while.

The Minister may not know this, but there has been great reluctance on the part of his department to talk properly to the industry on these issues, because of this absurd idea that access is a matter that it will not discuss. He may also not know that NHS England is being obdurate about being prepared to discuss these matters in an open way with the industry. I have been astonished by the difficulty that these huge companies have had in getting through the door of NHS England to discuss these matters. This is a serious issue. We would not pursue it unless we thought that we were reaching a critical point in the future of a hugely important sector. I have a sense that because the funding of the NHS so dominates everything that the department does, it then cannot talk about access

because it is seen as a cost pressure. I understand that, but it is such a short-term view. We are at risk of making the wrong decisions.

My two amendments are the nearest I can come to the creation of a ring-fenced fund, as suggested by the noble Baroness, Lady Redfern, given the constraints on drafting amendments. That is essentially what I aimed to do: to say that the rebates are for investing in new medicines, devices and technologies. That is the heart of what we seek to do because I still believe that the 2014 PPRS agreement was a golden opportunity to get the best of all worlds—a brilliant life sciences sector, industries investing in R&D and NHS patients getting speedy access to these new developments. But we have not got there yet and that is why this debate is so important.

The Minister mentioned a number of encouraging developments, including the rapid access review, but he must know that there is a general cynicism among anyone involved in earlier discussions about the outcome being a pale shadow of what it could have been. We know that it will really cover only a limited number of medicines and treatments. Equally, the Minister mentioned NICE. It is true that there is an order, which I introduced way back, because of concern that primary care trusts were not implementing technology appraisals effectively enough. But we are seeing a chipping away at even that rather imperfect approach to try to get the NHS to do what legally it should have done, which is enthusiastically to embrace NICE's technology appraisals.

The department has allowed NHS England to ride roughshod over it in relation to NICE. The latest consultation by NICE, imposed on it by NHS England, to put an arbitrary cap on NICE decisions, coupled with the introduction of a threshold for rare diseases of the £100,000 figure, is putting a triple jeopardy into the system. When it is investing billions of pounds in a new drug, the industry has the NICE process to face; it then has to face the arbitrary imposition by NHS England of these further restrictions; it then gets down to clinical commissioning groups, which in recent months have made some extraordinary decisions in relation to rationing in general and specifically on some of these new medicines. It is very worrying indeed.

I think that the noble Lord, Lord Lansley, hopes the Government might give an outline of their strategy for future voluntary agreements with industry—if there are to be such agreements in future—that embrace the issues of investment, access and value. I am sure that that is very sensible. In the meantime, I am convinced that the only way in which the NHS will start to invest properly, so that its patients come at least somewhere near to the kind of access that we see in other European countries, is by some ring-fenced money being found to finance it. There is no chance of access being improved on the current funding arrangements. NHS England, whose approach is simply to look to control budgets, seems to have no interest whatever in the issue of access. My amendments suggest one way in which we might do that. Ultimately, what I think we all want to hear from the Government is whether they will take a new approach to negotiations which would be about cost-effectiveness and value for money, of course, but takes access almost as its No. 1 aim. I beg to move.

Lord Warner: My Lords, I support these amendments, to which I have added my name. I do not want to go over again what has just been said, but the issue of access is critical. It is why companies have invested in this country. They criticised NICE when it was first set up; they were highly hostile but have been wooed over, have stayed with the game, played in it and continued to make products which are of great benefit to NHS patients. However, having jumped that hurdle they now see a new one, which is driven not by cost-effectiveness but by cost—a straightforward capping of expenditure at an arbitrary figure of £20 million. The noble Lord, Lord Hunt, was a little critical of NHS England. I would be if I thought that it was only NHS England but I do not believe that the Government are not behind this, putting pressure on it. We already have a massive difference of view between the Conservative chairman of the Health Select Committee and the Prime Minister over how much extra money has actually been put into the NHS. The noble Lord, Lord Lansley, winces, but such measures are being introduced basically to stop the NHS carrying out a legal obligation to implement NICE recommendations. I totally support the amendments in the name of the noble Lord, Lord Hunt, because they are a way of trying to ensure that, where repayments are made, they go back to where they should be, which is in the NHS and helping patients to access new drugs.

Baroness Finlay of Llandaff: I have added my name to the first of the amendments. I would have added it to the second, but there was not room—there were already four names there. I strongly support them. The debate so far has related to the pharmaceutical industry, to pharmacies—that is, chemists in the community—and to the NHS but these amendments go to the heart of it, which is access for patients.

One problem with what will feel to a patient like almost arbitrary rationing is that they will know that they have a disease or condition and that there is a drug which, if they lived in other parts of the world or had more money, they would be able to access and which, for one reason or another, they cannot. We must recognise that any costing system for medicines is relatively arbitrary and does not cost in all the social costs of disease progression, or of more severe versus less severe forms. Nor does it factor in the cost to the whole family of the distress somebody feels when they need medication and cannot access a drug which has gone through an appraisal process and whose criteria they can see they fit.

I hope that the Minister will look sympathetically at the principles behind this amendment. If you save money but do not put it back into access to medicines, you are effectively bleeding that area to plug other gaps or deficits in the NHS. As for the patient with the condition who knows that there is medication that probably would help them, although they are well aware that they could be a non-responder, no one should underestimate the anguish to them and their families, or the knock-on effect on society in the long term of failing to ensure access to effective medications.

4.45 pm

Lord Lansley: May I say a quick word on these two amendments, which would have the same effect in relation to the voluntary and statutory scheme? I understand

the debate that we have just had, but it seems to me that we are likely to have a more productive discussion to this effect on the next group. The purpose of these amendments is simply to say that the money that is generated through the rebate must travel back to pay for medicines. The consequence of any such scheme would be that, whereas at present the Treasury together with NHS England and the Department of Health agree a budget based on the Treasury's assumption that there will be a drugs bill and that bill will be controlled at that level by virtue of the rebate, the Treasury would be obliged to say that the drugs bill could not be controlled. We know that the rebate does not necessarily correspond to the prior assumption of the level, so the amount of money available to fund medicines would be variable, particularly if it was applied to new medicines, as in Scotland. There would therefore be, from the industry's point of view, nothing in principle to prevent it from pricing up products that fall within the scheme to which the rebate is applied, with the impact that that would increase the money available to supply additional medicines, knowing perfectly well that there would be no overall budgetary control. At the end of the day, there has to be budgetary control. It is only by virtue of the fact that the rebate is not automatically recycled into additional NHS expenditure that the budget can be controlled. In the absence of any such control, I cannot see how the amendments would work.

Lord Hunt of Kings Heath: Surely it is the other way round. The NHS could up its intake of new medicines willy-nilly, knowing that the industry would have to pay a rebate to the department. In essence, industry would be paying for the uptake of new medicines. The problem is that the Treasury discounts the figure. It makes an estimate of what the rebate is likely to be in the next financial year and builds it into the baseline budget, which is based on minimal growth.

Lord Lansley: The position is that the PPRS is a deal based on a budget. If you want to construct something that does not have a budget limit, you could certainly do so, but I do not think that the amendments would have the effect that was looked for. As for another way of doing it, this is where we get on to what in my view is the real debate. I am not sure that I have ever believed that there should be a fixed drugs budget in the NHS. We have a health budget and we should aim for the NHS to derive the greatest possible benefit to patients from the budget that it deploys—not the drugs budget but the total health budget.

Lord Hunt of Kings Heath: That is very interesting. It has always struck me that when you chair a board of an NHS foundation trust, for instance, there is a philosophy that says that spending on doctors and nurses is a good thing but spending on drugs is a bad thing. It is a ludicrous position. I agree with the noble Lord, Lord Lansley, that there is a big problem. Spending on drugs is seen as a cost pressure, so automatically everyone's emphasis is on keeping that spending down, whereas a rather more sophisticated approach would take the view that, if you have spent your money on drugs that have had a hugely positive impact on the

throughput of patients, cost-effectiveness and efficiency, that might be a good investment. The question when we come to the next group is whether our current arrangements have come to the end of the road and whether we need to move on to something rather more sophisticated.

Lord Warner: What we set up a long time ago was, effectively, NICE to be the arbitrator, and we controlled the flow of technology appraisals into it. I used to sign off a limited number of drugs that would go into the NICE process. We have that system, which has now been legally enshrined. It is also open to NICE to withdraw drugs from use, as it has from time to time, or to change procedures. We have a system enshrined in our law in which the NHS is required to commit to introducing NICE-approved technology appraisals, so the idea that we should let the Treasury arbitrarily reduce and control the small bit of that total NHS budget on those grounds seems bizarre. I agree with the noble Lord, Lord Lansley: we have ended up obsessing about this relatively small part of the NHS budget when we have set up a system to ensure that the NHS gets value for money through the NICE appraisal process. We are getting into a strange situation, which is why we are scrabbling around to make amendments to try to make a pretty crazy system slightly less crazy.

Lord Lansley: There is a risk of going on about this, but the structure of the amendment in the context of the PPRS as presently constructed is illogical, because the PPRS is constructed around budget control. The point, however—we will no doubt come back to this, not least on the next group—is that we should be thinking about how we can arrive at a negotiated price for the NHS to buy medicines which may well be marketed initially or globally at a given price, but the amount that the NHS should pay should reflect value. I have said it before and I will keep coming back to it.

I would not be as disparaging of the current consultation between NHS England and NICE at the noble Lord, Lord Hunt. It could have the effect that he describes: adding additional jeopardy because one has to meet not only all the normal criteria for an effective medicine but the NICE threshold, and NHS England might step in with hobnailed boots and say, “But we are not going to make it available and you must change the funding direction”. But it might recognise reality. The consultation, in my view, may have the effect of avoiding arbitrary post hoc rationing of medicines, because the NHS should be up front, negotiating price discounts on medicines, regardless of the rebate. That means engaging with the industry at an early point.

If the industry understands the consultation properly, it will understand that the budgetary impact for the NHS under current circumstances cannot be ignored. The best way to deal with that is not to go through all these processes and then find, at the end of the day, that the NHS cannot afford it, or that NICE has to say no through the application of the threshold. Rather, it is to use the pharmaco-economic evaluation and the health technology assessment properly alongside NHS England and say: “Here is something that is valuable and we want to be able to use it, but we must recognise the budgetary impacts”. There may well therefore be some risk-sharing processes or discounting processes

to enable the product to be available to the NHS at an early stage and to give industry and the NHS all the information they need subsequently to be able to make sure that they have got the pricing right.

Lord O'Shaughnessy: I thank noble Lords for these amendments and for the discussion that has followed. I will come back to the issue of budgetary control raised by my noble friend Lord Lansley. I do not think it is enough simply to say that it should not be a factor. It is a factor and I will talk about how that interacts with the current system in my response.

Our concerns with these amendments are twofold—one is a matter of principle and the second is a matter of practice. In my short period in the office I have already had an opportunity to talk about ring-fencing on at least one occasion. Noble Lords understand that the Government's policy is not to ring-fence with budgets set by politicians but rather to give money to the NHS and its constituent parts and to trust clinical judgment on commissioning health services in response to the regulatory regime that is set up to hold them accountable. I have not yet heard from anybody who disagrees with that fundamental principle.

Amendments 2 and 4 are unnecessary, therefore, because all the income and savings from the PPRS and the statutory scheme are already invested in NHS services. As the noble Lord, Lord Hunt, said, the anticipated income from the PPRS and the statutory scheme are put into the NHS baseline. That baseline is the figure above which we will be spending the additional £10 billion by 2020-21. That money is already in the baseline and it is there to be used with the discretion of clinicians within the system.

The Health and Social Care Act 2012 requires the Secretary of State to promote the autonomy of NHS England and clinical commissioning groups. This includes their decisions as commissioners about priorities for funding. That is because it is a fundamental principle of the NHS that funding should be allocated according to clinical priorities based on the judgment of clinical commissioners. That might include new treatments but it might include scaling up older, effective treatments or investing in staff. The proposed amendments would result in the income received from a voluntary or statutory scheme being used solely for the purposes of reimbursing the NHS for medicines and medical supplies. It is perhaps worth highlighting to noble Lords that the NHS spent over £15.2 billion on medicines in 2015-16—far in excess of the cumulative income received from both schemes.

I come to a couple of points raised by the noble Lord, Lord Hunt. The first, as I mentioned, is on budgetary control. The second is that if additional money were spent, it could be recycled back into funding for innovative drugs. I am not sure. I have not had the opportunity yet to consult with the boards of life sciences companies, but I am not sure that there is an open-ended commitment there either to continue spending money in the NHS. There is a need for budgetary control on both sides. I appreciate—and it is a strong theme in this debate and was in the previous debate—the need to do something about access. The ability to access drugs and to access them quickly is both good for patients—because clearly those drugs

[LORD O'SHAUGHNESSY]

are being approved because they are an improvement largely on what has gone before—and also good for life sciences. If we are in the game, as it were, of trying to find a win-win out of the changes we make now or in future, clearly access will be a clear part of that.

My noble friend Lord Lansley touched on a practical objection. It is the potential unintended consequence of ring-fencing the income from schemes specifically for certain types or categories of medicines. The income from the PPRS and the statutory scheme can fluctuate, so allocating the income to a specific area, such as new medicines, brings risk. This could potentially disadvantage patients by making treatment dependent on income from medicines pricing schemes, thereby producing inequities. At the moment the Department of Health manages that risk. The proposed changes would move that risk on to the NHS—which, as we know, is already under a great deal of pressure.

I understand the intention behind the amendments, but I am not convinced that the Government predetermining clinical decisions and clinical priorities for spending on medicines and medical supplies is the right way to go. We believe that the current PPRS is designed to incentivise companies to bring new medicines to market. Companies with mainly new medicines in their portfolios pay less than companies with mainly old medicines, and as part of the PPRS, the Government have made a number of commitments around NICE decisions and the funding of NICE-approved products in order to support access to new medicines.

5 pm

We have already talked about the things that are happening in the system to support uptake of access, but I clearly take the point that more could be done. I am sorry to hear that there might be scepticism about the accelerated access review. That is certainly something that I would be keen to explore with noble Lords in meetings following this, to make sure that we could provide reassurance. It is not necessarily about convincing people in this room, but convincing the companies that are making the investment decisions that are going to determine the success of the life sciences industry in this country.

I would like to say something about rationing among CCGs. Again, it is not something that I have yet had the opportunity to find out about; I would be interested to see and understand any examples that noble Lords could bring to me. Clearly, we want to reduce that wherever possible and make sure that access is there, bearing in mind that the NHS is under a huge pressure for the reasons that we discussed earlier today.

These amendments could be a matter of concern because there is a potential for gaming the system, as my noble friend Lord Lansley described. Indeed, some of the considerations that we are talking about today would be better conceived of for a future medicine pricing scheme than in the context of this scheme as it stands. On that basis, I ask the noble Lord to withdraw his amendment.

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister and other noble Lords who have spoken. We have had a very good debate. Obviously,

as I made clear at the beginning, I am not wedded to the words of the amendment. It was not the amendment that I wished to bring to your Lordships' Committee. Clearly, the issue is access and the use of the rebates. I understand the issue about risk and, of course, any considered system in which there clearly needs to be budgetary certainty.

Equally, we need to see much faster uptake of new medicines and, indeed, new technology and devices. A similar argument could be made about new technology as well because, again, we are terribly bad at investing in our own companies even though we have highly successful medical technology and devices industries. They have the same issue of the NHS being incredibly reluctant to invest in their new developments. This has been a long-term problem: the noble Lord, Lord Warner, and I dealt with it 15 or 20 years ago and it has been a problem with the NHS right from the start. The problem is that we are now seeing this connected to the success of the UK's economy as well, which is why—one way or another—we have to find a solution to this problem.

Turning to CCGs, it is reported on a regular basis that they are making rather bizarre decisions: arbitrary decisions about restricting access to certain treatments that clearly are entirely budget-based and seem to have no value as clinical decisions. I am very worried about the fact that we are now starting to see the legitimisation of very crude rationing of access to services by patients.

This has been a useful debate. Access is crucial and it is clearly not happening at the moment. I hope that between now and Report we can have further discussions and an understanding of what the Government are trying to do to seek to increase access. Having said that, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 1 agreed.

Clause 2: Power to control prices

Amendment 3

Moved by Lord Hunt of Kings Heath

3: Clause 2, page 2, line 15, at end insert—

“(3) In exercising functions in relation to the controls on the costs of health service medicines, the Secretary of State must ensure that any medicine covered by a voluntary or statutory scheme that requires payments calculated by reference to sales of that medicine shall be made available to all NHS patients if recommended by a qualified NHS clinician.

(4) An amount calculated under subsection (1)(b) may only be calculated using the same methodology as an amount payable by any member of a scheme made under section 261 of the National Health Service Act 2006 (voluntary schemes for controlling the cost of health service medicines) is calculated.”

Lord Hunt of Kings Heath: My Lords, I will speak to the second part of Amendment 3, as I think we have comprehensively covered the first part in our debates on the first two groups. I am not looking to the Minister to respond to the first part. The second part of my amendment seeks clarification on the relationship and equivalence between the voluntary and statutory

schemes. It provides a further opportunity to debate the future of a voluntary PPR scheme, because, clearly, it might be argued that the Bill is setting a precedent for determining in legislation the nature of a voluntary scheme. It would be helpful if the Minister set out in very broad terms the kind of approach he wishes to be taken in the future—in either a statutory or voluntary scheme—looking at the issues we have talked about in relation to pricing, access and value for money.

In many ways, the voluntary PPRS approach has served government, patients and the industry pretty well over the years. There is no doubt, as the noble Lord, Lord Lansley, referred to, that it has provided certainty to government, alongside giving the industry flexibility on the prices it sets, because it acts as a marker to many other countries. However, the actual price paid is very different from the notional price set. What comes to my mind is that this is not very transparent and very few people understand the system. One does begin to wonder whether it is still serving its purpose and whether we need to think about a new approach that is neither the voluntary PPRS approach we have at the moment nor the statutory approach we have in mind for companies that have not signed up to the voluntary system. If anything, there is the issue of equivalence, which companies wish to know about in terms of the two schemes, but it would be helpful to know where we are going in relation to future negotiations, and the amendments from the noble Lords, Lord Warner and Lord Lansley, will address this. I beg to move.

Lord Lansley: The purpose of Amendment 5, in my name, is to recognise that the Government have brought forward legislation to do a necessary thing, which is to address the discontinuity between the voluntary scheme and the powers available under the statutory scheme. As such, where companies were operating under the statutory scheme with a pre-existing discounted price, often in the hospital sector, the effect of the statutory scheme imposing a given price cut did not impact on their effective price to their customers. Therefore, they did not make a contribution, in that sense, to the budgetary control that was being looked for. The purpose of the legislation is to bring equivalence to the voluntary and statutory schemes. But if we are creating equivalence between the voluntary and statutory schemes, we should be clear that the legislation does precisely that. The noble Lord, Lord Warner, quite accurately referred to this issue at Second Reading, if I recall. There are companies under the statutory scheme—Gilead is a particular example—with products that would, under the voluntary scheme, not have a PPRS control applied to their pricing because they would not contribute to the rebate as they have been introduced after December 2013. Under the statutory scheme, however, they are required to contribute.

As I understand it, the objection to bringing the two schemes to an equivalent place is that under the statutory scheme, as things stand, there are relatively few products and a significant proportion of them have been introduced since December 2013. Therefore, under the statutory scheme, the effect on the rebate of the rest of the companies would be excessive. That can be dealt with. The powers are available. If we legislate in the form that I propose, the Government can modulate

the rebate between the two schemes in order to arrive at a similar result for those companies that have to contribute to the rebate and apply a common percentage. As a matter of principle, if we are legislating for the two to be equivalent, it is desirable to do so.

I am slightly worried about Amendment 3 because it assumes that there is a voluntary scheme. We do not know. There may or may not be a voluntary scheme. But a voluntary scheme will not always be in place at the point at which the Government, in order to protect the NHS, may require there to be one. I do not think that we should be in that position. There would be a flaw in the powers available to set a methodology for a rebate under a statutory scheme. In Amendment 6, which the noble Lord, Lord Warner, has not yet had a chance to speak to, he clearly understands that there needs to be a relationship between these two, but I fear there is a risk of gaming on that amendment because the industry may say that if it does not agree a voluntary scheme there cannot be a statutory scheme. Therefore, there is no scheme, and I do not think that that we want to get ourselves into that position. It will not surprise the Committee that I can see reason for my own amendment even if I am not necessarily in favour of everyone else's.

Lord Warner: My Lords, I reassure the noble Lord, Lord Lansley, that I see excellent reasons for his amendment. If the purpose of the Bill is to achieve equivalence between the two schemes, the Bill should secure that. At the moment, it does not. The industry does not think that it does. I am not sure, technically, whether the noble Lord's amendment secures it, but I think it does. If it is not quite right, no doubt the Government can amend it. I tabled Amendment 6 to push the Government a little more on their commitment to a voluntary scheme. That is its purpose. We have had a good canter over that particular area. As I said when we discussed Amendment 1, I was not totally convinced by the Government's position, but I want to set out briefly why this is important.

The scheme has stood the test of time as a basis for a relationship between an industry and government where that industry has a much bigger set of customers and a much bigger presence outside the UK. We have actually punched above our weight in securing the presence of that industry in this country, partly through the NHS, but partly because a system was imposed on the industry in terms of the research-based drugs industry. There was a negotiation. Amendment 6 is not meant to say in any way that a particular type of PPRS should be enshrined in legislation for all time. It is trying to get the Government to say, clearly and unequivocally, that for the foreseeable future, there will be some form of voluntary scheme in which a negotiation takes place in an open and transparent way with this particular sector in order to keep this sector being attracted to setting up, doing research and developing pharmaceuticals for the population at large and for the NHS in particular.

Amendment 6 is trying to get out of the Government rip-roaring support for the foreseeable future, a little stronger than the Minister said earlier on, for a voluntary scheme that presents an opportunity for government and the sector to agree the basis on which they operate

[LORD WARNER]

in a life sciences industry producing drugs that can be made available quickly and speedily, when proven, to the NHS and its patients.

5.15 pm

Lord O'Shaughnessy: My Lords, I thank noble Lords for their amendments. The noble Lord, Lord Hunt, skipped over the first part of Amendment 3. For the sake of completeness, I shall dwell on it briefly. The amendment would circumvent an important part of the checks and balances around prescribing systems. It would basically do away with the NICE process by going straight from licence to availability with clinicians, which we do not think is the right approach.

The second part of Amendment 3 would link the payment mechanisms for the statutory and voluntary schemes, and Amendment 5 would require us to secure equivalent terms for both schemes. The Government's intention is for the two schemes to deliver a broadly equivalent—I emphasise “broadly”—level of savings as a proportion of the total sales covered by each scheme. However, to require the terms of each scheme to be the same, which is what the amendments denote, would be inappropriate and would severely restrict the scope for the two schemes to operate in a complementary manner. The idea of equivalence is too strong and would involve there being similar processes, whereas the alignment approach outlined in the Bill would allow for similar outcomes, which is ultimately what we are driving at and would not undermine the complementarity of the two approaches.

The voluntary scheme is a matter for negotiation with industry. As such, there is scope to include a range of measures that reflect the priorities of both sides. To give an example, the current voluntary scheme, the PPRS, includes a range of provisions developed through negotiation with industry that sit alongside the payment mechanism. They include price modulation, which enables companies to put prices up and down as long as the overall effect across their portfolio is neutral. This has commercial value to companies, who may be willing to accept a higher payment percentage as a result.

To give another example, while new medicines in the PPRS are excluded from the PPRS payments, the PPRS payment percentage level is set to achieve the agreed level of savings across both old and new medicines. This means that each company's share of the income due to the Government will vary depending on the balance of new and old products in their portfolio, with companies which have mainly new products paying less than companies with mainly old products—there is obviously value in that for encouraging innovation.

However, it would be very challenging to replicate this model in the statutory scheme, as many fewer companies are affected by the statutory scheme regulations than are members of the PPRS. As a result, there is a smaller pool of companies with older products. To achieve the same level of savings overall from the statutory scheme as from the PPRS while exempting new products would require an extremely high payment percentage—I think that my noble friend Lord Lansley conceded that point. This provides an example of

where minor differences in terms may be required to deliver an equivalent level of savings across the two schemes overall. The detail of how a future statutory scheme would work will be subject to further consultation that will take place this year.

The freedom to be able to negotiate the voluntary scheme has been valued greatly by both industry and government. We would intend that any future voluntary scheme is established through negotiation in this way, but linking the payment mechanisms as described in the amendments would inevitably place a restriction on that freedom.

Amendment 6 would mean that the Secretary of State's powers to operate a statutory scheme would be permitted only while a voluntary scheme was in operation—a point that has already been raised. It is clear that the noble Lord, Lord Warner, is keen to retain a voluntary scheme in future and we know that industry values the agreement, which began 60 years ago in 1957 and has been of benefit to both government and the life sciences sector over that time.

The current scheme, the 2014 PPRS, and its predecessors show how government and industry can work together to develop solutions on a voluntary basis for the benefit of patients. Like the noble Lord, I am keen to continue the collaborative and productive relationship that the Government currently have with the pharmaceutical and life sciences industries. With the life sciences industrial strategy coming up, and reflecting on the debates that we have had, it is clear that there is a lot more we can do to enhance that relationship.

However, the amendment would have the effect of giving industry no incentive to agree a voluntary scheme, as there would be no fallback to a statutory scheme in the event of failing to agree a voluntary scheme. Without a voluntary scheme in operation, there would be no scheme to control the cost of medicines—so it would in effect tie one hand behind our back in any negotiations.

The statutory scheme and the PPRS both include provisions for controlling the maximum price of medicines, and these prices are the starting point for negotiation of supply contracts between the NHS and suppliers of medicines. As I think all noble Lords would recognise, removal of both schemes would risk significant price rises.

I am sympathetic to the noble Lord's intention in tabling this amendment and welcome the opportunity to reassure him and other noble Lords that the Government are committed to continuing a collaborative approach to future medicines pricing arrangements. We firmly believe that it is beneficial to collaborate with industry to develop the successor arrangements to the 2014 PPRS. This legislation should provide the widest possible range of options in order that the best arrangements, whether voluntary or statutory, can be put in place for the benefit of NHS patients.

However, the amendment would have the opposite effect by removing a key incentive for industry to collaborate, and would bring significant risks to the control of the cost of medicines. I ask noble Lords not to press their amendments.

Lord Hunt of Kings Heath: My Lords, one of the benefits of Committee is that one can draft imperfect amendments, have them corrected by Members of the Committee and then, if necessary, come back with better amendments on Report. I have never worried about the absolute wording of amendments, because whatever happens, in the end, the Government have to come back at Third Reading to correct everything. So we can relax about that.

It has been a helpful debate, with a helpful response from the Minister. He has used the term “broadly equivalent”; he has also said that the Government are committed to a voluntary scheme in future and, I think, recognises the flexibility that it gives. However, we still have much to discuss about the nature of the future relationship and potential agreements.

I also worry about most people’s current lack of understanding of what the negotiations mean and of the actual prices paid. I wonder whether we have reached a point where we need to move to something that is more understandable and transparent. I think that what the Minister said about the future of the voluntary scheme will be welcomed, I am sure that it has been a helpful debate, and I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 2 agreed.

Clause 3: Statutory schemes

Amendments 4 to 6 not moved.

Amendment 7

Moved by Baroness Wheeler

7: Clause 3, page 2, line 41, at end insert—

- “() The Secretary of State must make or maintain legal exemptions for low cost presentations of health service medicines covered by a statutory scheme.
- () “Low cost presentation” means any health service medicine with a reimbursement price of less than £2 per unit or with sales to NHS England totalling less than £450,000 per annum.”

Baroness Wheeler (Lab): My Lords, we tabled Amendment 7 to probe the Government on why, in their new draft regulations, with 25 pages just on the branded medicines proposals, they seek to alter the current arrangements for exempting low-cost presentations from the price-reduction requirements of the statutory scheme. As the Minister will know, the existing regulations specify as an exemption a low reimbursement price of either under £2 an item or low primary care sales to NHS England of less than £450,000 a year. The provision has been there to protect the commercial viability of low-revenue or very low-cost medicines. It therefore seems somewhat counterintuitive to remove this safeguard at a time of such significant uncertainty for the pharmaceutical industry, particularly in the face of what could be a highly disruptive withdrawal from the EU.

Under paragraph 11, the proposed revised regulations give the Secretary of State the power to exempt a manufacturer or supplier where he considers that an exemption is necessary to ensure adequate supplies of medicines for health services purposes. This changes

the current arrangements to give the Secretary of State a discretionary power that he may use in certain circumstances, rather than the automatic exemption that currently operates for £2 per item or a £450,000 annual sum. The current provision is important in maintaining adequate supplies to the health service of the medicines in question.

We are concerned about the significant impact that the removal of the current arrangements will have on manufacturers producing the common, low-cost generic branded medicines in question, such as those for hypertension. Although it is not always the case, the producers of such low-cost medicines are often small businesses operating on small margins. If they are not exempted from paying a rebate on those medicines, many will struggle to maintain current low costs, resulting in a consequent rise in costs for those medicines.

It is also important that the regulations accompanying the Bill maintain a specific exemption from the statutory scheme in the case of supply shortages, as currently. Amendment 8 would therefore formally place this duty on the Secretary of State. This is particularly important given the concerns of GPs and other health professionals, who have voiced frustration about having to prescribe “second choice” medicines because their preferred drug is out of stock. Representative bodies have also expressed their concern about the removal of the current exemption.

The amendments do not call for anything new but for some of the current regulations to be maintained and—where the Secretary of State believes that there is a case for it—strengthened. I look forward to hearing from the Minister the Government’s reasons for seeking to change the current regulations. Has any work been undertaken to assess the potential impact on the future availability and cost of the medicines that will be affected, and on future supplies? Is this designed to save costs—and, if so, what is the expected level of savings to the NHS?

Noble Lords may feel that there is a case for debating the long-term place of such exemptions in the regulations, but now is clearly not the time to pull the rug from beneath the producers of low-cost medicines, or medicines at risk of supply shortages. Instead, it is important that the status quo is maintained until such time as the Government can be clear about the consequences and the benefits of any change. I beg to move.

Lord O’Shaughnessy: My Lords, I thank the noble Baroness, Lady Wheeler, for raising important issues through these amendments, both of which relate to the operation of the statutory scheme. I will turn to each separately.

Amendment 7 would set an exemption for low-cost presentations, defined in primary legislation as those presentations,

“of less than £2 per unit or with sales to NHS England totalling less than £450,000 per annum”.

This is similar to the exemption that exists in the current statutory scheme for presentations with a reimbursement price of less than £2.

Officials have continued to have constructive discussions with industry representatives and stakeholders throughout the consultation and since publishing the illustrative

[LORD O'SHAUGHNESSY]

regulations. Through these discussions, my officials have been listening to views on the illustrative regulations and refining the policy approach for a future statutory scheme. I am sympathetic to the arguments that companies make in relation to these types of low-cost presentations, which could not only lead to direct savings to the NHS when compared to more expensive treatments but incentivise companies to lower prices further to meet the threshold. I reassure the noble Baroness, Lady Wheeler, that as a result of the discussions with industry, my officials are already considering a policy approach for low-price presentations.

However, the Government are not convinced that it is appropriate or desirable to have such an exemption set out in primary legislation. Setting out specific thresholds in primary legislation would be inflexible and would limit the Government's ability to adjust them to account for the economic circumstances at the time. I can, however, commit that an exemption for low-price presentations will be included as part of the forthcoming consultation on the operation of the scheme, which will take place this year. I hope that this provides the noble Baroness and other noble Lords with the reassurance that the Government will fully consider this and take it forward.

Turning to the second amendment, Amendment 8 would place a legal duty on the Secretary of State to make provisions which "ensure adequate supplies" of those medicines in the statutory scheme. The production and supply of medicines is complex and highly regulated, involving materials and processes that must, rightly, meet rigorous safety and quality standards. These complex factors stretch far beyond those that relate specifically to medicine costs. Difficulties in ensuring supply can arise for a number of reasons including manufacturing problems, supply and demand imbalance and issues related to raw materials and regulatory action as a result of, for example, manufacturing site inspections. It is also important to remember the impact of a globalised pharmaceutical industry, which can mean that factors around the world can directly impact supplies of medicines to the UK.

However, I reassure the Committee that the Government recognise the vital importance of ensuring adequate supplies and actively manage and respond to supply issues on a daily basis. The Government have also carefully considered the supply issues in developing policy and regulation. We consider that in most cases, the ability to increase prices, as provided in the illustrative regulations, is the right way to address short or long-term supply problems, where these circumstances are dependent on UK pricing. We also recognise that there may be exceptions to this approach, which is why we included in the illustrative regulations a provision in Regulation 11 allowing the Secretary of State to exempt companies from price controls in the statutory scheme,

"where he considers that an exemption is necessary to ensure adequate supplies of that presentation for health service purposes".

I understand and am sympathetic to the intention behind the amendment and concerns relating to the supply of medicines in the statutory scheme. However, given the complexities in the provision and supply of medicines, we believe that exemptions for supply issues are best dealt with by exemption, rather than a

comprehensive and broad duty. In responding to both amendments, I hope that I have provided the Committee with the assurance that we recognise the concerns and will address them in both primary legislation and the illustrative regulations. I ask that the noble Baroness withdraw her amendment.

Baroness Wheeler: My Lords, I thank the Minister for his response and for the focus that he says that he will give in future to constructive consultation with the industry. There was a feeling that it was not being consulted on these issues, and his reassurances about that are welcome. Obviously, supply in the industry is complex and I will look at what the Minister said. We are concerned about the industry's fears about the cost of deleting these provisions and we were certainly not advocating putting them into statutory requirements but making sure that the regulations dealt with this issue adequately. For the most part, I thank the Minister for the response, and I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Amendment 8 not moved.

Clause 3 agreed.

5.30 pm

Amendment 9

Moved by Lord Hunt of Kings Heath

9: After Clause 3, insert the following new Clause—

"Report on use of payments made under schemes

The Secretary of State must prepare and lay before each House of Parliament a report covering each financial year during which this Act is in force, detailing how the payments made by manufacturers or suppliers under the schemes established or amended by sections 1 and 3 have been used to re-imburse the National Health Service for expenditure on medicines and medical supplies."

Lord Hunt of Kings Heath: My Lords, I shall speak also to Amendment 10A, which was inserted at a late stage, and Amendment 14. This comes back to the theme of transparency. My amendments cover the use of payments made under the reimbursement scheme. They cover the pricing and availability of medicines and other medical supplies, research and development and the duty on the NHS to promote innovation. Given that we have already had an interesting debate and that these matters are very important to both patients and the life sciences sector, is the Minister sympathetic to the idea of regular reporting on how this is going—the impact on patient access, payments and reimbursement in a way that would allow parliamentarians in particular and the public to be kept up to date?

I am not wedded to the wording of any of the amendments, but it would be helpful to know whether the Minister is sympathetic to regular reports, which would be helpful to noble Lords and Members of the other place. We could get to grips with what is happening and see the impact in terms of access, reimbursement and investment in life sciences. I hope that the Minister will give a positive answer on this. I beg to move.

Baroness Walmsley: My Lords, I am in favour of this group of amendments. The Government plan to introduce new regulations and duties on the industry at a very difficult time, so the Minister cannot be surprised that the industry is concerned and that parliamentarians would like to take the opportunity to hold the Government to account based on what happens after the Bill becomes an Act.

For some of the things that we have been talking about, I have been told that the Government already have powers but have not used them—they are just refining and clarifying them and making them more proportionate. Of course, that makes the industry worry that they are planning to use them, even though they are not saying so. We need to know what will happen to all these issues of availability, access, proper supply and cost to the NHS once the Bill has passed. In the interests of transparency and post-legislative scrutiny, will the Minister accept that the Government should report back to Parliament?

Lord Warner: My Lords, I have added my name to Amendment 14, but I also support in principle Amendments 9 and 10A in this group. Each of these amendments does something slightly different and they need some consolidation. They are, however, a reflection of a deep sense of unease over where the Bill is taking us and a strong wish to monitor its consequences. The Government are imposing a lot of requirements on the industry for information. The quid-pro-quo is that we would like a lot more information from the Government on how this has worked in practice.

There seem to be three features that that kind of reporting back should cover. The first is the scale of payments made; the second is the use to which the money has been put; and the third is the impact of the Bill on the access to new medicines of NHS patients. It would not be right to try to draft this off the tops of our heads, but it would be helpful if the Government would accept that there should be some kind of monitoring of key issues around the Bill that are then reported back to Parliament and the public on a regular basis—let us say annually—and if we could get together with the Government to help draft something for Report in this kind of territory.

Lord O'Shaughnessy: My Lords, I am grateful to noble Lords for raising the issue of reporting requirements. We will address at the end the issue of access and my sympathy to reporting requirements, but I first want to deal with the amendments as they stand.

Under the current PPRS, the Government regularly publish information relating to the operation of the voluntary scheme. Of course, for a future statutory scheme I draw attention to the regulations that we have already discussed, in which there are annual reviews of the regulations and a requirement to publish a report on each review. The illustrative regulations require an annual review that will: set out the objectives of the scheme; assess the extent that our objectives have been achieved; and assess whether those objectives remain appropriate. These requirements will be tested through the consultation on the regulations and we will, of course, take account of those views. I totally accept that reporting is a critical principle, but believe

that setting out the requirements in primary legislation is too restrictive because of the potential to change from year to year what the priorities are within a sector and within the NHS.

Turning to the specifics of Amendment 9, I reassure noble Lords that the content of annual reviews would not be restricted to reviewing objectives. They must also be able to address key issues arising during the year that might affect the operation of the scheme, so there is flexibility there. We also intend for the annual review to be published and put before Parliament, so there is the opportunity for that to be seen and discussed. On the details of what it is proposed to report—in particular, how the payments are used—to achieve the specific aims of the amendment, the department would need to ring-fence the funds and monitor where the payments are used. I do not want to rehash our discussion about ring-fencing. I take seriously the point that noble Lords make about driving access to innovative drugs but we do not think this is the right way of doing it.

Nor do I believe that, through these means, it is right to address matters relating to the NHS duty to promote innovation. This Bill is ultimately about controlling the cost of medicines and medical supplies. The NHS Act 2006 puts duties on the Secretary of State to take into account both the need for medicinal products to be available for the health service on reasonable terms and the costs of research and development, which is a big factor in innovation. By taking into account these factors, the Secretary of State is looking at the needs of the industry to support the R&D base as is necessary to support the development of innovative medicines and technologies.

The NHS duty to promote innovation is different. It is about promoting innovation in the provision of health services and there is an extremely broad agenda that goes well beyond medicines. We have already said that we all want to make the UK the best place in the world to design, develop and deploy life sciences products. We do not believe that the Bill will have a negative impact on our doing so. We have also talked about the accelerated access review, so I will not go over that.

Turning to the specifics of Amendment 10A, the supply of medicines is highly complex, and pricing is one part of it. Other issues of course include rigorous safety and quality standards. Difficulties faced in the take-up or availability of medicines can be influenced by a number of reasons which are nothing to do with pricing. There can be manufacturing problems, such as batch failures; changes in guidelines, such as antibiotic switches; and raw material problems, as well as regulatory changes.

For example, in 2015, there was worldwide withdrawal of a branded antipsychotic injection, Pipartil, due to a global shortage of the active pharmaceutical ingredient. Sanofi was unable to find an alternative source of this ingredient and had to discontinue the product. I set that out to illustrate the point that it is not always easy to link changes in pricing to issues of availability or access: there are other things to take into account. That is why we do not believe that we should set out, either in primary legislation or beyond the commitments made in the illustrative regulations, specifically to assess the impact on availability, access and so on.

[LORD O'SHAUGHNESSY]

Leaving all that aside and returning to the recurring theme of the debate, I understand the desire for greater transparency, which is undoubtedly the right approach to access. We must think about how we can improve access to innovative medicines for NHS patients and, in doing so, improve the operating conditions, if you like, for the life sciences industry—the win-win situation to which we keep returning. I would be happy to meet noble Lords either individually or collectively to think about what more we could do, whether through the Bill or looking ahead to the life sciences strategy, to ensure that we deliver on this promise. I take very seriously the warnings that many noble Lords have issued; the Government absolutely want to address this. On that basis, I ask noble Lords not to press their amendments.

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister. On the two arguments he put forward against the amendments, he said, first, that primary legislation would be too restrictive and what one might need to report on one year, one would not in another. The three amendments cover payment, supply, R&D and innovation. I do not think that there would be any year in which it would not be appropriate to report on them. He also said that duties in existing legislation cover some of these areas, and that where they do, such as the duty on innovation—presumably in the 2012 Act—they go wider than the intent in the amendments. I fully accept that. None the less, there is a strong argument for progress being monitored and for Parliament to be involved in that. However, I am grateful to the Minister for agreeing to have further discussion about the core issue of access, and I hope that we may take this forward. In the meantime, I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by Lord Lansley

10: After Clause 3, insert the following new Clause—
“Price control: criteria

After section 264 of the National Health Service Act 2006
(statutory schemes: supplementary) insert—

“264ZZA Price control: criteria

- (1) In determining the prices of medicines under sections 261 and 263 of this Act, the Secretary of State must have regard to the criteria listed in subsection (2), insofar as the prices concerned relate to a new chemical entity, or a new indication for the use of an existing medicine.
- (2) The criteria are—
 - (a) the prospective therapeutic benefit to patients;
 - (b) the extent to which the therapy meets an as yet unmet need;
 - (c) any wider social benefits which would accrue from the medicine's use;
 - (d) the desirability of making licensed medicines available to clinicians and their patients, for use where they are the most clinically appropriate treatment;
 - (e) the desirability of promoting innovation in new therapies; and
 - (f) affordability for the National Health Service, including any evaluation of the relative benefit of the medicine compared to other treatments available.”

Lord Lansley: Amendment 10 is intended to insert into the Bill some of the criteria that I hope would form part of a value assessment for pricing of medicines. The difficulty is that, as things stand, the structure of the two schemes is not designed to take account of those criteria. It is not a value assessment but a budgetary control process. We are, to that extent, looking at an amendment the purpose of which is to put into the legislation criteria applicable to the design of a future PPRS.

I have in the past—in a debate in my name in another place, back in December 2014—expressed the view that we could redesign the existing PPRS to reflect the value of medicines. That would be done by modulating the extent of the rebate payable, such that medicines that were relatively costly in relation to their determined value under such a system would pay a higher proportion of the rebate than those that appeared, on the basis of this assessment, to be charged at something more relevant to the implied value. That is in the existing scheme and I see no prospect of it being revised during its present life through to the end of 2018. An amendment of this character would clearly be designed in relation to a future PPRS.

5.45 pm

I have two additional points. First, why would it relate to new chemical entities or new indications of a use for an existing medicine? That is to reflect the view—which was always made clear to me by the industry—that value as a basis for pricing control should be introduced progressively in relation to new medicines, rather than applied retrospectively to its existing pricing structure in order to provide a degree of stability for it, with a transition towards a full value-based pricing system. I completely understand that; I have written it into the amendment simply to reflect that thought.

Secondly, are these the right criteria? I will leave it to noble Lords to see whether they regard it as having the right character. We all know that we want to assess the therapeutic benefit. We have to try and meet the as yet unmet need. We want to take account of wider social benefit. It is possible to do it and NICE sometimes does it under its present formula for economic evaluation. However, the wider impact of something such as a highly effective medicine for the treatment of early-onset Alzheimer's, for example, would have very substantial social benefits that cannot yet be fully incorporated into a NICE evaluation.

On the point about proposed subsection 2(d), we have to make it clear that we are asking Ministers to arrive at a position on a future PPRS where responsible clinicians taking account of relative benefit evaluations are able to make any licensed and effective medicine available to their patients. It should then be between government and the industry to pay the relevant appropriate price, but the outcome of the system should not be that patients do not have access to the medicines appropriate for them. We know that innovation and affordability for the NHS are existing criteria that should be incorporated into the structure of the PPRS. This amendment is a sighting shot for our discussion today. What should be taken into account by Ministers in making determinations about any design of a new PPRS and determining prices under that system? I beg to move.

Lord O'Shaughnessy: My Lords, I am very grateful to my noble friend Lord Lansley for this amendment and I pay tribute to his considerable expertise in this area. We had the opportunity to discuss some of this when we met. I also recognise that the amendment's purpose is to start thinking ahead to what comes next. It is not so much to define right here and now what is required but to do something which I think he has been trying to do for a long time: to broaden the discussion about how we price value into medicines and bring that broader discussion to bear. I recognise the intention. It clearly is important that we think of these things in the broadest possible sense for the benefit of the most people possible.

Amendment 10 would require the Secretary of State to have regard to factors such as therapeutic benefit to patients, meeting unmet need, wider societal benefits, the promotion of innovation in new therapies and NHS affordability. I would like to draw noble Lords' attention to the legal duties that already exist, which the Government believe currently achieve the intention behind the amendment. Section 266(4) of the NHS Act 2006 already requires the Government to bear in mind,

"the need for medicinal products to be available to the health service on reasonable terms",

and,

"the costs of research and development",

when limiting the price of medicines—something we discussed in the last group. Section 233 of the Health and Social Care Act 2012 requires NICE to have regard to,

"the broad balance between the benefits and costs of provision ... the degree of need ... and ... the desirability of promoting innovation".

In reading out these sections, I am beginning to understand that these Acts are often very, very long. I am thankful for small mercies that our Bill is not, yet.

As part of the NICE clinical and cost-effectiveness assessments, NICE already considers factors such as therapeutic benefit to patients, unmet clinical need and the promotion of innovation, and has recently consulted on new affordability considerations. The point here is that some of the factors that my noble friend is concerned about are already taking place but within the NICE process as part of that assessment.

The Government's priority is to make sure we get the best possible results for all NHS patients with the resources we have. We will continue to look at how to promote better access to effective medicines through NICE recommendations and guidance to the NHS. In developing that guidance, NICE takes account of all health-related costs and benefits, including the benefits to carers. As I am sure my noble friend will recall, in 2014, NICE considered changes to its methods to better capture the wider costs and benefits to society of new drugs and treatments, sometimes known as value-based pricing. It is only responsible to report that, during the consultation, some significant concerns were raised; for example, about the potential implications for products that offer limited life extension without associated gains in quality of life for those with terminal illnesses. The consultation highlighted a significant diversity of responses, demonstrating that this is a

complex issue. The point here is to say that there may be a way through, but we do not yet know what the right way forward is. It is critical that stakeholders continue to have confidence in NICE's work, and we agree with NICE that these issues require very careful consideration before making changes to the way that we assess medicines.

My final point is on freedom of pricing, an issue that has been raised and which this amendment would have an impact on. Noble Lords will be aware that the Government, when setting prices for new medicines, currently operate a system of freedom of pricing for medicines that are a new active substance. This means that the maximum NHS price approved and published by the Secretary of State is that proposed by companies. NICE will then assess the product and consider whether it is clinically and cost effective. The PPRS allows a company to propose a discount to the maximum price.

We know that this system of freedom of pricing for new active substances is of great value to the life sciences industry, providing commercial flexibility, which is important in a context where other countries may reference the maximum NHS price in their own pricing arrangements—something we know to be of huge value. It does not prevent the NHS securing substantial discounts, which indeed it does, and these form part of the overall assessment of value undertaken by NICE. The amendment could, however, have the effect of removing the principle of freedom of pricing, which has been an important pillar of medicines pricing agreements for years. It would require the introduction of assessments akin to clinical and cost effectiveness when determining price, as opposed to determining through NICE whether it should be used. Such an approach would largely replicate the factors that NICE considers as part of its clinical and cost-effectiveness assessments.

I want to make one final point on the current scheme and looking ahead. The PPRS commits the Government to maintaining the basic NICE threshold and take-up periods until the end of 2018. It is my belief that the right time to look at whether the sorts of factors that my noble friend has raised should be taken into account in medicines funding and pricing arrangements is as part of discussions on a new medicines pricing system, where it can then be looked at in the round. That opportunity will arise when considering what should happen when the current PPRS expires. I would be very happy to explore with him proposals on what any new scheme could look like. I look forward to productive dialogue and to benefiting from his wisdom in the months ahead. On that basis, we believe that the amendment is unnecessary, although we sympathise with its intention. I therefore ask my noble friend to withdraw it.

Lord Lansley: I am grateful to my noble friend for that thoughtful and helpful response. I will say three things. First, thank you for the opportunity to be consulted as the future PPRS structure is developed. I very much appreciate that.

Secondly, on freedom of pricing and introduction, it does not necessarily follow that putting into the legislation the criteria that Ministers should take into account in so far as they exercise their powers has a

[LORD LANSLEY]

direct impact. That might be done, as I described, through the mechanism of modulating the rebate, which would not impact on the freedom of pricing and introduction.

My third point is that I did not invent value-based pricing. I may have advocated it for some considerable time—probably 10 years now—but it was advocated before I took it up by the OECD in a wide-ranging report on pharmaceutical pricing internationally and by the Office of Fair Trading in its review of the previous PPRS.

Lord Hunt of Kings Heath: My Lords, I think it goes back even further, to an Oxera report on value-based pricing.

Lord Lansley: The noble Lord is absolutely right about that. There is a history to this. The reason why there is a history is, first, that this is an eminently desirable place to arrive at, in that it would give us tremendous transparency in pricing. At the moment, it is extremely difficult to discern the pricing structures in the industry from the point of view of the payers. Secondly, it would enable us—and this is the objective—to arrive at the point where we could give patients the access to the medicines that are most appropriate to them.

Lord Hunt of Kings Heath: This is very interesting and rows back to a point that the noble Lord made earlier. One issue is the capacity to negotiate with industry. My understanding is that the pharmaceutical industry has made some approaches to NHS England to look at elements of what the noble Lord is suggesting. There is a sense that, at the moment, there simply is not the capacity to negotiate the kind of sophisticated agreement that he seeks.

Lord Lansley: Without repeating what I said earlier about the consultation being conducted jointly by NHS England and NICE, I think that that is precisely the point. These two organisations need to be brought together. There is a degree of sophistication in the NICE processes that needs to be allied to the affordability and therapeutic benefit considerations as seen by NHS England. I freely admit that NHS England is still developing its role.

In relation to specialised health commissioning, I think that it is tremendously positive for it to be able to see the needs and advantages of commissioning all these specialised services on a national basis, as opposed to the patchwork and inconsistencies that we used to see. In that sense, it is only discovering what the commissioning pressures and costs look like—but that will enable it to move on to understanding what that means in terms of the relative benefit and, by implication, affordability of getting into negotiations with companies.

We need to arrive at the point where NHS England can engage up front with industry about the potential cost and pricing of medicines and obviate the need for NICE to go through the long process of the introduction of additional thresholds. As we discussed, there is an issue about the introduction of an additional threshold for highly specialised technologies. We do not want to go to that place with additional thresholds and a variety of arbitrary figures. We should be able to

arrive at a point where industry can engage up front with an expectation of understanding what kind of discounting or price it is likely to be able to attract from the NHS because it is able to have a serious discussion about relative value.

I have been dragged back into another, longer conversation. I entirely take my noble friend's point that there are references to these criteria for Ministers to take account of elsewhere, but there is a risk that the PPRS can be constructed as a budgetary control mechanism without regard to those criteria—notwithstanding that Ministers have a responsibility for them in other places. Even if it were constructed in terms of cross-reference to ministerial duties elsewhere, we could still continue to look at whether this part of the legislation—the statutory basis for the scheme—should cross-refer to the criteria that should be brought to apply. But I take my noble friend's comments in good part and I am happy on that basis to withdraw the amendment.

6 pm

Baroness Finlay of Llandaff: In light of the noble Lord's remarks, I wonder how he sees there being flexibility. The problem with establishing a value-based price, however one works it out, is that we do not have a crystal ball. A product may be used for a whole lot of different indications. One example is Rituximab, which was developed for lymphoma but is now widely used for at least seven other indications. Some of those are chronic conditions, so there is long-term use.

Obviously, the company produced a product and a price was fixed estimated on a certain amount of use, but then its sales went up hugely. That represents an enormous profit. In the system that the noble Lord envisages, how much flexibility would be built in to allow for volume sales and a dramatic lowering of the production costs? That has happened with a lot of things that were initially expensive to produce, but where production costs dropped dramatically over time. We must not inadvertently get locked into pricings that over time become inappropriate.

Lord Lansley: There is a risk of making this debate too extended, but the amendment is not about the whole structure of pricing but about what criteria should be taken into account. In the context of a PPRS scheme such as the present one, the point I made previously was that it would be possible, for example—and this is only an example—to modulate the rebate by reference to any gap between the price charged to the NHS by a company and the value as disclosed by a comparative assessment.

Of course, if there are a number of different indications, the value may vary according to those indications, but that is no problem in itself because all you are doing is trying to understand to what extent a company would be required to contribute a lot to the rebate because there was a big gap between the price charged and its relative value. Some companies may contribute virtually nothing to the rebate because there is no disclosed gap between the price charged to the NHS for a product and its relative value. That is merely an example of how a scheme could be adapted using this sort of value assessment. I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 10A not moved.

Clause 4 agreed.

Clause 5: Control of maximum price of other medical supplies

Amendment 11

Moved by Lord O'Shaughnessy

11: Clause 5, page 3, line 25, at end insert—

“() Section 260 (control of maximum price of medical supplies other than health service medicines) is amended in accordance with subsections (2) and (2A).”

Lord O'Shaughnessy: My Lords, this group of government amendments would ensure that, as is the case with the power to control the cost of health service medicines in the NHS Act 2006, the Secretary of State would be required to consult representative bodies before making legislation to control prices of medical supplies.

The NHS Act 2006 contains provision for the Secretary of State to control the cost of both health service medicines and medical supplies. It also contains a requirement on the Secretary of State to consult with the industry body before any cost control scheme for health service medicines is made. There is, however, no requirement to consult before making price controls on medical supplies. The amendment would introduce this requirement.

An amendment was tabled in Committee and on Report in the House of Commons, with support from Labour and the SNP. It would have had a similar effect, but it was not consistent with the existing provisions for health service medicines in the NHS Act 2006. Representative bodies in the medical devices sector have expressed their support for the amendment. I believe that it would improve the Bill by ensuring that appropriate consultation takes place before the introduction of any scheme to control the price of medical supplies. Therefore, I hope noble Lords will be prepared to accept this amendment.

Amendment 11 agreed.

Amendments 12 and 13

Moved by Lord O'Shaughnessy

12: Clause 5, page 3, line 26, leave out from “In” to second “for” in line 27 and insert “subsection (1)”

13: Clause 5, page 3, line 28, at end insert—

“(2A) After subsection (1) insert—

“(1A) Before making an order under subsection (1) the Secretary of State must consult any body which appears to the Secretary of State appropriate to represent persons who manufacture, distribute or supply medical supplies falling within subsection (1).”

Amendments 12 and 13 agreed.

Debate on whether Clause 5 (as amended) should stand part of the Bill.

Lord Hunt of Kings Heath: My Lords, we discussed at Second Reading the general concern that the Bill extends amendments aimed at the provision of health service medicines to provisions relating to medical supplies. Subsequently, the Minister has written to us to explain that,

“section 260 of the NHS Act 2006 already provides the Secretary of State with powers to control prices of medical supplies and to require companies to provide information on any aspect of their business. Clause 5 of the Bill ensures that the enforcement and territorial provisions for any scheme concerning medical supplies are aligned with those for health service medicines, including changing non-compliance from a criminal to a civil offence ... While the Government is currently not using its powers to control prices of medical supplies ... it is important that we continue to have these powers”.

I have to say that, so far, I am not convinced. Will the Minister confirm that the section of the NHS Act 2006 to which he referred is essentially a consolidation measure, which merely restates the provision introduced some years before? Indeed, with the help of the Library, I can say it seems that the measure was first introduced in 1977. There seems to be no reference in *Hansard* as to the reasons that it was then introduced, although it is thought that it was part of the debates on the Bill on the status of private patients in the NHS. Looking back to those happy days, one can only imagine the debates that we had. The point is that the power has never been used: it was legislated for 40 years ago and it has never been used.

I start from the premise that, if a provision introduced 40 years ago has never been used, the first question is: should it be needed at all? So far, I have heard no convincing argument that it should. With this provision having never been used, even though on the statute book for 40 years, the Minister should not be surprised that the companies concerned are suspicious of the Government's motives for doing what they are doing. This is particularly the case because there was so little consultation with the medical technology industry, as an example, prior to the publication of this Bill.

As just one example of this, at Second Reading in the Commons, the Health Secretary said that his officials had consulted stakeholders across the supply chain, including those from the medical devices sector. My understanding, however, is that the continence-stoma industry, and its relevant trade associations, was not consulted about the potential impact of the Bill. It is unclear why the Government want to do this in relation to medical supplies. If ever there was an example of gold-plating of legislation, this is it. I hope that the Government will be prepared to modify those provisions.

If the Government really want to extend this beyond medicines to medical supplies, surely they can find a way to remove the open-ended provisions and set a threshold to trigger them. At the moment, we have no information. There was none in the impact assessment. Given that the Government are supposedly interested in light-touch regulation, it is difficult to understand why Ministers have not removed this clause from the Bill and the section from the 2006 Act. It is very difficult to see what they are getting at here.

Lord Warner: My Lords, I am very interested in this part and added my name to that of the noble Lord, Lord Hunt, in opposition to the clause. He sparked my interest by accusing me of taking through the 2006 Act. Only on further reflection with my ageing brain did I find that I had not taken it through the House when I was a Minister because it was a consolidation Act. As far as I can recall, it went through both Houses of Parliament without any direct consideration, because there were no amendments to any of the legislation covered by the Act.

The noble Lord, Lord Hunt, in a very Sherlock Holmes manner, has been pursuing where this all came from. As far as I can see, it came from 1977, after a period in the Callaghan Government when there was great excitement about the relationship between the NHS, private practice and the private sector, following my period as private secretary to Barbara Castle. It comes from that generation. As the Minister and his officials indicated in a helpful meeting that we had, it has never been used. We are talking about a provision that comes not just from a long time ago but from a totally different context. We have Whitehall picking up a piece of legislation which it thinks may be useful and slotting it into the Bill with an amended purpose.

As the noble Lord, Lord Hunt, said, the medical devices sector does not think that there has been adequate consultation. It cannot understand what the Government are up to on this. The only justification it seems to have been given is that the department is modernising—whatever that means—a particular piece of old legislation. Modernisation is one of the words that one treats with a certain amount of caution, particularly when it affects public services. We are very unclear why the devices sector has attracted the attention of the Department of Health.

We are clear what the mischief is on the medicines side that the Government are trying to address. We are not clear what the mischief is on the devices side—medical supplies—that has caused the Government to go rootling around in the archives to find a bit of legislation that enables them to place a considerable requirement on the devices sector, which has been quietly minding its own business with a kitemarking system and the usual tendering processes for selling its products to the NHS.

I think we need to be a lot clearer than we are now as to why the Government need this modernising legislation. I remember that when I was a Minister one of the things I was trying to do was reduce the regulatory burden on the NHS and the health sector. I confess to having slipped up a bit in that I totally missed this 1977 regulatory burden. I wish I had spotted it, because we could have struck it out of the legislation while we were tidying up other things. Having got that off my chest and owned up to it, I would really like to know why the Government want this gold-plated provision on regulating a sector which, as far as I can see, has not caused any great problems. Perhaps the Minister can tell us why they have suddenly gone in for this attention and whether they have actually been neglectful of the sector. Has it been ripping off people a great deal for the past seven or eight years? Should we have acted sooner?

6.15 pm

Baroness Walmsley: My Lords, I think you only want to modernise something when you are planning to use it. Therefore, I hope the Minister can understand the level of suspicion and worry that we have been hearing from the sector. I understand that the Government want to make the penalty for not complying with the information requirements more proportionate—that is fair enough. But if the Government are not planning to use those powers then why do they want to make that small but fairly significant change?

I am not aware of any competition law action against companies providing medical supplies to say they have abused the system or overcharged. I am aware that an awful lot of the companies producing medical supplies are fairly small and would fall below the £5 million level and therefore not be affected by this. However, some companies that provide a lot of equipment and supplies do come within the scope of what the Government are trying to do, but they are, in fact, very competitive. It is a very competitive market already and, as far as I know, the prices charged are affected by competition. Therefore, to my knowledge, the NHS is not being ripped off. I have asked the Minister whether he has any evidence to the contrary. I have not heard anything yet, but perhaps he will be able to give us something this evening.

Lord O'Shaughnessy: I thank noble Lords for the debate on Clause 5. I am also grateful for the tour d'horizon or history lesson on how this has all come about. It feels as though it has slipped through many nets, for which there are multiple responsibilities around the room.

I will first address the point about consultation. Noble Lords will appreciate it when I say that, personally, I have not had the chance of undertaking that consultation but it is something that I am committed to doing. Whatever has gone before, I can at least give the reassurance that I will meet the relevant bodies in the next few weeks and discuss their concerns ahead of Report. At least in a forward-looking way, I can provide that reassurance.

As everyone has stated, the critical point here is that the 2006 Act gives the Secretary of State the power to control the price of medical supplies and to collect information about medical supplies. What Clause 5 does is to ensure that the same enforcement and territorial extent to provisions apply to controlling the cost of medical supplies and health service medicines. It does not give the Secretary of State any new powers to control the price of medical supplies. There are currently inconsistencies in the enforcement and territorial extent provisions. For example, a contravention or a failure to comply with the current provisions in the 2006 Act for medical supplies can result in a criminal offence. By contrast, the equivalent penalty for medicines is a civil financial penalty. Clause 5, therefore, aligns the enforcement provisions for medical supplies with those for medicines and, in so doing, makes them more proportionate, as the noble Baroness, Lady Walmsley, has pointed out.

With respect to the territorial extent, the power to control the prices of medical supplies in the NHS Act 2006 currently extends only to England and Wales.

Clause 5 would extend the power to control the prices of medical supplies to Scotland and Northern Ireland. That would be consistent with the territorial extent of the powers to control the costs of health service medicines. That is an important point.

A number of noble Lords asked why the Government need the powers to control the prices of medical supplies when they do not currently use them nor have ever used them. That is a perfectly reasonable question to raise and one that occurred to me, too. We do not have any immediate concerns about the pricing of medical supplies. It is true that the market for medical supplies is very different from the market for medicines. It is innovative and competitive, and new medical supplies are generally faced with competition much more quickly than is the case for new medicines. However, I remind noble Lords that until recently we did not think that we needed the powers to set the price of unbranded generic medicines. We thought that competition in the market was working well and keeping prices down. When we realised that the market was not functioning as well as we thought with respect to certain products, and we were faced with companies charging unreasonably high thresholds where they had no competitors, we realised that we did not have sufficient powers to intervene when needed. That is of course one of the reasons for the Bill.

A question was asked about thresholds and when such a provision could be triggered, which is a reasonable question. The two examples I can give are when we had evidence from existing data that there may be an issue with pricing—for example, the reimbursement price that we set in primary care is increasing without an obvious reason—or when there is effectively a bottom-up complaint where patients, clinicians, commissioners or industry raise concerns because it is not obvious what is driving a price rise. I want to minimise the need for future primary legislation on medical supplies pricing controls. The Government should have the ability to intervene, but only when the market is not working well. Whether it is for medicines or medical supplies, it is right that those powers exist but are used only when necessary and proportionately. On that basis, I ask the Committee to agree that Clause 5 stand part of the Bill.

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister for his response. I also thank him for his consultation and willingness to meet bodies before Report, which I am sure will be very welcome. I understand the first argument, which is that there is a need to ensure consistency in relation to this Bill and the 2006 Act. I fully understand that. I also understand the change from criminal to civil penalties. But we then come to the issue of whether this provision should be in statute at all. The Minister himself has acknowledged that this is a different market, with competitive tendering. It is very competitive. We can see no evidence that this measure has been used for 40 years, and as far as I can see there is no evidence to suggest that it will be used any time soon.

The Minister said that it was not thought that the switch from branding to generics would arise in relation to medicines, and therefore that we should look into a

completely different sector and say that because something might happen in the future we need to have this overarching provision in the Bill. But that is not the right approach. It has become clear that there are two courses of action. One is to take this out of the 2006 Act altogether, which at the moment I rather favour. We should not regulate for something that might happen in the mystical future.

I, too, was a better regulation Minister and it was drummed into me that if you do not need it, get rid of it—and if you do not need it, do not legislate in the first place. In his heart of hearts, surely the Minister realises that this is unnecessary. The alternative approach is to take the threshold he suggested and put it in the form of an amendment so that we have some reassurance on the face the Bill that it will not be used inappropriately. Those are two particular options.

In my tour d'horizon, as the noble Lord said, I came across the comments made by the noble Earl, Lord Howe, in 1999 when my noble friend Lady Hayman was taking one of the many health service Bills through your Lordships' House. The discussion was not about devices but about the PPR scheme, because the then Government had taken powers in relation to prices. The noble Earl, Lord Howe, said that the Government had,

“arrogated to themselves sweeping powers to bring the current voluntary scheme to an end and to control the price of any drug at will. Lower medicine prices are appealing but too much of that will kill the golden goose”.—[*Official Report*, 9/2/99; col. 118.]

If the noble Earl, Lord Howe, were here arguing for this Bill, I think that he would have reflected that the case had not been made for non-health service medicines to be involved. We need to find a way forward between this stage and Report, otherwise the persuasive argument will be to remove the offending sections from the 2006 Act.

Lord Warner: Perhaps the Minister will consider the Bill's definition of “medical supplies”. It states that it,

“includes surgical, dental and optical materials and equipment (and for this purpose ‘equipment’ includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle)”.

That seems to take the Government into any bits of kit—not just ordinary devices as we normally understand them. It covers ambulances and all sorts of fixed equipment in the NHS. Is the Minister really saying that the Department of Health needs a power to cover that range of subjects—I presume that it includes scanners—where competitive tendering may be used, and that the Government reserve the right to intervene in that? That is what the Bill seems to say.

Lord O'Shaughnessy: On that specific point, there are number of things—for example, supplements, cosmetics and foods—that fall outwith the categories of health service medicines or health service medical supplies but are sometimes provided or prescribed by the NHS. The intention of the part of the Bill to which noble Lords draw attention is to capture such items when they are provided by the NHS for the benefit of patients—but not in general.

Lord Hunt of Kings Heath: Perhaps I may continue, my Lords. My noble friend will move an amendment on this later on, but the Bill states:

“‘Health service products’ means any medicinal products used to any extent for the purposes of the health service continued under section 1(1) and any other medical supplies, or other related products, required for the purposes of that health service”. So it is a draconian regulatory power. Having said that, I think that we have had a very good debate. I am sure that we will come back to this on Report.

Clause 5, as amended, agreed.

Amendment 14 not moved.

Amendment 15

Moved by Baroness Finlay of Llandaff

15: After Clause 5, insert the following new Clause—

“Specials

After section 260 of the National Health Service Act 2006 (control of maximum price of medical supplies other than health service medicines) insert—

“260A Specials

- (1) When commissioning the production of “specials”, National Health Service clinical commissioning group, hospital trust and community pharmacies must seek no less than three quotes for non-tariff items, at least one of which should be from a National Health Service manufacturer.
- (2) Unless there are over-riding reasons not to accept it, the cheapest quote must be selected.
- (3) When setting the tariff price for “specials”, NHS England, in its tariff-setting process, should seek prices from National Health Service, as well as private, manufacturers.
- (4) For the purposes of this section, a “special” is an unlicensed batch of a medicine prepared or extemporaneously dispensed.””

Baroness Finlay of Llandaff: My Lords, I will now move into a very different area, but one that is integrally related to the Bill: that of “specials”. Concerns relating to specials and obtaining them have been brought to my attention by the British Association of Dermatologists, the Royal College of Ophthalmologists, the Royal College of General Practitioners and others—so the issue goes more broadly than simply dermatology.

Specials are unlicensed medicines manufactured or procured specifically to meet the clinical needs of an individual patient. They may be put on the skin; they may be alternative ways of making a medication that can be ingested when there are swallowing difficulties: for example, in babies fitted with a fine-bore nasogastric tube, and so on. The most frequently prescribed specials are made in small batches, but sometimes there are only one or two patients at any one time in the country who need this particular preparation.

6.30 pm

In his previous answer, the Minister spoke about the problem of generics overpricing and the monopoly that some generics producers have. I suggest that unless we do something about it, we have exactly the same with specials productions. We have effectively

the ability of a monopoly—a fixed price, one person producing it and charging whatever price has been arranged. I will come on to why I think that price can be sometimes inappropriately high.

One problem is that in a hospital the trust is required to keep procurement costs down, so it seeks the most cost-effective quote—normally from an NHS manufacturing unit which will manufacture the product. I was grateful to the Minister for meeting me previously and referring to comparisons in price between England and Scotland on the drug tariff. I noted that on the figures he supplied to me, all the dermatology items listed are more expensive in England than in Scotland, although some other items are lower. Only two ophthalmic preparations were listed, whereas there are well over 20 in the Royal College of Ophthalmologists’ guidance on specials. I worry that this is a fairly incomplete list.

In primary care, the situation is different from hospitals, because the retail chemist pharmacist is required to seek only one price quote when procuring specials not listed on the drug tariff and is guaranteed reimbursement however high the price paid. Legally, a quote can be acquired from a parent or sister company, which adds an incentive to seek a high quote and thus make a higher profit. The tariff-setting process compounds the problem. Prices for specials in primary care are set by reference to the prices of the Association of Pharmaceutical Specials Manufacturers, composed of private companies only. These members manufacture relatively small quantities of dermatology specialties and on an ad hoc basis, leading to extremely high prices. Until now, NHS manufacturers claim that they have been refused involvement in the process for setting tariff prices in England, although when I met the Minister, his officials said that they had not been able to get the prices from the NHS manufacturers.

Estimates for the amount of money wasted are difficult to obtain, although the top 12 dermatology specials dispensed in England in the last full year—2013—would appear to have cost £845,000, rather than the £162,000 they would have cost if procured from an NHS manufacturer. It would seem sense therefore for commissioners to be obliged at least to seek the most cost-effective option, which is why the amendment asks for them to seek no less than three quotes. Obviously if there is only one source of production for a very difficult special, while they may seek three they would not be able to get more than one and all the NHS manufacturers might say that they would not be producing it.

The objection to the amendment raised when I met the Minister was that sometimes these things are needed very urgently. I point out that in subsection (2) the amendment states:

“Unless there are over-riding reasons not to accept it, the cheapest quote must be selected”.

I should have thought that in guidance to go along with such an amendment to the Bill a clinical emergency would count as an “over-riding reason” and therefore would not require a pharmacist to try to seek another quote. Certainly in dermatology, a day or two of seeking alternatives is not going to make a major difference to the clinical condition. However, I have had dermatologists write to me describing a clinical

situation where they will prescribe a special but the clinical commissioning group will refuse to pay for it because the community price is so high. The patient therefore has either to return to the hospital's outpatient clinic all the time to obtain their topical treatment or, worse, their disease goes out of control and they can end up on very expensive systemic therapy, with all its complications and required monitoring. That is much more expensive than if the special had been provided in the first place. We need to amend the Bill to include the requirement that there is the equivalent of a degree of competitive tendering.

The argument was also put forward that lack of economies of scale in the manufacture of specials mean that the price is particularly high. That is sometimes true, but some specials can be manufactured in batches. Some topical creams can be manufactured in a series of tubs, which will last for quite a long time.

Recent examples of overpricing for specials have come in, for example, from Surrey Downs clinical commissioning group, which recorded in November 2016 that a patient was dispensed an oestrogen implant pellet at one pharmacy for 38p, while in the same month another local patient was dispensed an identical pellet in another pharmacy for £370.59. That seems an unbelievable discrepancy in pricing. Similarly, a tablet to be taken daily for bronchitis was dispensed for one patient at the price of £46.20 a packet and in another pharmacy at £271.17 a packet—again, a vast difference. I have tabled this amendment, and I intend to take it further, because I just do not understand why NHS money is potentially being spent unnecessarily, simply because there is no requirement to seek competitive quotes. I beg to move.

Baroness Walmsley: My Lords, I hope that the Minister will accept the common-sense amendment of the noble Baroness, Lady Finlay. The amounts of money that the NHS would save on specials may not be in their billions but, as my granny used to say, “Look after the pennies and the pounds will look after themselves”. I am sure that other noble Lords will have heard that from a couple of generations back. It seems crazy if there is no opportunity for the Government to stop this. It sounds like exploitation to me and a fairly simple change to the Bill could stop it in its tracks.

Baroness Wheeler: My Lords, we very much support the intention behind this amendment and commend the noble Baroness, Lady Finlay, for her determined and dogged campaigning in highlighting this issue and trying to persuade the Government to recognise the problem. In a Bill designed to close loopholes, this is a particularly important one to address. At the same time, it would obviously save the NHS a substantial amount of money. A BBC investigation six years ago estimated a potential saving of £70 million a year just for England, so it is hard to see why the Government should not want to take urgent action now.

We have heard from the noble Baroness, and from the excellent work undertaken on this issue by the British Association of Dermatologists and other organisations, of the overall costs and substantial savings that could be made on unlicensed medicines. Addressing this issue would be to the benefit of the NHS and the many patients in community and primary

care who are denied access to special order medicines because of the way in which the current procurement system operates. The anomaly is that if they were in hospital, they would have stood a good chance of being given the drug.

We have also heard how the current system can result in some suppliers charging hyperinflated costs for specials, particularly when chemists do not buy direct from a specials manufacturer but via a wholesaler which adds its costs to the price. This results in the NHS having to pay the chemist the wholesalers' rather than the manufacturers' price, because there is no price tariff on the unlicensed specials. Moreover, prices for specials in the primary care sector are set by reference to the Association of Pharmaceutical Specials Manufacturers, which covers private companies that generally manufacture only smaller and therefore much more expensive quantities of drugs. The whole system, which has one much cheaper and cost-effective system for hospitals and another for community and primary care, surely needs to be urgently addressed.

I ask the Minister whether consideration can be given to the Competition and Markets Authority being asked to investigate suppliers. Why have the Government not looked at and learned from the Scottish system, which takes a whole-market approach in the way that the noble Baroness proposes should operate here? We understand that the Government have proposed a six-month review of the existing and proposed arrangements, but we do not feel that this adequately recognises the urgency and scale of the problem. In the Commons, the Minister, Philip Dunne, acknowledged that the Government have existing powers to address the issue, so why is it not being addressed?

The amendment contains the important provision to require NHS England, as part of its tariff-setting processes, to seek prices from the NHS as well as private manufacturers—the whole market—and we fully support this. If the Minister would at last take the important step of recognising and acknowledging the problem, then work could commence on the procurement process required to bring the new system into effect.

Lord O'Shaughnessy: My Lords, I thank the noble Baroness, Lady Finlay, for the work that she has put into investigating this issue, for her amendment and, indeed, the intent behind it, which is to save the NHS money and provide a better bang for our buck. That is something that everyone would support.

I say first that it is the Government's priority to make sure that we get the best possible results for all NHS patients with the resources we have. That is what the Bill, in its entirety, aims to do. This amendment seeks to save the NHS money on specials by requiring CCGs, hospital trusts and community pharmacies to seek no less than three quotes for non-tariff items, at least one of which should be from an NHS manufacturer and, where possible, to select the cheapest quote. It also requires NHS England to take into account prices of NHS manufacturers when setting reimbursement prices. A special is a medicine manufactured or imported to meet the specific needs of a specific patient. By nature they are bespoke, and therefore they do not have the same economies of scale during manufacture and distribution as licensed medicines. Due to the

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bespoke nature of specials, the costs associated with manufacturing and distribution will never be as low as the often relatively cheap components that make up the special. I say that by way of background for those who are perhaps not as familiar with the subject as the noble Baroness is.

I turn now to the idea of setting tariff reimbursement prices and including data from NHS manufacturers. In England, reimbursement prices for the most commonly prescribed specials are listed in the drug tariff. Those prices are based on sales and volume data, which the department currently obtains from specials manufacturers under a voluntary arrangement. The new provisions in the Bill would make reimbursement data more widely available and more accurate—which would clearly be a benefit in making sure we get value for money with specials. By setting a reimbursement price, we encourage pharmacy contractors to source products as cheaply as possible because it allows them to earn a margin, which in turn creates competition in the market and, as a result, lowers reimbursement prices. Since these reimbursement arrangements were introduced in 2011, we have observed that, in England, the average cost for specials listed in the drug tariff decreased by 39% between 2011 and 2016.

In setting that out, I do not disagree with the idea that there are instances of wild variation. Indeed, I ask the noble Baronesses, Lady Finlay and Lady Wheeler, for any examples and evidence that they have. I would be keen to see them, to better understand instances where it has happened.

Basing reimbursement prices on selling prices from more manufacturers than we do now, which the Bill would allow us to do, would make our reimbursement system more robust. For specials, we currently rely on information from those manufacturers that have signed up to our voluntary arrangement. There have been talks with NHS manufacturers to provide information on a voluntary basis. However, we have not been successful so far in securing data from NHS manufacturers that we are able to use. The Bill would enable us to get information from all manufacturers, including NHS manufacturers, for the purpose of reimbursing community pharmacies—that being, of course, one of the main aims of the Bill. Once we receive data from NHS manufacturers, we will be able to assess whether it is appropriate to include it in calculating reimbursement prices. We are actively looking to see whether we can include data as part of our reimbursement price setting, and the Bill will help us to get it. Consequently, we do not need the amendment.

6.45 pm

On seeking three quotes, including one from an NHS manufacturer, I am aware that the three-quote system was used in Scotland, but I understand that our Scottish colleagues have now simplified this and restricted it to one quote—unless the special is sourced from an NHS manufacturer or the price was authorised in the past 12 months and does not vary by more than 20%, in which case no quote is needed.

The letter I wrote to the noble Baroness, Lady Finlay, goes into a little more detail about price comparisons between the English and Scottish systems. For those

noble Lords who have not seen it, a high-level comparison of reimbursement prices showed that out of 42 products which are in both the English and Scottish drug tariffs, 31 specials—74%—have a cheaper reimbursement price in England than in Scotland. The pricing arrangements are different and complex. Although we should always be looking at international examples as a way to improve what we do here, we feel relatively confident that we are learning the right lessons and that the English system is operating for specials on the drug tariff.

In England, specials that are not listed in the drug tariff are reimbursed at the manufacturer's invoice price, less any discounts and rebates. Introducing a requirement on pharmacies to seek three quotes for every special not listed in the drug tariff, including one from an NHS manufacturer, would put a considerable burden on pharmacies and bring considerable administration costs with it. I am concerned that the amendment would cost the NHS more than it would deliver through lower prices—and we do not yet know whether it would lead to lower prices.

I also have concerns about the delay that it could create in getting medicines to patients, especially when a pharmacy may struggle to get a quote from an NHS manufacturer in a timely manner. We are uncertain whether NHS manufacturers produce all specials—for the reason I mentioned of the availability of data—including those prescribed in primary care. An NHS pharmacist in England is under a legal duty to provide medicines with reasonable promptness—an issue to which the noble Baroness alluded. The Government, together with the representative body of pharmacy contractors, the PSNC, previously considered introducing quotes, but that was not for those reasons.

We recognise that the arrangements need to do more to provide incentives for pharmacy contractors to source products, including specials, with lower prices. My officials work continuously with the PSNC to look at how we can improve reimbursement arrangements for specials.

Finally, I will comment briefly on some technical aspects of the amendment. The making of drug reimbursement determinations is a Secretary of State duty rather than an NHS England duty. Placing a duty on NHS England through the Bill would not be appropriate. Further, the drug tariff does not apply to secondary care or CCG procurement. Embedding in primary legislation the need for three quotes for non-drug tariff items would constrain hospitals in how they source specials—possibly inadvertently, for example if they do not procure medicines because they manufacture them on site.

The amendment also proposes changes to the way we reimburse pharmacy contractors for dispensing specials. Section 165 of the NHS Act 2006 sets out the Secretary of State's duties in respect to drug tariff determinations on reimbursement and states that,

“the Secretary of State must consult the representative body of pharmacy contractors—the Pharmaceutical Services Negotiating Committee (PSNC); and ...may consult other persons as he considers appropriate”.

The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 further set out that the determinations must be published in the drug tariff. With that in mind, an amendment to primary legislation,

which sets out detailed reimbursement arrangements, would not be appropriate. The purpose of the monthly drug tariff is to set out the reimbursement arrangements, which are not typically set out in primary legislation, to enable determinations to be amended to reflect the continuous change in the market.

Finally, the Secretary of State can require contractors to get three quotes for reimbursement prices, including from NHS manufacturers, if it is thought that doing so would be appropriate—although, as I indicated earlier, we are not certain that it is.

In conclusion, I hope that I have reassured the noble Baroness that we are engaged in considerable work to improve the value for money that the NHS gets in the procurement of specials. This Bill provides a key element of that ongoing work by enabling us to get information from NHS manufacturers to achieve the result that the noble Baroness and, I believe, all noble Lords seek. However, I have concerns about the impact that the first part of her amendment would have on the cost of operating the system and on prompt access by patients to specials. On that basis, I ask the noble Baroness to withdraw her amendment.

Baroness Finlay of Llandaff: I am grateful to the Minister for his very full reply, which I intend to study in detail. While he has made several points, I have ongoing concerns about leaving this unaddressed in the Bill. In light of what he said, I still do not understand why some manufacturers quote different prices for Scotland and England. Their production costs are exactly the same, so why are they quoting higher prices for England? It does not make sense. England is then paying a higher price than Scotland.

The dispensing fee that goes to the community pharmacists is the same, irrespective of the price paid. I worry that the bureaucratic burden of the clinical commissioning group refusing to pay for something because it seems inordinately expensive is a short-term view in the interests of immediate budget containment, and does not take a long-term view over the life course of an illness that could be contained by using something specifically designed for that patient so that, in the long term, there could be a decreased cost to the NHS. I remain concerned.

I have absolutely no intention of there ever being delays in accessing things in an emergency, but only where a patient is not in an emergency situation. In the community, the pharmacist often does not have things in stock anyway and has to order them. The patient or their representative has to come back the following day or 48 hours later, when something has arrived. I am not convinced that the bureaucratic burden would be that great. I can see that three quotes may be too many, but an alternative quote might be a way forward. In the meantime, I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendment 16

Moved by Lord Lansley

16: After Clause 5, insert the following new Clause—

“Price control: exemptions

After section 264 of the National Health Service Act 2006 (statutory schemes: supplementary) insert—

“264ZA Price control: exemptions

In controlling maximum prices of any health service medicines and medical supplies, including amounts payable to the Secretary of State under a voluntary or statutory scheme, the Secretary of State may not set a maximum price in respect of any product for which the cost of that product to the National Health Service has been determined through an open and competitive tender process.”

Lord Lansley: Amendment 16 takes us to an issue that was the subject of consultation prior to the introduction of the Bill: whether the Government should take powers to control prices in circumstances where there has been an open and competitive process—for example, a tender process. We know that one reason why the legislation is required is because it does not follow that because products have become unbranded generic medicines they are necessarily available on a fully competitive basis in the marketplace. We have seen examples of that. In explaining the purpose of the Bill, it was stated that:

“The government’s intention is to use these new powers where due to a lack of competition in the market, companies charge unreasonably high prices for unbranded generic medicines”.

That is understood. There can be circumstances where there is a lack of competition.

Quite clearly, however, there are circumstances where the products available and the prices set are themselves the product of an open and competitive process, such as a tender process; for example, in relation to blood products being supplied to the NHS. There may well be a degree of market dominance in some of those, even though some of the complex medicines may be generic. For example, I know a company that produces medicines in circumstances where it has to use opiates, and the availability of those opiates might be limited.

None the less, if the NHS can procure on the basis of a tender that is open and competitive, why should the Government leap in and try to amend it? I understand that the response to that is to say that companies can take account of the rebate in the prices that they set. But surely when one enters into a tender, the companies concerned may not be in symmetrical positions in relation to the implications of the rebate. Some companies are indifferent to the rebate because they are not affected by it and other companies are affected by it. The nature of the rebate over a period of time and the extent of it may be variable, and they may make completely different assumptions about what that process looks like. So it seems, on the face of it, that a much cleaner approach to the Bill would be exemption from the price control mechanism in those circumstances where clearly the mischief that the Bill is intended to remedy does not apply: that is, in an open and competitive process. I beg to move.

Lord Hunt of Kings Heath: My Lords, this is helpful. Medicines have been referred to, but I would have thought that it could be helpful with other medical supplies. I have had a letter from the British Healthcare Trades Association. It says, in relation to other medical supplies:

“We cannot think of any procurement scenario in our sector where products, on an ongoing basis, are not subject to tender or tariff procedures. The price is tested at entry and reviewed at

[LORD HUNT OF KINGS HEATH]

regular intervals, and the terms and conditions pertaining to the contract or tariff arrangements will include requirements for provision of information”.

That deals with the issue of information. So the noble Lord has put forward a very interesting suggestion and I hope that the Minister might be sympathetic to it.

Lord Warner: My Lords, I too am sympathetic to this amendment. I have a linked amendment, Amendment 33, which is about introducing a trigger before information is required. Both amendments, I think, are intended to curb the enthusiasm of Secretaries of State to intervene in a market situation where things are working reasonably well. So I have every sympathy with the amendment of the noble Lord, Lord Lansley, and I hope that the Minister will consider it sympathetically.

Baroness Walmsley: I too have a great deal of sympathy with the amendment, but I just wonder what the definition would be of an “open and competitive” process—perhaps it would be defined in regulations. Does the noble Lord agree?

Lord Lansley: That is a helpful suggestion. It might not necessarily be defined in regulations, but one might contemplate that the Secretary of State would issue guidance as to what constituted such a process.

Lord O’Shaughnessy: I thank my noble friend for his amendment and am very happy to show sympathy with it, as other noble Lords have done. I will start by stating that the Government’s view is clearly that competition and market forces are the best way of delivering value. Wherever possible, we should ensure that competition is there, that it works and that it involves as many participants as possible. In many instances, that is the way to drive better value. That being the case, my first priority is to look at ways of improving how markets operate, before reaching for the lever of regulation. That principle is guiding our work on the pricing and cost control of medicines and medical supplies.

For that reason, I understand the sentiment behind the amendment. The underlying assumption here is that if the NHS tenders for a product in a competitive market, the tender should always secure the NHS the best possible deal, and that there should be no need for further government intervention. However, while that is the case sometimes, it is not always the case. I will give a couple of examples. The department or the NHS may conduct tenders for a number of reasons, including security of supply. Furthermore, EU procurement rules—of course, that may change in future—which have been implemented into domestic legislation pursuant to the Public Contracts Regulations 2015 mean that, for contracts for products over a certain value, the NHS has to tender such contract opportunities in accordance with the requirements specified in the procurement rules.

Where there is a sole supplier of a particular product, or other factors such as supply or specificity of products apply, a tender exercise in itself is unlikely to result in significantly lower prices. For example, the department has run competitive processes for von Willebrand factor.

This is used to treat patients with a genetic deficiency in the quality or quantity of this protein, which causes problems with blood clotting. Although there are six or seven products that may meet our tender specification, they all have a different concentration of von Willebrand factor, so they are not easily interchangeable. This means that, in practice, the suppliers of such products do not compete on price, knowing that clinicians need access to all the products to select on clinical need and that the department will make awards on this basis.

7 pm

For unbranded generic medicines, the Government’s view is that, for the vast majority of medicines, competition in the market works effectively to keep prices down. We have therefore been very clear—and I am happy to repeat those assurances today, as I have done already—that it is our intention only to set maximum prices when companies charge the NHS unwarranted prices because there is no effective competition to keep prices down. Indeed, I have given examples of what some thresholds might look like for the application of such a power.

For branded medicines, the situation is different. It has long been established that an effective competitive market does not generally operate for branded medicines. For the majority of branded medicines, the existence of patent protection—a crucial part of rewarding companies for their innovations—means that no competitor will be available when a tender process is run. For the limited number of branded medicines where there may be alternative branded competitors—for example, biosimilars—products are not easily interchangeable and the level of price reductions does not therefore compare to the price reductions seen in the unbranded generics market. For that reason, it has long been the case that voluntary and statutory pricing schemes do not exclude products that may have been subject to a tender exercise.

The Government acknowledge that, just as is the case for the current statutory scheme, new statutory regulations for branded medicines should not apply to products already under a contract or framework agreement. It is currently the Government’s intention that under the new statutory scheme, products procured under framework agreements that were entered into prior to the regulations coming into force would be exempt from the pricing controls and payment mechanism in the statutory scheme. However, branded products procured after the regulations come into force would be subject to the pricing controls and payment mechanism. Like any other cost, companies would be able to take this into account when proposing a price in response to a new tender. The regulations will, of course, be subject to consultation.

It is worth noting that the 2014 PPRS is a voluntary agreement with the industry, in which the industry voluntarily agreed that products that have been the subject of competitive tenders should not be exempt from the provisions of the PPRS. Companies have chosen to be members of the PPRS despite—or perhaps because of—that feature, as opposed to entering the current statutory scheme.

I say to both my noble friend Lord Lansley and the noble Baroness, Lady Finlay, that I have great sympathy for the intention of their amendments in this group

and the previous group. I would be very happy to meet them individually to discuss the substance of their proposed amendments to see what more could be done, not necessarily through the Bill, but through any other kind of intervention that might be possible, to deliver something that has come up again and is in constant tension with the other thing that we care about, which is access and keeping prices down—something that we all want to achieve. On that basis, I ask my noble friend to withdraw his amendment.

Lord Lansley: I am grateful to my noble friend for his interesting response. Like the noble Baroness, Lady Finlay, I want to take it away and think about it. I probably felt kind of comfortable with what my noble friend said in relation to branded medicine. I thought it was specifically in relation to unbranded generic medicines that the issue was, perhaps, most likely to arise. However, I can see that he is identifying circumstances where there might be a tender process, and that the fact of it being a tender does not necessarily mean that it is open and competitive on price. I therefore see why the amendment does not do the job. However, I can still see where there might be a risk, none the less. There might be open and competitive tender situations where the companies concerned feel that they are in subsequent jeopardy that the price that has been determined competitively might be overridden by the powers that are available to Ministers. We just need to see whether, perhaps in further discussion, we can find some way to give companies an assurance that that would not be the case, whether statutorily or otherwise. I would very much value my noble friend's assurance that we will have that conversation. On that basis, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Clause 6: Provision of information to Secretary of State and disclosure

Amendment 17

Moved by Baroness Wheeler

17: Clause 6, page 4, line 4, leave out “products” and insert “medicines”

Baroness Wheeler: My Lords, this important group of amendments to Clauses 6 and 7 covering England and Wales is intended to reduce the scope of the burdensome information requirements under the Bill by excluding medical technology and supply sectors from its provisions. The Bill itself is inconsistent throughout on how it refers to this key part of the industry, variously referring to the producing of medical supplies, of health service supplies or of health service products. This gives fuel to the widespread assumption that the medical supplies parts of the Bill were a hastily drawn-up afterthought addition to its main purpose.

Our amendments in this group—excluding Amendment 19—remove all references to “health service products” in these clauses and substitute the “health services medicines” reference consistent with the other parts of the Bill applicable to the pharmaceutical industry. Despite extensive questioning and probing of Ministers by noble Lords and in the Commons and today's explanation from the Minister in our earlier

debates we have still to hear any evidence-based justification for these heavy-handed information and disclosure requirements. Both the ABPI and the ABHI have voiced strong concern at the onerous information requirements under the Bill and draft regulations and the potentially huge impact on SMEs across both sectors.

We were encouraged at Second Reading when the noble Lord, Lord Prior, in response to the widespread and deep concerns put forward, told us that,

“the last thing in the world we want to do is to build a bureaucratic edifice ... or to gold-plate regulations, information requirements and the like ... we are absolutely open to all ideas and suggestions on how we can reduce the regulatory and bureaucratic requirement on companies that supply the NHS”.—[*Official Report*, 21/12/16; col. 1685.]

Just to remind noble Lords—a point underlined earlier by my noble friend—the Bill currently requires, “a person who manufactures, distributes or supplies any UK health service products”,

and in England it is applicable to,

“any medicinal products used to any extent for the purposes of the health service continued under”

proposed new Section 264A(1),

“and any other medical supplies, or other related products, required for the purposes of that health service”.

In other words, millions of products and thousands of small, medium, large and very large businesses.

Within Clause 6, information may be required on:

“the price charged or paid by the producer for products ... the price charged or paid for delivery or other services in connection with the manufacturing, distribution or supply,”

of those products,

“the discounts or rebates or other payments given or received ... in connection with the manufacturing, distribution or supply”,

of those products and,

“the revenue or profits accrued ... in connection with the manufacturing, distribution or supply”,

of these products. These are the current draconian provisions and the only response so far to the Government's insistence that they are open to ideas and suggestions is to promise to consult the medical supplies sector after the legislation has been passed.

We will not go into the issue of the dreaded Section 260 of the 2006 Act, which already contains powers to get price control and information powers over the companies concerned, but we have still to hear a convincing argument as to why it cannot be used as a basis for seeking any further information that is required. We are told that the new provisions clarify, modernise and streamline and now, in the noble Lord's words, “make the provisions much clearer than they currently are in the 2006 Act”, but Ministers have still to explain exactly how this is the case.

To remind the Committee, the impact assessment makes the astonishing admission that the costs of these provisions have not been quantified for manufacturers, wholesalers and dispensers. Can the Minister tell the Committee whether any further work has been done on this? Surely proposals that stand to impact tens of thousands of businesses should be part of the evidence base before the Government decide to proceed with legislation? It is crucial that the Government accept our amendments and delete the medical supplies industry from the scope of Clauses 6 and 7; only then can they have the meaningful consultations with the industry

[BARONESS WHEELER]

that should have taken place before the introduction of the Bill. As noble Lords have underlined, it is not acceptable for Ministers to seek to change primary legislation to give the Government new information powers when the details and impact of the new powers will emerge only in future.

Finally, Amendment 19 in this group seeks to address the huge burden that the new information requirements will place on thousands of small businesses across the country. Bearing in mind that the Government have done no work on the potential impact on SMEs, this amendment would at least introduce a threshold limiting the businesses affected to those companies with a total workforce of more than 250 employees or with annual revenues of more than £50 million in each of the preceding three fiscal years prior to the information request. This is based on the EU threshold in relation to procurement. However, given our upcoming withdrawal from the EU, it seems sensible to specify a roughly equivalent amount in pounds. The value of the pound is, of course, currently subject to ongoing fluctuations. If the Government are inclined to act on this amendment, the Minister and his colleagues may wish to give some thought to an exact figure ahead of Report.

The potential impact of the proposed powers on SMEs is significant and could come with a significant unseen cost to domestic businesses and, as a result, to patients. A small firm such as Mediplus, with 55 employees and a turnover of approximately £6.5 million, already has to meet a range of requirements to demonstrate that it is providing value for money. The Bill would increase the time and cost of demonstrating compliance with regulations without any discernible improvement in final outcome. Increasing the bureaucratic burden on SMEs could force firms to consider how they bring products to market, which could have only a negative impact on the NHS and its patients.

The Government have indicated that they would exempt businesses with a turnover of approximately £5 million. The noble Lord will appreciate that, although that sum sounds large, it is very little in comparison with the revenues of the larger pharmaceutical firms which the Bill aims to regulate. The Government's proposed exemption will still subject a company such as Mediplus to an increased regulatory burden. As noble Lords keep pointing out, all this is completely counterintuitive, given the Government's supposed commitment to deregulation, and can only risk the viability and innovative streak of very small businesses, which we should be supporting in the current climate. I beg to move.

Lord Warner: My Lords, I have added my name to the set of amendments and strongly support what the noble Baroness, Lady Wheeler, said.

The Minister is new to this legislation. He has joined the party a little late on the Bill. I ask him to stand back and look at some of the terminology used in it. It skips lightly through about four different terms: health service medicines, medicinal products, medical supplies and health service products. It zigzags in and out of those terms throughout the Bill. It then gives a set of definitions at the end which, on the most

generous interpretation, overlap with each other. So we are imposing new obligations on a whole set of people in and around the NHS and the pharmaceutical industry without being very clear which group of products we are most concerned about. We are taking powers in the Bill to put obligations on all suppliers of those products to keep a lot of information in case the Government should at some point in future call on them to provide it. That does not seem to me a sound basis on which to legislate when we are trying to reduce the regulatory burden on not just small but medium-sized companies. We always talk about the small companies, but Amendment 19 is useful because it involves reducing the burden on medium-sized companies as well.

The impact assessment then adds to the problem by giving no idea of the impact of these provisions on those companies. At least these amendments narrow the focus to where there is an acknowledged problem—medicinal products—which is where the Bill started. If you read the Long Title, it looks as though it started as a Bill about medicines to which someone has tacked on “and related issues”, or similar words. I suspect that the Bill started off trying to deal with a genuine problem but has grown just in case it might be helpful to have some other provisions. Then, to add unnecessary complexity, it has moved around on what products are to be covered to the point where we are putting obligations on a very large number of organisations in case the Government come calling for information.

That is why I shall return to this subject when we come to Amendment 33, which tries, at the very least, to put some obligation on the Secretary of State to show that he has good reason for requiring the information sought in this Bill. That is a debate for another day, but the Minister should look very carefully at whether the Bill has a confusing set of definitions and a use of words that is going to cause a lot of confusion for the world outside.

7.15 pm

Lord O'Shaughnessy: My Lords, I thank noble Lords for their many amendments in this group. They cover two very important aspects of the Bill and I am grateful for the opportunity to provide further clarification.

I will look first at the issue of small and medium-sized enterprises. As noble Lords will understand, the medicines sector is very diverse, with companies ranging from the largest global enterprises with multiple interests to very small companies that manufacture specials on a bespoke basis. The Government have no intention to put unnecessary burdens on companies, and especially not on SMEs. The information that we would require them to keep, record and provide would not be more than companies are currently required to keep for tax purposes. For routine collections, we know that they are not an excessive burden on companies. We heard the director-general of the British Generic Manufacturers Association say at the evidence session for the Bill in the Commons that:

“Providing those data is not a big issue for the majority of our members because it is run from their invoicing system”.—[*Official Report*, Commons, Health Service Medical Supplies (Costs) Bill Committee, 8/11/16; col. 7.]

For non-routine collections, the illustrative regulations specifically make provision for SMEs, defined here as companies with a UK turnover of less than £5 million,

which can provide information in the form of pre-existing information such as invoices. This is the method by which we currently collect information from pharmacies, and we know that the process places barely any burden on them. We will consult the industry on the definition of an SME and will look also at the different definitions—I am aware that multiple definitions are being used across government. We would rely on the information provisions in the Bill to be able to obtain information to operate any price and cost control schemes. This definition of an SME would make it impossible to obtain information from certain companies and, therefore, it would be much harder effectively to operate our voluntary and statutory schemes. The amendment has the effect, therefore, of limiting applications of pricing controls set out in this Bill to large companies only.

We have considered carefully the application of the statutory scheme to small companies. Our consultation last year proposed that the exemption threshold for the new statutory scheme should be set at £5 million of branded health service medicines sales. This maintains the current statutory scheme arrangement and aligns, as we are trying to do throughout the Bill, with the current PPRS. Most industry responses agreed with this proposal, and the illustrative regulations published to aid discussion of the Bill show how it would be incorporated into the operation of the scheme.

It is also important to note that this bespoke definition is focused on the level of sales rather than company turnover, ensuring that only those businesses that make branded health services medicines sales of more than £5 million a year to the NHS will be included in the schemes. On that basis, any company, including those which fall within the EU definition of an SME, will be included in the scheme only if their sales reach this threshold. Not only does this align with the current PPRS and the Government's broader aims to support SMEs but this bespoke definition ensures that the focus is kept on sales of branded medicines to the NHS. More details are set out in the illustrative regulations for the statutory scheme that have been published alongside the Bill.

There would, however, as a result of this amendment, be additional impacts to the reimbursement of community pharmacies and GP practices, which is one of the core purposes of the Bill, and to the collection of information. Community pharmacies purchase the medicines they supply against NHS prescriptions. The drug tariff sets out a reimbursement price that they will be paid for the majority of medicines. The Government have voluntary agreements in place with manufacturers and wholesalers of unbranded generic medicines and specials. They provide us with information on their prices and volumes, which informs our reimbursement prices. As a consequence of these arrangements, the Government have been able to reimburse community pharmacies more robustly for the products covered by the arrangement.

If SMEs, whether defined as set out in the amendment or under any other definition, were excluded from the requirement to provide information, then not all manufacturers and wholesalers would be included. Reimbursement would be based on large company data alone, with the risk that the prices being

paid by small and medium-sized enterprises would not be reflected in the reimbursement prices, to their disbenefit.

In order for the reimbursement system to work effectively, appropriate data are needed from all parts of the supply chain, both large and small companies. If the prices charged by larger companies were generally lower, and these would be the only prices used to inform reimbursement prices, we would be systematically underfunding community pharmacies. This in turn could drive them to purchase products from the large companies only. The effect of this could be that small companies go out of business leading to less competition.

The third purpose for collection of information is for the Government to be assured that adequate supplies of healthcare products are available and on terms which represent value for money. We recognise that this non-routine provision of information is somewhat different from that associated with reimbursement and running our price and cost control schemes, and this is exactly why we have made provisions for SMEs.

I hope that I have assured noble Lords that the burden on SMEs has been considered carefully. We have provided bespoke definitions for both the price control schemes and the information provisions, in order that requirements are placed only on relevant companies for essential information. Broader definitions would risk both the price control schemes and critically the reimbursement mechanisms failing to work as well as they do now, let alone how they could work in the future.

I turn now to the other effect of the amendment, which is to limit application of the information-gathering powers to medicines and remove medical supplies or other related products from the scope of the clause. In response to the noble Lord, Lord Warner, I will look at the use of language and definitions subsequent to our debate today and provide reassurance that that is being done in the appropriate way and not to create confusion.

The 2006 Act gives the Government powers to control the price of medical supplies, as we have discussed at length, to collect information on medical supplies and to take enforcement action in the event of non-compliance. The Bill changes the 2006 Act in relation to medical supplies by reducing the enforcement penalties from criminal to civil, and aligns medical supplies provisions with those for medicines.

Clause 6 of the Bill brings together in one place all of the information requirements underpinning the provisions within this Bill. Without that information the provisions cannot apply to those companies. Removing medical supplies and other related products from this clause would therefore mean that we would not have the necessary information to put in place and operate a price control scheme if we wanted to and take specific action against instances of unwarranted price rises that come to our attention, although I appreciate that noble Lords have concerns that those two things will never happen in reality. Finally, it would impede our ability to put in place more robust reimbursement arrangements for medical supplies provided by community pharmacies for all the reasons that I touched on in the

[LORD O'SHAUGHNESSY]

context of small and medium-sized enterprises. That is very important information to have to ensure that reimbursement happens properly.

It is right and proper for the Government to have effective powers to gather information regarding medical supplies and other related products in order to improve our understanding of the costs across the supply chain and ensure that those are providing value for money and that we are properly reimbursing community pharmacies. The medical supplies industry is made up largely of SMEs, and my comments earlier reflect my very real concern to ensure that we ask only for essential information that does not provide an additional burden on such companies. On that basis, I ask the noble Baroness to withdraw the amendment.

Baroness Wheeler: My Lords, I thank the Minister for his response. Quite honestly, at this late stage, I will

not go into the debates that we have already had on the issue of inclusion of non-medicines in the scope of the Bill or of the burden on SMEs. But it is hard to see from the Minister's response how the Government can say that they are open to ideas and suggestions on how they will reduce the regulatory burden on the medical supplies industry and particularly on SMEs. The Minister knows that we remain to be convinced on this whole area. I hope that we can have ongoing discussions on this matter before Report. We will certainly return to this issue, but meanwhile, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Amendments 18 to 31 not moved.

Committee adjourned at 7.24 pm.