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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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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

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

House of Lords

Wednesday 25 January 2017

3 pm

Prayers—read by the Lord Bishop of Durham.

Death of a Member: Baroness Wall of New Barnet

Announcement

3.07 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Baroness, Lady Wall of New Barnet, earlier today. On behalf of the House I extend our condolences to the noble Baroness's family and friends.

Autonomous Road Vehicles

Question

3.07 pm

Asked by ***Lord Lucas***

To ask Her Majesty's Government whether they will commission a feasibility study to consider converting the entire Southern Rail network to a roadway for autonomous vehicles.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, we have no current plans to commission such a study. However, we are investing more than £100 million in research and development into connected and autonomous vehicles, and a further £100 million into testing infrastructure. We have commenced a programme of regulatory reforms that will keep pace with changes in technology as it comes to market. We continue to invest in our national rail infrastructure through transformative projects such as Thameslink and Crossrail to meet ever-increasing passenger demand.

Lord Lucas (Con): My Lords, I am very grateful to my noble friend for the access he gave me to Department for Transport officials and contractors, and congratulate him on the progress being made by his autonomous vehicle projects. Does he agree that the successful pilot currently under way at Heathrow demonstrates the potential of autonomous vehicles to serve on a branch line such as Lewes to Seaford, and that if we demonstrate success on that line, the technology would suit the peripheral parts of the Southern network very well? If we succeed at that, we will be in a great position in an industry with worldwide applications, which is just what we are trying to with the industrial strategy.

Lord Ahmad of Wimbledon: My Lords, of course we welcome the cutting-edge nature of transport innovation in the rail sector. In particular my noble friend talked about the new systems and operations at Heathrow and the pods being used there. There are also other parts of the rail network such as the DLR and the new rolling stock from Siemens that will be coming on line on Thameslink. There will be a use of technology and autonomous vehicles in what I believe will be controlled environments. He mentioned further innovations on the wider network. We need to see how technology can be adapted on existing systems while recognising that the interface with the people who work in the rail sector is equally important, and look at how their skills can be adapted in line with the technologies we are now seeing across the system.

Earl Attlee (Con): My Lords, is there any function of a train driver that cannot theoretically be safely automated?

Lord Ahmad of Wimbledon: My Lords, as I have already said, the DfT is not looking at any particular study. Train drivers across the network, across the country and beyond play a very important role. We are seeing the outlay and the new driver-only operated trains coming on board. As I have already said, we need to embrace technology and look at how the employee interface works with it. We are seeing some very good examples across the country.

Lord West of Spithead (Lab): My Lords, does the Minister not think that a very good example can be found from 54 years ago in Admiralty Fleet Order 150/63 —action to be taken in the instance of being bitten by a snake? When one looks at the Southern region, the first bit of advice is "Kill the snake".

Lord Ahmad of Wimbledon: I regret to say that I am not familiar with the order that the noble Lord has mentioned, nor with its related nature. As I often say to him, in the interests of education, I will look up that order when I return to the department.

Viscount Ridley (Con): My Lords, does my noble friend agree that, in trying to achieve autonomous vehicles, we should not only look at roads; they have uses not only on rail lines but in agricultural and marine environments, where there will be huge opportunities for connected and autonomous vehicles, although possibly short of full autonomy?

Lord Ahmad of Wimbledon: My noble friend is quite right to suggest that. He mentioned roads and I agree. As a Government, we are already trialling connected and autonomous vehicles. To digress for a moment, it is quite a strange sensation when you sit in an autonomous car for the first time, knowing that you are no longer directly in control. My noble friend talks about other uses. In my own area of transport—aviation—the autopilot has been used extensively. There is a need to see how we can embrace technology in an innovative way across all transport modes, while recognising that in certain circumstances controlled interaction is also important.

Baroness Randerson (LD): My Lords, yesterday Transport Focus announced its latest survey results, which showed the satisfaction level with the way in

[Baroness Randerson]
which Southern trains deals with delays to be down to 12%. It also referred to the timetable for London and the south-east of England as, in many cases, a work of fiction. Therefore, I have some sympathy with the imagination that the noble Lord, Lord Lucas, has applied to this Question. However, if autonomous vehicles develop as promised—and as the Government wish them to, as indicated by the Minister—they will be on our roads by 2025. What are the Government doing to prepare our legal structures and road system for this revolution?

Lord Ahmad of Wimbledon: The noble Baroness referred to Southern rail. I am sure that across the House we welcome the fact that one of the two unions is now sitting down to talk. That will be welcomed not just by those who use the network and who have particularly suffered over a long period but by us all. We hope that the result of those discussions will be positive. She talked about the importance of innovation and autonomous vehicles coming on line. Of course, she is right to raise insurance and other areas related to the use of such technology. The DfT is investing a great deal of time in research and development and in talking to the industry in exactly the way that she has suggested.

Lord Rosser (Lab): Before Southern rail tracks are tarmacked over, perhaps I may again take the opportunity to ask the Government the question that I asked the other week but to which I received absolutely no answer—namely, what financial penalties has Southern rail or its holding company, Govia, had to pay for poor performance unrelated to industrial action over the last 18 months under the terms of the franchise agreement providing for them to operate the rail service?

Lord Ahmad of Wimbledon: As the noble Lord is aware—we have already had an exchange on this—first, we hold the company to account. My honourable friend the Rail Minister meets the company once a week. Secondly, we have levied penalties in accordance with the current contract. Thirdly, as he is fully aware, the operator has invoked force majeure clauses. We need to look at each case before we decide on further action, and that work is nearly complete. However, to put it into context, as some noble Lords may know, there were 10,000 different cases and claims of force majeure between April and June, and that underlines the challenge that we face.

Lord Grocott (Lab): Does the Minister agree that anyone who suggests that we close railway lines should be referred back to the vandalism of the Beeching era, when thousands of miles of track were closed, viaducts were smashed up and tunnels were filled in? Now many communities up and down the country are trying to reopen lines that were closed. Perhaps that is a lesson that everyone should take on board.

Lord Ahmad of Wimbledon: The noble Lord is right. Indeed there are lines that were disused in the past that we are currently looking at to see how they can be brought back into service. I do not think any noble Lord, including my noble friend, has at any time suggested closing or tarmacking over railway lines. Instead we are trying to see how we can use innovation and technology in adapting for our railways of the future.

Voter Registration

Question

3.15 pm

Tabled by ***Baroness Kennedy of Cradley***

To ask Her Majesty's Government what action they are taking to increase the number of citizens registered to vote.

Lord Kennedy of Southwark (Lab): My Lords, on behalf of my noble friend Lady Kennedy of Cradley, and at her request, I beg leave to ask the Question standing in her name on the Order Paper. I refer the House to my registered interests.

Lord Young of Cookham (Con): That is a request the noble Lord was not in a position to refuse. The Government allocated £7.5 million to promote registration prior to the EU referendum, and a record 46.5 million people are now registered to vote. Online registration has made it easier and faster to make an application to register, with 75% of the 23 million applications made since the introduction of individual electoral registration using this method. The Government aim to further streamline the annual registration canvass and to work closely with the electoral community and civil society organisations to remove barriers that deter underregistered groups from joining the register.

Lord Kennedy of Southwark: My Lords, significant local elections are taking place this May, and millions of people are still not registered to vote. What are the Government going to do about this? Their response to date has been feeble, ineffective and lacking in any policy perspective other than to do as little as possible.

Lord Young of Cookham: With respect, I would reject the accusations that we have done very little. As I said, we allocated £7.5 million last May, ahead of the EU referendum, for a whole range of voter registration activities, and we now have a number of targeted initiatives for those who are underregistered—black and ethnic-minority groups, social tenants, tenants in the private rented sector, young people and students. We are developing those initiatives in order to drive up the numbers registered, which, as I said a moment ago, now stand at a record level.

Lord Rennard (LD): My Lords, what would be the problem with amending the letter sent to young people informing them of their national insurance number so that it also told them how to use that number to register online? What would be the problem with extending across Great Britain the system successfully

used in all Northern Ireland schools whereby the electoral registration process is undertaken at schools, or with extending across all universities in the UK the system used at Sheffield University for combining electoral registration with registration at the university, thereby ensuring that 76% of its students are registered to vote, compared with only 13% in other HE institutions of a similar size? Are the Government not simply dragging their feet on voter registration for young people?

Lord Young of Cookham: My Lords, there were three questions there. On the first, I am all in favour of what is called the nudge, so that when people get notified of their national insurance number they are also encouraged to vote. As for Sheffield, two weeks ago, on the Higher Education and Research Bill, we had a very good debate on the Sheffield initiative, which was part-funded by the Government. We are in the process of analysing that initiative to learn the lessons from it, and when we have done that we will be in touch with other further and higher education institutions to see whether that is the right model for them, or whether there are other models that might work even better. We are determined to do all we can to ensure that no individual is left behind and no community is unregistered to vote.

Lord Cormack (Con): My Lords, I ask my noble friend a question that I have asked his predecessors many times. What is the logical case against compulsory registration, particularly bearing in mind that it is technically an offence if you do not register?

Lord Young of Cookham: I understand that, technically, it is not an offence if you do not register. It is an offence if you do not reply to some correspondence from the electoral registration officer. I am sorry to disappoint my noble friend, but I will give him exactly the same answer that he received from my noble friend at the Dispatch Box a few weeks ago. We have no plans to introduce compulsory registration.

Lord Watts (Lab): My Lords, could we do away with all this nonsense by introducing ID cards? Would that not resolve this problem and many others?

Lord Young of Cookham: Again, I reply in a similar vein. The Government have no plans to introduce ID cards.

Lord Lexden (Con): Will my noble friend look at the Northern Ireland schools initiative mentioned by the noble Lord, Lord Rennard, which has been commended in this House across parties on a number of occasions?

Lord Young of Cookham: Yes, I am aware of the initiative in Northern Ireland. The advice that I have received is that the EROs are already free to work with local schools and colleges in their areas. Many already do so. Northern Ireland registration is different from the rest of the UK, so the schools initiative may not necessarily translate across to the rest of the UK.

Baroness O'Neill of Bengarve (CB): Does the Minister agree that Northern Ireland gives us another reason to think about compulsory registration? The Government have maintained that the common travel area will continue after Brexit. I do not see how that can be done except by people having ID cards or passports that are biometrically sophisticated and carried by all of us. It is no good just saying, "Let the illegals identify themselves".

Lord Young of Cookham: That goes way beyond my negotiating brief and takes us into very difficult territory about the future of the common travel area in Northern Ireland. I repeat that we have had a debate about ID cards and the Government have made their position clear. We are not minded to introduce them in the UK.

Baroness Symons of Vernham Dean (Lab): My Lords, have the Government done any calculations about the demographics of the electorate in coming years? Can the Government give any idea of the number of people aged 18 who will be joining the electoral register and the rate of attrition among older people who will be leaving the electoral register?

Lord Young of Cookham: The short answer is no. But the noble Baroness will be pleased to hear that, since IER was introduced, 5.7 million people between the ages of 16 and 24 have joined the register, so we have had some success in getting that end of the register backfilled. So far as the other half of her question is concerned, I will have to write to her.

School Milk

Question

3.22 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what plans they have to promote the increased consumption of school milk.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, this Government recognise the vital importance of pupils being healthy and well nourished. We already encourage the consumption of dairy products as part of a balanced diet through school funding legislation and guidance. Under the school food standards, milk must be available during school hours and offered free to disadvantaged pupils. In addition, schools and childcare settings receive over £70 million a year of funding through the EU and nursery milk schemes.

Lord Lexden (Con): Is it not the case that milk can play a conspicuous part in helping to combat obesity among children and the decay of their teeth—problems, sadly, that are increasing in our country today? Is there not more that can be done by the Government, schools themselves and interested organisations to get regular, increased consumption of milk in schools, so that children gain the health benefits that it brings?

Lord Nash: I agree entirely with my noble friend that milk is excellent for children's growth and development. It is a good source of energy and protein and contains a wide range of vitamins and minerals. It is also rich in calcium, which growing children and young people need to build healthy bones and teeth. That is why the school food standards require low-fat milk or lactose-reduced milk to be available during school hours and why we are encouraging further consumption of dairy or dairy alternatives through our *Eatwell Guide*. Of course, we are focused on healthy eating through our child obesity plan.

Lord McColl of Dulwich (Con): My Lords, is the Minister aware that children who are given whole milk—as opposed to semi-skimmed milk—for the first six years of their life are much healthier and less obese than those who are not? This is because fat in whole milk enters the duodenum and delays the emptying of the stomach, giving the feeling of fullness and therefore reducing the chances of obesity.

Lord Nash: My noble friend raises a very interesting point. I shall ensure that officials are aware of it and of all the implications to which he referred. The Government recommend that children should be given whole milk and dairy products until they are two years old because they may not get the calories or essential vitamins they need from lower-fat milks. After the age of two, children should gradually move to semi-skimmed milk, as long as they have a varied, balanced diet and are growing well. In England, whole milk can be provided up to the end of the school year in which children reach five, but after that, as I have said, school milk must be low-fat or lactose reduced.

Lord Storey (LD): My Lords, the Minister mentioned the problems of tooth decay, which in the north-west—my area—have reached worrying levels. Up to 35% of young people there have tooth decay. The Minister will be aware that in many schools, pupils are offered dental milk. Parents have a choice: they can choose ordinary milk or dental milk. This option to choose dental milk has been very helpful in dealing with tooth decay. Do the Government have any plans to further promote the drinking of dental milk?

Lord Nash: The noble Lord raises a very good point and I know he is very experienced in the area of primary schools. I am aware of a depressing number of children having their teeth removed because they have rotted at a very young age, and of many schools having things such as tooth-brushing schemes, et cetera. I shall certainly look more at what we are doing in the area he mentioned.

Lord Watson of Invergowrie (Lab): My Lords, the Minister alluded to, but did not mention, the European school milk scheme, which is funded by the European Union, but administered by Defra. It provides subsidised milk to all children above the age of five each day in school. However, Defra has committed to continuing participation in the scheme for only as long as the UK is a member of the EU. I am sure noble Lords will remember that some 40 years ago, a former Education Secretary attracted considerable opprobrium when she decided to reduce the amount of milk available to school children. I am certain the Minister would not like that to happen to his current boss, so will he commit to meeting with his fellow Ministers in the Department of Health to find a way of lobbying the Government to provide a replacement for the current scheme when it expires in 2019?

Lord Nash: We will play a full role in the existing scheme until we leave the EU, but as our involvement in the scheme will be short term, we are taking a pragmatic approach to keeping changes to current arrangements to a minimum. We will consider the long-term approach to school milk provision, following our exit from the EU, as part of our future domestic policy programme.

Baroness Manzoor (Con): My Lords, milk is also rich in vitamin D, as the Minister has said. There is some research highlighting that young girls from ethnic minorities and Asian women are more prone to vitamin D deficiency. Will the Minister say whether his department is working closely with the Department of Health to highlight this issue so that it can be addressed?

Lord Nash: I am afraid I do not know the answer to that question. I will investigate it and write to my noble friend.

Baroness Masham of Ilton (CB): My Lords, will the Minister say whether there are any systems in schools so that children who are deprived and come to school without breakfast get the milk they need?

Lord Nash: I entirely agree with the noble Baroness and I am very shocked to see how many pupils often arrive at school having not eaten. Some even do not necessarily use their dinner money to eat in school. All schools try to discourage this and try to get them to eat in school, but there are an increasing number of breakfast programmes, such as the Magic Breakfast, and we have announced in the Budget that we are providing further money to enable schools to provide breakfast clubs.

Baroness Sugg (Con): My Lords, milk production and milk prices are slowly recovering. The market is still volatile and many British dairy farmers suffer daily losses. Can my noble friend explain what steps the Government are taking to support the milk industry?

Lord Nash: I can. The UK dairy industry is enormously important to us. We are working with it to encourage greater resilience in the face of global market volatility. There are examples, with the introduction of extended tax averaging, enabling many farmers to smooth their tax bills over a five-year period.

Lord Brooke of Alverthorpe (Lab): Will the Minister confirm that free milk will still be available post-2019?

Lord Nash: I do not think that I can look that far ahead, but I would be surprised if it was not.

Child Migrants: Italy

Question

3.29 pm

Asked by ***The Lord Bishop of Durham***

To ask Her Majesty's Government, in the light of recent analysis by UNICEF of the growth in the number of unaccompanied child migrants to Italy, what measures they are taking under section 67 of the Immigration Act 2016 to relocate child refugees from Italy to the United Kingdom.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in 2016 we transferred more than 900 unaccompanied asylum-seeking children to the UK from Europe. More children will be transferred under the Immigration Act and we will continue to meet our obligations under the Dublin regulation. We have a long-standing secondee in Italy, who is based in the Italian Dublin unit. We will announce in due course the process and criteria for transferring more children to the UK from Europe.

The Lord Bishop of Durham: I thank the Minister for that Answer. During 2016, 25,800 unaccompanied and separated children arrived in Italy. The UK took only three from Italy during 2016. Would the Minister confirm that, in future, the vulnerability of the child, and in particular the danger of exploitation and trafficking, will continue to be the central criteria, and that there will be a strong enough team in both Italy and Greece for future transfers?

Baroness Williams of Trafford: My Lords, the right reverend Prelate is absolutely right to raise the issue of vulnerability, which has always been paramount in the Government's consideration of children, particularly unaccompanied children, who are travelling to this country—and not only that but their vulnerability when they arrive here. As he will know, the Government, through a Written Ministerial Statement, are committed to publishing a strategy for safeguarding unaccompanied asylum-seeking and refugee children in England.

On the capacity in Italy that the right reverend Prelate asked about, yes, we have a long-standing secondee there—and NGOs such as the UNHCR and IOM are present there. In addition to that, they are part of the EU relocation scheme.

Lord Alton of Liverpool (CB): My Lords, given that the Minister has said that vulnerability is the paramount question in the Government's mind, what progress has been made on the 10,000 children that Europol said had disappeared on the continent and the reports in the British press that some 360 children had disappeared here—as the right reverend Prelate said, almost certainly into the hands of traffickers and people who will use them for the purposes of exploitation?

Baroness Williams of Trafford: My Lords, the question of children who have disappeared here has been brought up previously in your Lordships' House and, if we ever get any information or reports of such things, obviously we will follow them up. To date we have not had representation from local authorities or the police that this is the case. As for intervening in other countries where children may have disappeared, as I have said before at this Dispatch Box, while a child is in another country they are the responsibility of that jurisdiction. We are there to help and we will help when asked, but we cannot unilaterally take these things into our hands.

Baroness Jowell (Lab): My Lords, I am pleased to follow the right reverend Prelate in pursuit of this issue, about which there is concern right across this House. I remind the Minister that Italy is where the largest number of refugee and unaccompanied children are, together with Greece. These are children who, last summer, had their faces disfigured by mosquito bites and who now have to deal with intolerable and freezing conditions. So the situation is urgent.

In a helpful Written Answer to me on 23 November, the Minister drew on the Home Secretary's reference to many hundreds of children coming to this country in the following few weeks—and she has updated us on that today. Will she give us further information on the number of children in Italy and Greece who are being assessed, and will she also make it clear to the House that there is no question that, at the end of this financial year, support for these children will cease?

Baroness Williams of Trafford: There are several questions there. The noble Baroness continued the theme of the noble Lord, Lord Alton. He spoke of children whom we would dearly like to assist who are living in conditions that are less than satisfactory in European countries. I cannot stress enough that we can help only when the country in question gives us leave to come and help. We have got a long-standing secondee in Italy. There are also NGOs in Italy such as UNHCR.

As to specifying the number, the Government have committed to transferring a specified number of refugee children to the UK from within Europe. They will specify that number in due course.

Lord Paddick (LD): My Lords, unaccompanied child migrants are likely to have been subjected to significant trauma. Can the Minister tell the House what assistance the Government are giving to ensure that accompanied child migrants receive appropriate psychological support, whether they are in Europe or in the UK?

Baroness Williams of Trafford: I think I touched on this in my response to the right reverend Prelate, but the noble Lord is absolutely right to raise this subject. He will know that the Government already have in place a comprehensive strategy for safeguarding children, including unaccompanied asylum-seeking and refugee children, who arrive here severely traumatised and in some cases require a package of care. The Immigration Minister's joint Written Statement with the Minister of State for Vulnerable Children and Families on 1 November committed the Government to publishing a strategy for the safeguarding of unaccompanied

[Baroness Williams of Trafford]
asylum-seeking and refugee children in England, and the children who have been identified for transfer from Europe.

The good news is that we have already been working with local authorities, charities and other organisations to make sure that plans are in place to give these children the immediate support they need—which I think was what the noble Lord was alluding to.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend update the House on the agreement made with Turkey to take unaccompanied children and other refugees from Greece? Could this be extended to Italy?

Baroness Williams of Trafford: My noble friend has got me on an update on the position on Turkey. If she does not mind, I will write to her.

Higher Education and Research Bill

Committee (6th Day)

3.38 pm

Relevant document: 10th Report from the Delegated Powers Committee

The Lord Speaker (Lord Fowler): My Lords, it may be for the convenience of your Lordships to have a slight pause here to enable those who are not taking part in the Bill to leave the Chamber.

Clause 47: Validation by the OfS

Amendments 312 to 316 not moved.

Amendments 317 and 318

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

317: Clause 47, page 27, line 38, leave out "and foundation degrees"

318: Clause 47, page 27, line 39, leave out "and foundation degrees"

Amendments 317 and 318 agreed.

Amendments 319 to 322 not moved.

Amendment 323

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

323: Clause 47, page 28, line 8, leave out "or foundation degrees"

Amendment 323 agreed.

Amendment 324 not moved.

Amendment 325

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

325: Clause 47, page 28, line 12, leave out "or foundation degree"

Amendment 325 agreed.

Amendments 326 to 328 not moved.

Amendments 329 and 330

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

329: Clause 47, page 28, line 16, leave out "or a foundation degree"

330: Clause 47, page 28, line 18, leave out "or a foundation degree"

Amendments 329 and 330 agreed.

Amendment 331 not moved.

Amendment 332

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

332: Clause 47, page 28, line 21, leave out "or foundation degrees"

Amendment 332 agreed.

Amendment 333 not moved.

Amendment 334

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

334: Clause 47, page 28, line 29, leave out "or a foundation degree"

Amendment 334 agreed.

Amendment 335 not moved.

Amendment 336

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

336: Clause 47, page 28, line 30, leave out "or a foundation degree"

Amendment 336 agreed.

Amendments 337 and 338 not moved.

Debate on whether Clause 47, as amended, should stand part of the Bill.

Baroness Wolf of Dulwich (CB): My Lords, I beg noble Lords' indulgence because there will be a couple of times when I will need to look up the wording of the Government's factsheet, which may cause a delay. Clause 47 states:

"If (having regard to advice from the OfS) the Secretary of State considers it necessary or expedient, the Secretary of State may by regulations … authorise the OfS to enter into validation arrangements".

That sounds quite reasonable, until one realises what is actually happening here. The OfS is the regulator of the sector and is being authorised to award degrees.

This is an extraordinary proposition. For an organisation that is regulating higher education providers, and bestowing and removing from them the power to award degrees according to terms of registration committee conditions, also to award degrees may not be unprecedented but it seemed rather amazing when I first read the clause. I read it four or five times to make sure I had not completely misunderstood it.

3.45 pm

Clearly, from what the Government have said they do not expect this to happen very often. One must rather hope it will not because, as I shall argue, the problem is not simply that this is not an appropriate thing for a regulator to do, it is that the Office for Students is not in a substantive position to do it properly. For example, the factsheet says that the OfS will, indeed, issue certificates and that:

"We would expect any degree certificate to reflect",

the institution that it came from,

"whilst also making reference to the fact that the degree was validated and thus awarded by the OfS".

I am not making a mistake; this is very clear. The idea is that there will be occasions when the OfS will award degrees.

It is my impression that the gas regulator is not allowed to set up and run gas supply companies. I do not think the communications regulator is busy setting up its own TV companies either. I therefore find it quite extraordinary that this is seen as an appropriate or, indeed, feasible state of affairs. In fact, I am completely confused that the same factsheet says that a,

"validating body and the provider being validated need to be registered Higher Education Providers".

In a sense, that is quite logical: the OfS must be a regulated higher education provider, as well as a regulator for everybody else. But we have both the substantive problem of what a regulator should be—or indeed, as far as I know, is in any other sector—and a practical problem, because it is really not clear how this could be organised.

If you are a validator working with an institution you will do so in quite an intensive way. You will help to set up procedures and processes, and the assumption will therefore be that you know what you are talking about. If the OfS is going to start awarding degrees it will need a whole set of experienced and competent people on its staff. Indeed, on page 14 of the factsheet the Government say,

"we would expect the OfS to be 'best in class' in terms of demonstrating that its validation services abide by best practice".

I am not sure who except the OfS will decide that it is "best in class" but that is what they aspire it to be.

The factsheet then starts to wonder how it will go about this. The Government say that they would expect the internal structure of the OfS that is set up,

"to be suitably independent from its other functions, to avoid any conflict of interest. This could for instance take the form of a separate internal division",

somewhere down the corridor. This is perhaps not as reassuring as most of us would wish but what is just as concerning in many ways is how the staff who are to do this, and who one would expect to include academics as well as people experienced in quality assurance, are somehow going to be found; that is, they will simply be drawn into the OfS whenever something like this happens. The faith of the Government is rather touching when they say:

"As we expect that the OfS board will between them have experience of providing Higher Education in England, the organisation would have the necessary expertise to recruit the staff needed to set up a validation function".

I do not find this terribly convincing.

Why should the OfS need to do this in the first place? The argument is that there may be cases when interesting, innovative or new higher education providers cannot get validation from anybody else, either because no one has the specific expertise or because the sector as a whole has dug its heels in. That has not happened very much and we have had a huge growth in the number of validated institutions but let us suppose that the Government really want to set up something very new and innovative, which therefore needs hands-on and genuinely expert help. Let us also suppose that validation is not just about providing a formal signature but mentoring, setting up and checking systems, and, therefore, that validators must know about the subject area. That is exactly what validation needs to be.

For example, a college I know—one of the most outstanding colleges in the country, which does a great deal of higher education—has different validators for different subject areas because it works closely with different universities which have the in-depth subject expertise and expertise in the sorts of areas that it wants. I do not see how the OfS can possibly bring people in on a very short-term basis and provide that sort of input. In fact, the Government are quite clear that it would not. They say:

"Students would be taught by their provider",

and that the OfS,

"would not have any day to day involvement in teaching",

but that:

"As the institution being validated has to be a registered higher education provider, it needs to abide by the quality regime"—

so one would hope.

The problem here is that to be a good new institution, you need a lot of hard work, a lot of expertise and, in many cases, a lot of help. If you say simply that in cases where an institution has a problem, it would just call in the OfS and it would do it, you are ignoring the substance of the whole exercise. How did we get into this mess? It is a legal mess. It is a mess because the legislation has not thought through how this would actually happen. How would somebody from the centre actually do it if they were trying to help a new, innovative, exciting institution get on its feet and get started, and for some reason there was not any help from a nearby established institution?

The Government say that this is necessary because there is "anecdotal evidence" that problems with validation have been limiting innovation. I am not sure that anecdotal evidence is quite what one would want as the basis for doing an overwhelming upheaval of a whole sector. However, it is true that, as a number of people have pointed out, the sector has been getting more uniform. There are fewer part-time students and fewer adult learners, and we have not had anything nearly as exciting as or on the scale of the plate-glass universities of the 1960s and 1970s. Although giving validation as the reason does not seem to be borne out by the evidence, it is true that it would be very nice to have more exciting new institutions in the system. I have tabled another amendment, which we will discuss later today, which addresses this point. While it is not reasonable to blame the validation system, there is a case for the Government feeling that something active needs to be done to increase the diversity, the innovation and the way in which our higher education sector responds.

[Baroness Wolf of Dulwich]

Then the question is: if you accept my argument that just getting the OfS to set up a division down the corridor and pull in a few people who will not actually be involved in teaching or very involved at all is not the way, how else might we do it? There are two things I would like to say. First, as people have pointed out, in the past new institutions were not required to have a validation agreement. They were set up and they had degree-awarding powers. That was a different era but it was an era in which government acted in a much more far-sighted, interventionist and innovation-oriented way. These institutions were set up over a long period with money, with experienced staff, with vice-chancellors who were deeply involved in the sector, and with an enormous amount of preparatory time and resource, and then they got royal charters. I am not clear whether or not the Bill actually forbids institutions to have a royal charter on top of registration—probably not—but that was how they were set up and it does not seem to have caused any problems. But that is not the way that the Government seem to want to go.

Secondly, we were wrong not to spend more time thinking about an independent quality assurance organisation, which could act in this way and could bring in additional help. It would also be a very good idea to have, as the noble Lord, Lord Stevenson, suggested, the Open University or some other institution as a validator of last resort. But I think that the problem that is being flagged is not a problem. The solution is not a solution. It will not provide the help that new institutions need. It will not create diversity. It will create conflicts of interest. I do not think that many students will want a degree that says it was awarded by the Office for Students. I hope the Government will go away and think again.

Baroness Garden of Frognal (LD): My Lords, I have added my name to this amendment for all the good reasons set out by the noble Baroness, Lady Wolf.

The ability for the regulator also to validate degrees, and thereby operate within the market it regulates, continues to be widely seen as wholly inappropriate for a regulator, and unnecessary. There is no evidence to support the lack of a suitable validator being a barrier to entry. We believe, furthermore, that there are no circumstances in which the proposal in Clause 47 would be appropriate or necessary, so there is no reason for the clause to remain in the Bill, even as a backstop power. The policy intent is covered by Clause 46, which allows the Office for Students to make arrangements with a higher education provider to act as a validator of last resort, and, as we discussed on Monday, the Open University could very well provide this service without any conflict of interest.

The removal of Clause 47, therefore, does not remove the policy intent of opening up the market through a wider choice of validation arrangements—as the noble Baroness has pointed out—but removes the need for the OfS, as authorised by the Secretary of State, to enter into validation arrangements with providers.

We support the option of identifying a central validation body. The current system of awarding bodies works well, though 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, though that should not mean that all comers must be validated. Expertise in validation —as the noble Baroness, Lady Wolf, has set out so clearly—lies in the objective and impartial appraisal of an institution's capacity to deliver and maintain appropriate standards of quality and student experience. We acknowledge that many universities already offer validation to students whose provider institutions are in trouble and such arrangements should be allowed to continue.

Whichever way you look at it, there is no need for Clause 47.

Lord Browne of Madingley (CB): My Lords, I speak for Clause 47. I have not spoken on the Bill to date but I have followed its progress closely because I was the author of the last review of higher education funding and student finance, commonly referred to as the Browne review. It looked at three pillars of the system: quality, participation and sustainability. Its recommendations were conceived as part of a holistic package. Much needed to change to secure the future of the sector. I welcome the Bill for completing many of those recommendations: by linking teaching excellence with fees charged to students; removing barriers to market entry for new providers; and creating a new regulator that is fit for purpose.

One of the principles that guided the review was diversity of institutions being essential to creating a competitive market that can provide quality teaching and satisfy student demand. Organisations offering courses validated by a provider with degree-awarding powers are critical to this diversity. However, in compiling the review, my panel and I spoke to many such organisations and found that in many instances the validation arrangements simply did not work. Highly lucrative for the established providers, they created a closed shop that stifled innovation and competition among new entrants and as a result reduced student choice. I hope, therefore, that the Bill will prompt traditional providers to recognise the benefits for all in expanding the higher education sector, promoting greater choice, greater opportunities and excellence in higher education. I hope they will respond positively to such competition.

In the rare case where that does not happen, however, it seems entirely right that the Office for Students should be able to step in as a validator of last resort. In doing so, it is essential that the regulator is independent. The OfS's board must be populated with those with no vested interests in the sector. If it is not, the reforms proposed in this Bill will be neither sustainable nor credible.

4 pm

Lord Stevenson of Balmacara (Lab): My Lords, I was going to speak early in this debate, but the intervention by the Lord Speaker, with his new approach to managing business, saved your Lordships from that—although I did have a wonderful anecdote that I was going to share and a few jokes that I thought might get us off at a good speed to what will be a very long session. However, we have all benefited from the two excellent speeches from the noble Baronesses, Lady Wolf and Lady Garden, against the clause standing part. It is

also good to see the noble Lord, Lord Browne, in his place. His report continues to send waves through this area, and it is good to hear, in his voice, what he would have done had he been in a position to deliver the rest of the recommendations in it.

These issues were raised on the last amendment on the previous day in Committee, but we are still left with some questions that need to be answered before we can make progress in this area. Although the noble Baroness, Lady Wolf, made it clear that the evidence that has been provided is only anecdotal, there may be problems in this area and it may be that we need a new validating system involving an independent validator like the OfS, which was set up to take away any hint that there might be some competitive pressures or any other issues that might interfere with innovation and challenger institutions of a new type coming into the system. However, again, I am not sure that that answers the problem of how the Office for Students, if it is the regulator, combines its responsibilities for validation with its responsibilities for overseeing standards, publishing statistics and overseeing fair access. The more we think about the OfS as some sort of Gilbertian character, reflective of all the various issues for which it is responsible and which are needed in the higher education sector, the more we lose touch with the reality of how that system will work. The noble Baroness, Lady Wolf, is quite right to ask how we got into this mess and whether this is really the right solution to get us out of it.

The issue that needs to be sorted out is whether the validation that is required in the system can be provided from within that system or whether it has to be provided from outside. If it is outside, surely it should be independent and available on the basis that it is not responsible for those who might benefit from any decision or other action that is part of it. But we have others that could do this job. The professional bodies all have a stake in the success or otherwise of the institutions and students for which they are responsible. Professional bodies do a lot of validation of institutions and courses, and their expertise could be used and harnessed. As we discussed on a previous amendment, and again today, the CNAA is still, in a vestigial form, present in the Open University, and maybe that would be a way forward. Alternatively, it may need to be a body completely independent of the system currently set up for the purpose. Whatever it is, I do not think Clause 47 has taken the trick that needs to be taken. It will not sort out the problem that we have and it should be taken back by the Government and reviewed.

Baroness Warwick of Undercliffe (Lab): My Lords, I support that final point, because we have to get at the principle of whether it is appropriate for a regulator to participate in the market it is regulating. That is the key issue. Based on the very effective arguments put forward by the noble Baroness, Lady Wolf, I urge the Government to think very carefully about this. There was an enormous amount of consultation on the Bill prior to it coming to the Commons and to this House, and yet, although there are lots of other areas where there could have been conflict rather than simple disagreement with the sector, this is the one area where the whole of the sector seems to have come together to suggest that the Government really need to think again.

As the former chair of a regulator, and having worked with other regulators, I cannot think of any regulator which is empowered to act in this way. This seems the key issue that the Government need to address. The current validation process seems to have worked pretty well, but if private providers are having problems, we should address those problems and, if necessary, have an independent validator—possibly more than one if we are going to give the range of processes that might be needed, as described by other speakers, for different courses, for example. We really need to think very carefully about that principle and address it.

Lord Mackay of Clashfern (Con): My Lords, I wonder how this works in view of Clause 47(6):

"Regulations under subsection (1) may include power for the OfS to deprive a person of a taught award or foundation degree granted by or on behalf of the OfS under validation arrangements".

What sort of validation of a degree is it when it can be taken from you—after you have got it, I assume?

Viscount Younger of Leckie (Con): My Lords, I thank noble Lords for the opportunity to discuss validation arrangements. We believe that they are essential to a fully functioning higher education sector. We have listened to the concerns raised around the potential for Clause 47 to create a conflict of interest. However, I believe that a more substantial conflict of interest already exists within the sector.

At the moment, new providers usually have to find a willing incumbent provider to validate their provision. This gives those incumbent providers significant levers to control which new providers can enter the market, and what kind of provision they offer. Even if established providers are willing to help new providers get a foothold in the sector, there is an inherent conflict of interest if the proposed new provision would directly compete with one of their own courses. Of course, conflicts of interest are not the only problem validated providers can face. We know that some providers still find it difficult to find a partner that is willing to enter into validation arrangements with them, or have established arrangements unexpectedly withdrawn, and not because they are considered poor quality.

The noble Baroness, Lady Garden, stated that there was no evidence, but I have to put her right. We only need to look at events at Teesside University last year. Following a change of leadership, the university unexpectedly withdrew important validation services to 10 local colleges, based on a change of strategic direction and not as a reflection of the quality of the provision. Ensuring new and existing high-quality providers are not locked out of the market via their preferred entry route is essential to ensuring that students are able to access the right type of higher education for them.

The OfS cannot force providers to enter into validation arrangements. If insufficient providers are entering into validation agreements with each other or into commissioning arrangements with the OfS, or these fail to correct the problem, the OfS will need to find another way to promote competition and choice. Without further powers, the OfS could potentially be forced to stand by and watch while good-quality providers

[Viscount Younger of Leckie]
that do not want to seek their own degree-awarding powers remain locked out of degree-level provision indefinitely.

The OfS will, if it performs any validation function, have to have regard to the need to encourage competition among higher education providers in England. Its aim will not be to compete with the other higher education providers with a view to diminishing their attractiveness or their ability to offer validation services. It will only offer these services if there is demonstrable evidence that validation services are failing to support the sector. A regulator needing to take a role in the sector it regulates is not totally unprecedented. For example, the Bank of England regulates many aspects of the financial sector in order to maintain financial stability in the UK. In extremis, however, it will also act as the lender of last resort, or a market-maker of last resort, for example by buying and selling assets such as government bonds to provide liquidity at a time of financial stress.

Noble Lords might wish to read an interim report by the Open University and Independent Higher Education on a joint project piloting a streamlined approach to validation. The report highlights several perceived obstacles for providers in developing successful validation partnerships, including restrictive behaviour on the part of some validating universities and,

"insufficient support for alternative delivery models including accelerated and more work-based degrees".

While the report accepts that this is not representative of all validation partnerships, it recognises the importance of validation as a route into the higher education sector and the need to fix problems which, if left unchecked, could have an adverse impact on student choice.

The report says:

"Validation stands as a critical part of the regulatory infrastructure, and its role as a gateway into the higher education sector means that any dysfunction will have a substantially negative impact on the diversity and quality of provision available to students".

Relying on incumbents to shape the future of higher education can also curb innovation and result in the entrenchment of the same model of higher education, as providers may be hesitant to validate courses that do not conform to their usual modes of delivery. As the noble Lord, Lord Browne, said, validation can create a closed shop. As part of its work on improving validation services, we would expect the OfS to draw and build on this and other work already carried out.

I also noted the suggestion in the previous debate to create an independent central validation body akin to the CNAA model. As a regulator of the higher education sector, the OfS is ultimately responsible for ensuring that the regulatory framework and its supporting processes are functioning effectively. As the noble Lord, Lord Browne, said, it therefore makes sense for the OfS to have a role in determining how validation problems that could prevent it from fulfilling its responsibilities, such as ensuring that market entry routes and related processes are functioning effectively, are actually fixed.

The OfS's broader strategic role makes it best placed to identify emerging trends in validation services across the sector and to monitor the impact of whatever solution it puts in place to correct any problems. It will be able to draw on information and advice from all its designated bodies and stakeholders to develop a robust evidence-based approach to address any serious validation failings. I reassure noble Lords that this is not a power easily given or used. We envisage that the OfS would be authorised as a validator of last resort only if it was absolutely necessary or expedient after other measures had been tried and failed.

The noble Baroness, Lady Wolf, said that this would be based only on anecdotal evidence. The Secretary of State may exercise this power if she considers that it is necessary or expedient to do so, having taken OfS advice. That advice is most likely to come in the form of an evidence-based report.

The Secretary of State would need to lay secondary regulations in Parliament. As we all know, it is common practice for these regulations, which use the negative procedure, to be laid before Parliament 21 days before coming into force, giving Parliament the opportunity to see these conditions. As always, Parliament retains the power of veto.

The regulations, should they be deemed necessary, are expected to set out the terms and conditions of any OfS validation activity. I would expect the OfS, as the overall regulator of higher education quality and champion of students' interests, to be best in class in terms of demonstrating that its validation services abided by best practice validation principles and delivered to the highest standards. I would also expect the OfS to put in place appropriate governance arrangements ensuring that an appropriate level of independent scrutiny was applied to the validating arm of the organisation and the safeguards to protect student interests.

The noble Baroness, Lady Wolf, asked how this would work, who within the OfS would do the validating and whether they would have the requisite skills and qualifications. The regulations by the Secretary of State could attach certain conditions to ensure that the service set up by the OfS was underpinned by the necessary expertise. As we expect members of the OfS board to have between them experience of providing higher education, the organisation will have the necessary expertise to recruit the staff needed to set up a validation function. For further detail on how the OfS validation arrangements would work, I again refer noble Lords to my letter of 19 January enclosing a factsheet published by the Department for Education on validation. With that, I move that this clause stand part of the Bill.

Baroness Wolf of Dulwich: My Lords, I thank the Minister for his full reply, though if anything I am now more confused than ever. Either the validation issue is a serious one, in which case presumably the OfS will be giving out degrees in large quantities, or it is not, in which case I am not quite sure why we have these massive powers. I hope the Government revisit the whole validation issue. I actually have no idea when it appeared on the scene; it was not the case for many years, and I assume it was created by government for a purpose. This is an issue we will want to return to on Report, but at the moment I am happy to see the clause stand part of the Bill.

Clause 47, as amended, agreed.

Clause 48 agreed.

Clause 49: Unrecognised degrees

Amendments 338ZA and 339ZB not moved.

Clause 49 agreed.

Clause 50 agreed.

Amendment 338A not moved.

4.15 pm

Clause 51: Use of "university" in title of institution

Amendment 339

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

339: Clause 51, page 32, line 6, leave out "(instead of the Privy Council) consents" and insert "and the Privy Council consent"

Lord Stevenson of Balmacara: My Lords, this group of amendments deals with whether and on what basis the powers of the OfS should be strengthened to ensure that it takes over responsibility for many areas which are currently the responsibility of the Privy Council. I should like to make it clear that I have no particular brief for the Privy Council. I am not a member of it; I have never aspired to it, and I do not know how it operates, although I know it operates in relative secrecy. Having experienced some of the debates around the BBC charter renewal and press standards, I want to make it clear that I am not arguing for the Privy Council. It is probably sufficiently devalued—in the public mind at least—and fallen from grace so as not to be considered the way forward in future. I am arguing in this group of amendments for some level of scrutiny and oversight, reflective of what the Privy Council does at present, to be reinserted into this Bill.

Amendments 339, 340 and 341 reinsert the words "Privy Council" where they have been deleted. In Amendments 342 and 343 and in the whole of Clause 52, there are issues that need to be addressed by the Government in promoting the Bill further on this basis and which I hope will be picked up in debate and discussed.

The correspondence on this matter has been flowing. An issue raised by the Constitution Committee resulted in a letter being sent to the noble Viscount, Lord Younger, on 6 January. It raised questions, the response to which I assume is still in preparation. I have not seen a reply, although the noble Viscount may be able to tell us when he responds to this debate. It asked why a number of powers have been transferred from the Privy Council to the Office for Students. The Delegated Powers and Regulatory Reform Committee has also expressed concern about this and the degree to which the exercise of these powers will, or will not, be subject to parliamentary scrutiny. Indeed, we have discussed these thanks to the interventions of the noble Lord, Lord Lisvane, and other noble Lords on a number of occasions, and there are more to come.

Common to all who have commented on this issue is how removing powers from the Privy Council will, in effect, remove them from the oversight of a body that is independent of and separate from Parliament. In some senses, it can be regarded as being cross-party. It behoves those who wish to support the line of argument that I am taking to make suggestions as to how this might be resolved. It seems that the Office for Students is to be the all-singing, all-dancing regulator, both validator and remover of degrees—as we have just discussed—guardian of the flame and operator of all the functions relating to higher education. If this is so, it must not be given responsibilities which cannot be checked and covered if decisions are taken which are not appropriate. There must be some sort of appeals system. Its advice to the sector and to Ministers should, on occasion—and this will be relatively slight—be subject to the will of Parliament. The question is how.

The Privy Council stands as a surrogate for a process which requires Ministers and their advisers—in this case, the Office for Students—to defend the decisions they take in a way which at least opens them to wider scrutiny. I do not see—and it will be for the Minister to convince us if this is wrong—any position within the arrangements currently laid out in the Bill which will satisfy the high standard that the Privy Council is intended to confer on this mode of scrutiny. I beg to move.

Baroness Goldie (Con): My Lords, let me first reassure your Lordships that we absolutely agree that a university title is valuable and prestigious, and that a university's reputation needs to be protected. I am grateful for the opportunity to set out how we want to do this. I thank the noble Lord, Lord Stevenson, for raising some genuinely interesting points which I shall try to address.

As regards Clauses 51 and 52, currently there are three main legislative routes for English higher education providers to obtain university title. Two of these require consent of the Privy Council. The other requires consent of the Secretary of State under the Companies Act to the use of the word "university" in a company or business name. While the criteria are the same for all routes, in general publicly-funded higher education providers obtain university title from the Privy Council. Alternative providers can currently use only the Companies Act route. This creates a slightly complex and certainly inconsistent situation. The Government want to achieve the position whereby the OfS is able to grant university title to all providers. Clauses 51 and 52 achieve this by making changes to the two Privy Council routes by transferring the responsibility for consenting to the use of university title to the Office for Students. This transfer to the OfS will not lower standards. We believe the reforms will continue to ensure that only the highest-quality providers can call themselves a university. That is because we are not anticipating wide-ranging changes to the criteria. As now, we want any institution that wants to call itself a university to demonstrate that it has a cohesive academic community and a critical mass of HE students. This means that there will continue to be a distinction between universities and other degree-awarding bodies. That is not changing.

I endeavour to reassure the noble Lord, Lord Stevenson: we envisage that providers will be eligible for university title only if they are registered in either the approved or the approved fee cap category, and have undergone strict financial sustainability and quality checks; have over 55% of full-time equivalent students studying HE; and have successfully operated with full

[Baroness Goldie]
degree-awarding powers for three years. As we do now, we intend to set out the detailed criteria and processes for obtaining university title in guidance, and we plan to consult on the detail of this before publication. The OfS will make awards having regard to this guidance, just as the Privy Council does now. I make it clear that we want this to be a high bar, designed to ensure that the reputation and prestige of being an English university are maintained. That is in the interests of the whole sector. The term "university" will, of course, remain a sensitive word under the Companies Act, which means that it cannot be used in a business or company name without the appropriate consent.

I know there are some concerns that our reforms would open the door to low-quality or even bogus universities. That would be a very unwelcome prospect. However, I submit that the protection of the word "university", along with all the safeguards I have just outlined in relation to obtaining university title, are designed to ensure that this could not happen.

I turn to the amendments that relate to the role of the Privy Council. As I said, we intend to keep the broad structures for the award of university title—that is, a decision which is made independently, having regard to published guidance. At present, providers send their application to HEFCE, which advises the department, which in turn advises the Privy Council, which then rubber-stamps a decision. This is unnecessarily complex. It is legitimate to ask the question posed by the noble Lord, Lord Stevenson: what is the role of the Privy Council in this context? That is an important question. A briefing paper of the Library of the House of Commons describes the Privy Council, in this context, as,

"effectively a vehicle for executive decisions made by the Government".

We have investigated and cannot cite a single case in recent memory where the Privy Council disagreed with a recommendation by the department.

I hope I have been able to explain that we are not planning to change the independent decision-making and scrutiny, nor the core of what it means to be a university. I therefore suggest that the amendments proposed by the noble Lord, Lord Stevenson, are not necessary and in these circumstances I ask him to withdraw Amendment 339.

Lord Stevenson of Balmacara: My Lords, I thank the Minister for her contribution. I am glad to see that she has got over her sore throat and it is not worse than at our last meeting so she is in full voice again. I am a bit confused about quite where that answer took us. I welcome the candour with which a Minister of the Crown has spoken about the role Ministers play in relation to royal charter achievements. The idea that the Privy Council has never turned down a Minister's recommendations is exactly the point that many of us were making in relation to the BBC. The former chairman is sitting there, looking as if he is about to leap to his feet and comment on this matter—I am sure he will at a later stage.

Baroness Goldie: My Lords, I was very careful and quite specific in the expression of my description of the Privy Council in the context of this Bill.

Lord Stevenson of Balmacara: The subtlety of that point, I am afraid, has been lost on me entirely and therefore I will continue. The point I was trying to make —it completes the circle of the argument—is that it is not about the Privy Council in essence but about independent scrutiny of the processes under which organisations achieve the valuable status of becoming universities, which at the moment is done by an outside body. It may not be perfect, and probably it is not, but it still requires a step to be taken by a body beyond the processes controlled by Ministers which could, at least in theory, raise questions of an uncomfortable nature.

The Minister will be aware that although there has been no occasion when the Privy Council has not accepted the recommendations, I am sure there have been occasions when difficult questions have been asked of institutions which have wanted to change statutes or make changes to their own governing arrangements. Indeed, I know that to be true. Because of Privy Council requirements these have had to be laid before the council and before they could be agreed they were the subject of a considerable exchange of information, discussion and debate. Indeed, anecdotally one could even talk about the recent press standards issue. Just after the legislation went through both Houses of Parliament, the royal charter for the press recognition arrangement could not be implemented because the Privy Council could not consider two applications for approval on a single area at the same time. There are processes that engage with the sort of scrutiny I am talking about. It is not about the Privy Council but about whether such standards should be in existence. Let us park that for a moment.

As I understand it, the changes proposed in the Bill will not reduce standards. I accept that. There will still be a process under which a university title is different from being a higher education provider—the Minister read out a list including the number of students, the amount of time it takes and so on. These are distinctions that would be made and the body currently charged with that, the Office for Students, would have to make the recommendations, whether to the Privy Council or not, on that issue. That is good and I am not trying to move away from it, but it still raises the question of whether the last step, which may not be a substantive step at the moment but could be, is still required. That is the point that we might want to return to, but I will not detain the Committee further. I look forward to reading *Hansard* and I may come back to this on Report. I beg leave to withdraw the amendment.

Amendment 339 withdrawn.

Clause 51 agreed.

Clause 52: Unauthorised use of "university" in title of institution etc

Amendments 340 to 343 not moved.

Clause 52 agreed.

Clause 53: Revocation of authorisation to use "university" title

Amendments 344 to 347B not moved.

Clause 53 agreed.

4.30 pm

Clause 54: Revocation of authorisation: procedure

Amendments 348 to 352 not moved.

Amendments 353 to 356

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

353: Clause 54, page 34, line 34, leave out from second "the" to end of line 35 and insert "notice of the decision must specify the date on which the revocation takes effect under the order to be made under section 53(1)."

354: Clause 54, page 34, line 39, after "The" insert "order under section 53(1) implementing the decision to revoke the authorisation, consent or other approval may not be made and the"

355: Clause 54, page 34, line 39, leave out from "when" to end of line 41 and insert "—

(a) an appeal under section 55(1)(a) or (b), or a further appeal, could be brought in respect of the decision to revoke, or

(b) such an appeal is pending."

356: Clause 54, page 34, line 42, after "prevent" insert "the order under section 53(1) being made or"

Amendments 353 to 356 agreed.

Amendment 357 not moved.

Amendment 358

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

358: Clause 54, page 34, line 43, at end insert—

"(10) Where subsection (8) ceases to prevent a revocation taking effect on the date specified under subsection (6), the OfS is to determine a future date on which the revocation takes effect under the order to be made under section 53(1).

(11) But that is subject to what has been determined on any appeal under section 55(1)(a) or (b), or any further appeal, in respect of the decision to revoke."

Amendment 358 agreed.

Clause 54, as amended, agreed.

Clause 55: Appeals against revocation of authorisation

Amendment 359

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

359: Clause 55, page 35, line 3, leave out from "against" to end of line 5 and insert "either or both of the following—

(a) a decision of the OfS to revoke, by an order under section 53(1), an authorisation, consent or other approval given to the institution to include the word "university" in its name;

(b) a decision of the OfS as to the date specified under section 54(6) as the date on which the revocation takes effect."

Amendment 359 agreed.

Amendment 360 not moved.

Amendment 361

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

361: Clause 55, page 35, line 12, at end insert—

"( ) vary the date on which the revocation takes effect under the order to be made under section 53(1);"

Amendment 361 agreed.

The Deputy Chairman of Committees (Baroness Stedman-Scott) (Con): My Lords, if Amendment 362 is agreed to, I cannot call Amendment 363 by reason of pre-emption.

Amendment 362 not moved.

Amendment 363

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

363: Clause 55, page 35, line 14, after "decision" insert "(including the date on which the revocation takes effect)"

Amendment 363 agreed.

Clause 55, as amended, agreed.

Clause 56 agreed.

Schedule 5: Powers of entry and search etc

Amendment 364

Moved by ***Baroness Brown of Cambridge***

364: Schedule 5, page 85, line 14, at end insert—

"( ) the suspected breach may constitute fraud, or concerns serious or wilful mismanagement of public funds,"

Baroness Brown of Cambridge (CB): My Lords, this amendment stands in my name and that of my noble friend Lady Wolf. It would limit the powers of entry and search to suspected breaches of registration concerning fraud and serious financial mismanagement of public funds. The relationship between the Office for Students and registered providers is basically a civil one, and indeed in many areas a supportive one, and criminal proceedings such as search and entry should clearly be used only in cases of very serious misconduct, as specified in the amendment.

I recognise that paragraph 1(3)(b) of Schedule 5 says that,

"the suspected breach is sufficiently serious to justify entering the premises",

and I am sure that the intent is that powers of entry would be used only in exceptional circumstances. However, this part of the Bill has been described by the sector as draconian, and the amendment, in effectively defining what constitutes "sufficiently serious" breaches, would provide considerable reassurance to the sector. I beg to move.

Baroness Goldie: My Lords, I thank the noble Baroness for her contribution. Clause 56 and Schedule 5 as drafted will ensure that the Office for Students and the Secretary of State have the powers needed to investigate effectively if there are grounds to suspect serious breaches

[Baroness Goldie]
of funding or registration conditions at higher education providers. The amendment recognises that these powers are necessary where there are suspicions of fraud, or serious or wilful mismanagement of public funds.

As the noble Baroness indicated, we would expect the majority of cases where these powers would be used to fall into this category, but limiting the powers to this category would risk compromising our ability to investigate effectively certain other cases where value for public money, quality, or the student interest is at risk.

The OfS may, at the time of an institution's registration or later, impose a "specific registration" condition. This is a key part of our risk-based regulatory framework. For example, an institution with high drop-out and low qualification rates could have a student number control imposed by the OfS if it considered that this poor level of performance was related to recruiting more students than the institution could properly cater for.

A breach of such a condition may not constitute fraud, or serious or wilful mismanagement of public money, as students will still be eligible to access student support. But there is a very real risk that students, quality, and value for public money will all suffer. If the OfS has reason to believe that despite, for example, the imposition of a condition that limits the numbers of students a provider can recruit the provider is nevertheless undertaking an aggressive student enrolment campaign, it will be important that evidence can be swiftly secured to confirm this. If the proposed amendment were made, a warrant to enter and search may not be granted in such cases. That would be an unfortunate and perhaps unintended deficiency in these important powers. I therefore ask the noble Baroness to withdraw Amendment 364.

Lord Mackay of Clashfern: Before my noble friend sits down, I was wondering whether the justice of the peace who is to decide such a matter has to give a certificate that he has been satisfied on all the matters required in the schedule at this point in order to grant the warrant, because it sets out conditions about which he must be satisfied. I think it would be quite a reasonable requirement that before the warrant was granted, he should certify that he—or she, I should of course have said—is satisfied on each one of all those rather important conditions.

Baroness Goldie: I thank my noble and very learned friend for his contribution. I cannot comment on the specifics of the operation of magistrates' warrants in England, but I certainly can undertake to write to him with clarification as to how—a very large piece of paper has just been handed to me, entitled, "What will the magistrate take into account when considering whether to issue a search warrant?" If your Lordships, like me, are agog to know this riveting information, here we go.

The magistrate would need to be satisfied on the basis of the written evidence and the questions answered on oath that reasonable grounds existed for suspecting a serious breach of a condition of funding or registration, and that entry to the premises was necessary to determine whether the breach was taking place. Further to this, the magistrate would also need to be satisfied that entry to the premises was likely to be refused or that the purpose of entry would be frustrated or seriously prejudiced. These criteria will ensure the exercise of the power is narrowly limited.

Well, as FE Smith once famously said to a judge, I may not be any wiser, but I am much better informed.

Lord Mackay of Clashfern: My Lords, I am grateful for that, but of course it does not deal with the question that I am asking. It is very useful information—or rather, I think I am right in saying that, at least so far as I followed it, it is a repetition of what is already in the Bill. The question, however, is whether the magistrate needs to be aware that these are the conditions. When applications for warrants are dealt with, the degree of speed required sometimes slightly derogates from the detail in which they are considered. This is an important matter: if a higher education institution has a search warrant on its premises that is a pretty damaging thing, especially if it happens to come out in the press that a highly regarded senior institution is being subjected to a search of its premises, which may be quite large, when it comes to it.

It would be useful to have a requirement that the magistrate should certify that he or she is satisfied on these matters and grants the warrant accordingly, or something like that.

Baroness Goldie: My Lords, I totally defer to my noble and learned friend on these matters. I do not have the technical information that he seeks, but I undertake to write to him.

Baroness Brown of Cambridge: I thank the Minister for her detailed reply. I am not sure I understand what the grounds for search and entry in the case of a risk to quality might be. Indeed, as an engineer not a lawyer, I feel that taking a large number of students who you had been told you could not take when they were supported by government loans could count as wilful mismanagement of public funds, but I am sure others have a better understanding than I have.

However, when there is time, I ask the Minister to reflect that some of the clauses in the Bill seem rather draconian powers for a regulator whose general tone is about supporting the system to prosper and grow. But at this point, I beg leave to withdraw the amendment.

Amendment 364 withdrawn.

Schedule 5 agreed.

Clauses 57 and 58 agreed.

Amendment 365

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

365: Before Clause 59, insert the following new Clause—

"Duty to compile and make available higher education information

(1) The relevant body must—

(a) compile appropriate information relating to registered higher education providers and the higher education courses they provide, and

(b) make the information available in an appropriate form and manner to the OfS, UKRI and the Secretary of State.

(2) In this section "the relevant body" means—

(a) the designated body (see section 60), or

(b) if there is no such body, the OfS.

(3) What is "appropriate" for the purposes of subsection (1)(a) and (b) is to be determined—

(a) by the designated body if the OfS has notified the body that it is required to do so (and has not withdrawn the notification), or

(b) otherwise, by the OfS.

(4) A notification under subsection (3) may relate to one or both of the paragraphs of subsection (1).

(5) When the designated body or the OfS determines what is appropriate for the purposes of subsection (1), it must in particular consider what would be helpful to the persons mentioned in subsection (1)(b).

(6) The OfS must from time to time obtain and consider, or require the designated body to obtain and consider, the views of the persons listed in subsection (7) about the information that should be made available under this section.

(7) Those persons are—

(a) UKRI,

(b) the Secretary of State, and

(c) such other persons as the body seeking views considers appropriate.

(8) In performing the duty under subsection (1)(a), the relevant body must—

(a) cooperate with other persons who collect information from registered higher education providers, and

(b) have regard to the desirability of reducing the burdens on such providers relating to the collection of information.

(9) In carrying out other functions under this section, the OfS and the designated body must have regard to the desirability of reducing the burdens described in subsection (8)(b).

(10) The functions conferred by this section do not affect any other functions of the OfS regarding information."

Amendment 365 agreed.

Clause 59: Duty to publish English higher education information

Amendment 366

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

366: Clause 59, page 37, line 3, leave out "body" and insert "bodies"

Lord Watson of Invergowrie (Lab): My Lords, in moving this amendment I shall also speak to others in this group in the name of my noble friend Lord Stevenson. Amendment 366 is self-explanatory, so I will say a little about the others. Amendment 374 seeks to extend "what … when and how" to,

"what … when, where and how",

when the Office for Students is determining what course information is to be published. It is designed to make it incumbent on the OfS to consider what would be helpful to students on higher education courses in terms of where the information should be made available. The Government have decided to ensure that how the information provided by the OfS is disseminated should be subject to all considerations with the exception of where it should be available. Surely this is one small amendment that the Minister cannot find a reason to turn down.

At first reading, Amendments 376 and 377 may seem pedantic, but the aim is simply to ensure that this subsection is all encompassing. If the Minister declines to accept these two amendments, it could imply that only some people considering applying for such courses should be included. Should that be the Minister's intention, he needs to say who he thinks might or should be excluded. I hope that would not mean mature students.

Amendment 379 would achieve the same purpose in respect of staff, who also need to be given consideration in this case. Amendment 384 would add staff working in higher education institutions to the list of those whom the OfS must consult from time to time about the information to be made available. Students and prospective employers are included in the Bill so it is fair to ask why not the people who collectively work to ensure that the student experience is as rewarding, in all senses of the word, as possible. This clearly casts the net wider than academics. Support staff in many categories also contribute to the success of the courses provided to students at our universities and it is therefore appropriate that they should also be part of the consultation exercise.

Amendments 396 and 406 are similarly concerned with ensuring that the views of higher education staff are taken into account—the first in respect of consultation prior to recommendation of the designated body and the latter in situations where it is proposed that the designation be removed. I suspect the Minister will point to the final subsection in all three cases, which allows for the involvement of "such persons" as the Secretary of State "considers appropriate". These two amendments are concerned with inclusion—involving the people who work day to day in our higher education institutions. The Government have been unwilling to include staff explicitly as the Bill stands, or perhaps they have considered them and deemed such inclusion inappropriate. As a result, what confidence would staff likely have that the Secretary of State might suddenly decide that it was a good idea and introduce them under the "such persons" subsection? These two amendments are about including staff; doing so would not exclude anyone else. It is right and proper that the Minister should agree to this common-sense addition to the Bill.

4.45 pm

Finally and most importantly among the amendments in this group in the name of my noble friend Lord Stevenson, I turn to Amendment 368. As recent media reports have revealed, too many universities today employ academic staff on short-term—sometimes zero-hours—contracts. In some situations, lecturers are even paid on an hourly basis, a situation unthinkable just a few years ago. That means that job insecurity is a major concern among staff at many institutions, and the higher education sector needs to wake up to the likely consequences of any race to the bottom in employment practices. In some ways, this is a natural

[Lord Watson of Invergowrie]
development of the increasing marketisation of the sector, a shift about which the Government are wildly enthusiastic and a philosophy that underpins the whole Bill. Those of us urging caution have genuine fears as to where it might lead.

We have heard much about the importance of student satisfaction in our deliberations, and rightly so. That is one of the metrics that is supposed to drive up teaching standards, yet it seems to ignore the fact that good teaching depends not just on well-qualified staff but on well-motivated staff. What sort of motivation stems from not knowing whether you are going to be teaching a class next week, far less next term or next session? That is a question universities have to consider very carefully and the requirements of Amendment 368 will encourage them to do that. Those that place short-term economic considerations before the long-term interests of their staff—and, by extension, their students—are treading a path that leads to poorer standards and potentially lasting damage to their reputation. Institutions that have nothing to hide in terms of employment practices—and their impact on staff/student ratios—have nothing to fear, and neither should the Government in accepting this improvement to Clause 59. I beg to move.

Lord Lucas (Con): My Lords, I have three amendments in this group. Amendment 371 urges the Government to make as much of these data open as possible. This is not really the pattern with university data at the moment. Even HESA, which is an easy organisation to deal with, none the less guards them closely so that it can charge fees for their release. I think life will be a good deal better for prospective students if that information is more widely used, available and circulated. It is a principle the Government have established in other areas such as Ordnance Survey and the Land Registry, and it has worked extremely well. I would like to push the Government in that direction so far as university data are concerned.

My second amendment is Amendment 383 and we have been here before. It should be obvious that the principal customers for these data are prospective students. They are the ones who need to know about universities. We really ought to take the views of people who look after prospective students into account in deciding how data should be made available.

I have tabled Amendment 413 because there is a tendency for bodies, once you have given them the power to charge, to start inventing things to do, because they can always get them paid for. Look at UCAS, for example; it probably does five times as much as it needs to. The central "apply" function, which everybody uses, is only about 20% of UCAS's activity. The rest it can get paid for and it is interesting, so it does it. This body ought to be under tighter financial discipline than that.

Baroness Garden of Frognal: My Lords, I support the amendments in this group, particularly Amendment 368, which is about the number of staff on non-permanent contracts and zero-hours contracts, as the noble Lord, Lord Watson, set out. As we have discussed before, these sorts of metrics might be more valuable to the TEF than many of the metrics already in it, because the non-permanent staff and zero-hours staff will have a greater impact on teaching quality than many of the other things which the TEF purports to measure. On Amendments 376 and 377, it is important at all stages of the Bill to ensure that adult, mature and part-time students are included as part of the student population.

Baroness Wolf of Dulwich: My Lords, I have one amendment in this group, which is a very small amendment in that it asks that one word be substituted for another. But if I read out the original clause, it may be evident why this is really quite important. I am very much in sympathy with what the noble Lord, Lord Lucas, said about keeping an eye on the fees that people charge.

The original Clause 61(2) reads:

"The amount of a fee payable by a registered higher education provider under this section may be calculated by reference to costs incurred, or to be incurred"—

so you do not even have to incur it yet—

"by the body in the performance by the body of any of its functions under this Act which are unconnected with the provider".

My amendment would replace "unconnected" with "connected". This is quite typical of a number of statements in the Bill to which amendments have been tabled already; it implies a degree of freedom for the regulator or designated body to impose fees of any sort or level, without any requirement that the necessity or even the link to the provider being charged be demonstrated.

It would be entirely possible for the Government, without losing sight of any of their major objectives, to go through the Bill and change these extraordinarily open-ended invitations to levy a charge for something that we know not what. It starts to sound something like the South Sea bubble. With a regulator or an official body, it is very important that the nature of fees, like the nature of information, be very clear, and that there is not an ambiguity in the legislation about the ability of organisations that rest on statute to be able to levy charges that are not in any sense proportionate to the activities or what is required of the individual provider. I would be very grateful if the Minister could come back to us on that.

Lord Liddle (Lab): My Lords, the amendments in my name are relevant to the points that the noble Baroness, Lady Wolf, has just made. I am concerned with the scope that the OfS has to levy charges on the sector; effectively, it is a provision to tax the sector for unlimited purposes, which are not clear, and there needs to be some mechanism of control and full consultation on any proposed charges. Just as regulators impose limits on rises in fees on institutions in line with the cost of living, similarly the regulators should be under an obligation to try not to put up their charges on the sector above the rate of increase that universities can themselves charge.

Lord Mackay of Clashfern: I think that I am right in saying that some years ago it was decided that a statutory authority did not have power to charge fees unless it was expressly conferred on the body in question. As the noble Baroness said, this is the authority for this fee, so it is exceedingly important that we see that

the authority is limited to what it ought to refer to. How exactly it should be dealt with in relation to unconnected matters strikes me as a little strange. I cannot see exactly why something completely unconnected should be regarded as something on which you can reasonably charge other people—taxpayers, or people applying for help.

The noble Lord, Lord Watson of Invergowrie, said that there was no reference to employees in this Bill, but I found one—and I found it a little unsatisfactory, and tabled an amendment to deal with it, Amendment 492. In a moment of reflection, he may see it and come to my help.

Baroness Brown of Cambridge: My Lords, I remind the Committee that the people who will pay these fees that the regulator is charging will be the students. Therefore, we very much need to make sure the regulator is charging the absolute minimum it can to perform its duties effectively.

Lord Willis of Knaresborough (LD): My Lords, I shall speak to Amendment 371. I hope that the amendment of the noble Lord, Lord Lucas, will not get lost in this group because what he raises is fundamental to the Bill and to the way we are going to improve the offer we make to students and the veracity with which we look at the higher education sector.

I have written to the Minister on this issue and raised it as a question earlier. I am referring again to the role of HESA and the role of data. Unless you have accurate data with which to interrogate, and unless they are consistent across all providers, quite frankly, they are pretty useless. At the moment, it is not simply that you cannot get at some of HESA's data. I gave the Minister an example just this week. You cannot get the data because HESA simply says, "Different institutions collect them in different ways". That is a brilliant cop-out for saying, "We can't let you have it".

The other cop-out, which occurs quite frequently, is to say that data are sensitive to the universities because they own them, and therefore could be damaging to their reputation. If we are to give students the sort of offer they rightly should have, and if we are to give taxpayers the confidence they rightly should have, data should not be hidden. Data are absolutely key to delivering a higher education system of the highest possible quality which will maintain the high quality we already have in the future. I urge the Minister, in reference to Amendment 371, to reflect on how we are to ensure that data are not just left to HESA, but that the Office for Students has powers to ensure their consistency and effectiveness to be interrogated.

Viscount Younger of Leckie: I thank all noble Lords who have raised these important issues. I agree immediately with the noble Lord, Lord Willis, about the importance and quality of data. I will make one overarching point, in the interest of brevity, before addressing individual amendments. We are not seeking to determine in the Bill exactly which data must be collected or exactly who must be consulted. Data requirements and needs evolve over time, and the body needs to maintain the ability to adapt to changes.

In response to comments made by the noble Lord, Lord Watson, I appreciate what he said. We do not feel it is appropriate, for example, to specify workforce data when all other data will—very importantly—be agreed under the duty to consult. The relevant body will have the duties to plan data publication in conjunction with the full range of interested parties, with sufficient flexibility to take a responsive approach.

Turning to Amendments 376, 377 and 383, given the OFS's duty to have regard to the need to promote greater choice and opportunities for students, just to reassure my noble friend Lord Lucas, there is, to my mind, no question that under Clause 59(5), considering the needs of people thinking about undertaking higher education courses must include considering what would be helpful to prospective and potential students from a diverse range of backgrounds.

In considering Amendments 368, 379, 384, 396 and 406, it is expected that the views of higher education staff will be considered as part of the voice of the sector institutions. The OfS will also have the discretion to consult persons they consider appropriate, including any relevant bodies representing the staff interests. I think the noble Lord, Lord Watson, foresaw the words that I have just spoken.

Lord Watson of Invergowrie: On that point, the Minister said that it would be "expected" of the OfS, but I do not see what could be done if it chose not to do it. I would think it was a normal thing to do, but if it is expected, why not just say that or something equivalent to it in the Bill?

5 pm

Viscount Younger of Leckie: The noble Lord makes a fair point, but I must go back to the overarching statement that I made at the beginning of the Bill: we have carefully crafted it to look ahead to the future. I have said specifically that we do not consider it right to be too exact in what we put in the Bill. I hope he will accept that.

On Amendment 371, spoken to by my noble friend Lord Lucas, the Government are committed to making data available publicly and in a format that can be easily used wherever possible. However, the data body will collect personal data and it may therefore not be appropriate or lawful to publish identifiers. In accordance with the code of practice for official statistics, the statistics published by the body should not reveal the identity of an individual.

On Amendments 413, 415, 415A and 415B, fees should be fair and proportionate, neither creating disproportionate barriers to entry nor disadvantaging any category of provider. I want to reassure noble Lords that there are several safeguards to prevent a burdensome charging regime. First, the Bill makes clear that the total fees charged by the body must not exceed the total costs incurred. However, I recognise that there must in addition to this be due oversight to ensure that these costs are kept to a minimum—so let me answer some points raised by the noble Baroness, Lady Wolf, the noble Lord, Lord Liddle, and my noble and learned friend Lord Mackay. The data body will be required to publish a statement showing the

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amount of the fees it charges and the basis on which they are calculated. Also, as part of the triennial reporting process, the OfS must report to the Secretary of State on the appropriateness of any fees charged by the designated body. We are confident that these safeguards are sufficient and that further specific requirements would be overly restrictive.

On Amendment 366, I must stress that we want to minimise the regulatory burden on providers by avoiding duplication. For this reason, it is best for the sector to have only one body designated to collect the information at any one time. However, I also recognise that there are already several sector organisations with an interest in gathering data, and I understand that noble Lords may have concerns about the availability of data and collaboration over their use. I assure Members that Clause 59(7) and (8) set out a clear expectation that the data body must co-operate with those other organisations and have regard to the desirability of reducing burdens on providers.

The noble Baroness, Lady Wolf, referred to unconnected fees. I hope I can give some reassurance that I understand the intention to ensure that fees are calculated fairly. However, I fear the effect would be to damage the interests of both the data body and providers. It would prevent legitimate overheads related to designated functions being incorporated in the annual fee and block the current practice, common to sector bodies, of charging fees varied by the number of students at a provider, which is essential to ensuring proportionate and affordable fees. With these explanations, I hope the Lord will withdraw Amendment 366.

Lord Mackay of Clashfern: On the Minister's last point about connected and unconnected fees, I understand that the Secretary of State has to be satisfied that the fees charged are proportionate. On the other hand, the Secretary of State is not obliged to consider whether they are connected in any way whatever with the provider. That is the problem. The Secretary of State's power to monitor the fees depends on what the authority is for the fees being charged. Most of the illustrations that the Minister has given are connected in some way with the provider. For example, if it is a question of assembling data, the data will include those provided by the provider who is charged—so that is connected to the provider all right. It is perfectly reasonable to charge for overheads in relation to a function connected with a provider, but charging for those unconnected with a provider seems to open up a large and rather unspecific area.

Viscount Younger of Leckie: I will attempt to answer the points made by my noble and learned friend. Surely this is encompassed by the safeguards that I outlined. There will be an opportunity on a regular basis, as I mentioned, to analyse and scrutinise the statement showing the amount of fees, including those that are unconnected, and how they were made up.

Lord Lucas: My Lords, I am grateful to my noble friend for his reply on Amendment 371, but I think he rather missed the point. In respect of school data, the Department for Education already publishes extensive information, under the heading of performance tables, as open data. The level of information has grown substantially over the years and is free for anyone to reuse, as is the database on schools, EduBase. I am very sorry to say, as the proprietor of the *Good Schools Guide*, that this has resulted in the emergence of a lot of competitors, which is thoroughly tiresome. While it would be convenient for me if the Government did not do it, it is very good for the economy and for students and pupils that they have, and it is the pattern I would like them to pursue with regard to university data.

The Department for Education also makes available the National Pupil Database, which is confidential, at various levels. The whole database is available to the "very serious" level of researchers, but anonymised information is also available at pupil level, which is immensely useful for understanding how schools are operating and how various examinations and other aspects of the school system are working. That is a precedent for really good practice that is, now, contained within the same department that will look after university data.

The practice for university data is different. It is either held by UCAS, in which case it is effectively not available to anybody, or by HESA. In the latter case, there is a long application process to determine whether it will let the data out because nothing is standardised and you have to ask permission from individual institutions. It then charges a hefty fee. This is a comfortable situation for me, as a user of HESA data, because it means I do not get a lot of competition, but it is not the way the market should be. The market should be open. The only reason that the use of the data is charged for is that HESA wants to make money out of it. If it is given the power to charge institutions then it is in the interests of the economy and the country that it makes it freely available whenever it can. It is much better for the country that HESA should make a little bit of money by making it available in a more restricted way and for a large fee, or a substantial fee—not an unreasonable fee; HESA is a good organisation. We should go open. The Government, as a whole, have made a lot of progress in making much bigger collections of data open, when they were formally charged for. There has been a lot of benefit from that. That is the practice we should follow with the university data.

Lord Watson of Invergowrie: My Lords, this has been a livelier group of amendments than had been anticipated. Gratitude is due to the noble Baroness, Lady Wolf, for exciting some controversy. It is a surprise that the shortest amendment to the entire Bill—it is just two letters—led to so much impassioned debate.

The Minister is treading on rather boggy ground if he feels that his legal people will be able to counter the argument of the noble and learned Lord, Lord Mackay, about the precedent for statutory bodies. The Minister has developed the practice of writing letters to us in Committee. I suggest to the noble and learned Lord, Lord Mackay, that he might write to the Minister on this particular point and perhaps assist in clarifying the position and getting the Minister to think again.

I liked the noble and learned Lord's point about spotting a reference to an employee in the Bill. He was, of course, referring to a part that we will consider on

Monday, but that it took his legal eagle eye to detect it underlines my point about staff being notable by their absence from the Bill, and hence, I would suggest, being undervalued. I take on board what the Minister said about it being expected that the OfS will consult staff. Experience tells us that expecting organisations or employers to do something on behalf of their staff often leads to disappointment, and that is why I believe it should have been a bit more explicit in the Bill. I suspect, however, that his comments today may well be quoted by a number of staff and their representative organisations in future. There is another question, which perhaps he could answer in one of his famous letters, which is: what recourse would be open to staff if it was shown that the OfS was not considering their views, as I suggested in my amendment?

Other noble Lords spoke about financial issues, which I think remain as they were prior to the debate, but it has been both enjoyable and interesting. On that basis, I beg leave to withdraw my amendment.

Amendment 366 withdrawn.

Amendment 367

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

367: Clause 59, page 37, line 3, leave out from "of," to end of line 5 and insert "appropriate information relating to registered higher education providers and the higher education courses they provide"

Amendment 367 agreed.

Amendment 368 not moved.

Amendments 369 and 370

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

369: Clause 59, page 37, line 10, leave out paragraph (a) and insert—

"(a) at appropriate times, and"

370: Clause 59, page 37, line 12, leave out from "published" to end of line 13 and insert "in an appropriate form and manner."

Amendments 369 and 370 agreed.

Amendment 371 not moved.

Amendments 372 and 373

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

372: Clause 59, page 37, line 13, at end insert—

"(4A) What is "appropriate" for the purposes of subsections (1), (3) and (4) is to be determined—

(a) by the designated body if the OfS has notified the body that it is required to do so (and has not withdrawn the notification), or

(b) otherwise, by the OfS.

(4B) A notification under subsection (4A) may relate to one or more of subsections (1), (3) and (4)."

373: Clause 59, page 37, line 14, leave out from beginning to "must" in line 15 and insert "When the designated body or the OfS determines what is appropriate for the purposes of subsection (1), (3) or (4), it"

Amendments 372 and 373 agreed.

Amendment 374 not moved.

Amendment 375

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

375: Clause 59, page 37, line 17, leave out "in England"

Amendment 375 agreed.

Amendments 376 and 377 not moved.

Amendment 378 had been withdrawn from the Marshalled List.

Amendment 379 not moved.

Amendment 380 had been withdrawn from the Marshalled List.

Amendments 381 and 382

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

381: Clause 59, page 37, line 21, after "consult" insert ", or require the designated body to consult,"

382: Clause 59, page 37, line 28, leave out "in England"

Amendments 381 and 382 agreed.

Amendments 383 and 384 not moved.

Amendments 385 to 387

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

385: Clause 59, page 37, line 39, leave out "its"

386: Clause 59, page 37, line 39, after "OfS" insert "and the designated body"

387: Clause 59, page 37, line 44, leave out "in England"

Amendments 385 to 387 agreed.

Clause 59, as amended, agreed.

Clause 60: Designated body

Amendments 388 to 391

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

388: Clause 60, page 38, line 2, leave out first "section" and insert "sections (Duty to compile and make available higher education information) and"

389: Clause 60, page 38, line 6, leave out "section" and insert "sections (Duty to compile and make available higher education information) and"

390: Clause 60, page 38, line 10, leave out from "decision" to end of line 11 and insert "about what is appropriate for the purposes of section (Duty to compile and make available higher education information)(1) or section 59(1), (3) or (4)."

391: Clause 60, page 38, line 14, leave out "duty under section" and insert "duties under sections (Duty to compile and make available higher education information)(1) or"

Amendments 388 to 391 agreed.

Amendment 392 not moved.

Amendment 393 had been withdrawn from the Marshalled List.

Clause 60, as amended, agreed.

Schedule 6: English higher education information: designated body

Amendment 394

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

394: Schedule 6, page 90, line 17, leave out "in England"

Amendment 394 agreed.

Amendments 395 and 396 not moved.

Amendment 397

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

397: Schedule 6, page 91, line 6, leave out "section" and insert "sections (Duty to compile and make available higher education information) and"

Amendment 397 agreed.

Amendment 398 not moved.

Amendment 399

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

399: Schedule 6, page 91, line 21, leave out "duty of the relevant body under section" and insert "duties of the relevant body under sections (Duty to compile and make available higher education information)(1) and"

Amendment 399 agreed.

Amendments 400 and 401 not moved.

Amendment 402 had been withdrawn from the Marshalled List.

Amendment 403 not moved.

Amendment 404 had been withdrawn from the Marshalled List.

Amendment 405

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

405: Schedule 6, page 92, line 11, leave out "in England"

Amendment 405 agreed.

Amendments 406 and 407 not moved.

Amendments 408 to 412

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

408: Schedule 6, page 92, line 27, leave out "duty under section" and insert "duties under sections (Duty to compile and make available higher education information)(1) and"

409: Schedule 6, page 92, line 31, leave out "duty under section" and insert "duties under sections (Duty to compile and make available higher education information)(1) and"

410: Schedule 6, page 92, line 38, leave out "duty under section" and insert "duties under sections (Duty to compile and make available higher education information)(1) and"

411: Schedule 6, page 93, line 11, leave out "in England"

412: Schedule 6, page 93, line 22, leave out "duty under section" and insert "duties under section (Duty to compile and make available higher education information)(1) or"

Amendments 408 to 412 agreed.

Schedule 6, as amended, agreed.

Clause 61: Power of designated body to charge fees

Amendment 413 not moved.

Amendment 414

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

414: Clause 61, page 38, line 32, leave out "duty under section 59(1) and its other"

Amendment 414 agreed.

Amendments 415 to 415B not moved.

Clause 61, as amended, agreed.

Clause 62 agreed.

5.15 pm

Clause 63: Studies for improving economy, efficiency and effectiveness

Amendment 416

Moved by ***Lord Lucas***

416: Clause 63, page 39, line 37, at end insert ", limited to the specific activities of the registered provider under the same contractual conditions as registration."

Lord Lucas: My Lords, many of the providers which will come under this Bill are operating with similar qualifications in other markets and countries. I thoroughly approve of this clause and what it aims to do, but the providers deserve the same level of confidentiality from researchers as they get from regulators. I beg to move.

Baroness Goldie: My Lords, I thank the noble Lords, Lord Stevenson and Lord Lucas, and the noble Baroness, Lady Wolf, for raising these important issues.

The amendments seek to limit the power of the OfS or someone working on its behalf to carry out efficiency studies on HE providers under Clause 63. I assure the noble Lord, Lord Lucas, that we entirely accept the

principle of what he is seeking to achieve here. For many providers on the register the teaching of higher education will be just a part of their overall business. Many providers will also carry out other activities, such as offering corporate conference facilities or operating sports facilities which the public can access.

Let me also assure my noble friend that the Government would not want the OfS to look at the efficiency of those other activities. Instead, the Government would expect the OfS to confine its efficiency studies to providers' HE teaching activities. I accept that the Bill does not explicitly limit the OfS's efficiency studies power in the way my noble friend seeks but we do not think that these amendments would achieve that laudable end. They seek to link the OfS's efficiency studies power to those activities which are subject to the contract between the OfS and the provider relating to the provider's registration. A provider's registration, however, is not subject to a contract.

The Bill is not, though, entirely silent on how the OfS should carry out its functions. I point to the general duties this Bill places on the OfS in Clause 2(1)(e), which requires the OfS to,

"use the OfS's resources in an efficient, effective and economic way".

Furthermore, Clause 2(1)(f) places a duty on the OfS to have regard to,

"the principles of best regulatory practice, including the principles that regulatory activities should be … transparent, accountable, proportionate and consistent, and … targeted only at cases in which action is needed".

Let me also assure my noble friend that individuals conducting efficiency studies on behalf of the OfS will be subject to the same confidentiality requirements as the OfS.

I hope that these latter points provide my noble friend with some reassurance that the OfS will carry out its efficiency studies in the focused way he seeks to achieve. This level of focus is certainly something the Government want to see. In these circumstances I ask him to withdraw Amendment 416.

Lord Lucas: My Lords, I am very grateful to my noble friend for that explanation, which I shall go away and chew over. It is not that the university might be running a tiddlywinks club for money that worries me, but that it may well be selling the same higher education product as commercial training outside the university sector, or internationally online. These are both money-making activities where the university is concerned about commercial confidentiality but, under the Bill's current wording, researchers might be asked to look at and gather data on them.

I shall have to do some work between now and Report, but I hope the Government will look again at what I have said today. I beg leave to withdraw the amendment.

Amendment 416 withdrawn.

Amendments 417 to 419 not moved.

Clause 63 agreed.

Amendment 419A not moved.

Clause 64: Registration fees

Amendment 420

Moved by ***Baroness Brown of Cambridge***

420: Clause 64, page 40, line 26, leave out subsection (3) and insert—

"( ) The regulations may not provide for the fees to be calculated except by reference to costs incurred, or to be incurred, by the OfS in the performance of its functions connected with the institution in question."

Baroness Brown of Cambridge: My Lords, in moving Amendment 420, which is in my name and that of my noble friend Lady Wolf, I will also speak to Amendments 421 and 421A in my noble friend's absence.

These amendments bring us back to the discussion we had previously about the costs and charges of the OfS. The purpose of the amendments is to probe the issue of who will act to control the costs and charges of the regulator—the Office for Students. Higher education providers will pay these charges, and hence students, at the end of the day, will have to bear them. The OfS is referred to frequently as a regulator by Ministers and others talking about the Bill, but nowhere is it clear in the Bill whether or not the OfS will have to sign up to the Regulators' Code, published by the Department for Business, Innovation and Skills in 2014. If it was clear that the OfS was covered by the code, it would provide some of the reassurance sought in a number of amendments to the Bill.

The code for example requires that regulators must consider how they can best minimise the,

"costs of compliance for those they regulate"—

the issue behind some of these amendments. They also,

"should avoid imposing unnecessary regulatory burdens",

and,

"should carry out their activities in a way that supports those they regulate to comply and grow".

As your Lordships can hear, the language of the Regulators' Code is both clear and supportive. Can the Minister provide assurance that the OfS will sign up to the Regulators' Code? It would be helpful in providing clarity and reassurance to the sector. I beg to move.

Lord Lucas: My Lords, I am greatly in sympathy with what the noble Baroness has just said. I very much hope that universities will carry those principles through into their current practice of taking lots of money off students who are studying humanities in order to give it to students who are studying sciences. The little bits of money being unfairly taken off students to fund the OfS are not a very substantial worry in proportion to what universities are already doing to students on different classes of course.

Lord Stevenson of Balmacara: My Lords, I will speak to Amendment 423 in my name. The question is about grants to the OfS for set-up and running costs, but there is the additional possibility, picked up in the amendment of the noble Baroness, Lady Brown, that there may be other aspects and bright ideas that come to mind about how these charges might be recouped.

[Lord Stevenson of Balmacara]
The amendment asks whether or not there are tight guidelines available which would restrict the ability of the OfS to raise funds in a broader sense other than specifically for set-up and running costs. I look forward to hearing the Minister's response.

The point raised by the noble Baroness, Lady Brown, in her opening remarks on Amendment 420 is important, because we still worry a bit about what the nature of the beast called "OfS" is. Is it a regulator? It has been said that it is, and if it is, does it fall under the Regulators' Code? I think I heard the Minister say on a previous amendment that it did not qualify to be considered within the code of practice for regulators. But if that is so, why call it a regulator? It will cause confusion and doubt if, in the public mind, it is a regulator for the sector but in fact it is not because it does not fulfil the criteria that would normally apply to other regulators. As the Minister said, these are not unhelpful comments in relation to regulator practice. They would clarify a lot of the uncertainty we have been experiencing in terms of how the regulator will operate. It might be that there is a case for it, even though it was not intended.

The noble and learned Lord, Lord Mackay, has pointed out a number of times that there are other statutory provisions and considerations that might bear on how this Bill is constructed and issues relating to it. It is wise to have a wider net on these matters than simply to focus on the wording of the Bill. If there are other considerations that we ought to be aware of, it would be helpful if the Minister could respond, making quite clear what it is that drives the determination that the regulatory code does not apply in this area, even though some of the factors might be helpful and effective in terms of how it discharges its responsibilities.

Baroness Wolf of Dulwich: My Lords, I want to repeat what has been said by a large number of people in the Committee this afternoon about the issue of fees paid and how this is looked at and moderated. It seems fundamental to the future of the relationship between the regulator and the sector. An awful lot of what one gets from reading the Bill is the sense that they will be at odds—that the regulator is there to punish, to force, to fine and to search. Ultimately, that is completely destructive. The most destructive thing of all will be if people are fighting constantly over the nature of fees, what is legitimate and what is not.

Therefore, rather than repeating comments that I made in connection with an earlier amendment, I simply say how fundamentally important this issue is and how very much I hope that the Government will look carefully at the structures that are being set up. Fees and payments go to the heart of everything. As a policy researcher, "follow the money" is always what I say to myself. It would be very helpful if the Minister were able to assure us that, following this House's deliberations on the Bill, that is one of the things that the Government will look at in terms of other legislation and statutory requirements, and that they will look at how, going forward, the OfS will interact with the sector in a way that is mutually beneficial rather than being made up of constant arguments and turf wars.

Baroness Goldie: My Lords, it is the Government's intention that the OfS's running costs will be shared between the sector, in the form of registration fees charged on registered providers, and government. The Bill enables this, granting the OfS the power to charge fees to cover the cost of its functions, with the detail of those fees to be set out in secondary legislation following proper consultation with the sector. That consultation is now open.

Moving to a co-funded model will be more sustainable, bringing the approach to funding the OfS in line with that of other, established regulators, such as Ofgem and Ofcom. It also reflects current practice in sector-owned bodies, including HESA and the QAA. Asking providers to contribute will strengthen their incentive to hold the OfS to account and challenge its efficiency. To reassure your Lordships, the total amount of funding raised by fees would represent less than 0.1% of the annual income that the sector generates.

Turning to Amendment 423, I thank the noble Lord, Lord Stevenson, for his thoughtful contribution. Let me assure him that the fees consultation seeks views on guiding principles in relation to areas where the Secretary of State may provide supplementary funding to the OfS. This could include funding to cover set-up costs and elements of its running costs. If we were to specify this in legislation, however, in the way that the amendment does, it would inadvertently prohibit the Secretary of State from giving money to the OfS to distribute as teaching grant.

5.30 pm

The Government are therefore actively seeking to address the concerns raised by the amendment through consultation, and to ensure that sector views help to shape the final funding model so that it is fair and proportionate. I also remind noble Lords that the OfS will need to ensure that it charges only fees sufficient to cover its costs, and has a general duty to operate economically and efficiently. It will also operate transparently: the final fee structure will be subject to Treasury consent and set in secondary legislation subject to the negative resolution procedure, and the OfS will lay an annual report before Parliament. So there is a wide degree of transparency about what will happen.

I turn to the amendments tabled by the noble Baroness, Lady Wolf. Fees should be fair and proportionate, neither creating disproportionate barriers to entry nor disadvantaging any category of provider. The HE White Paper announced that fees will vary in part by the size of a provider, recognising sector concerns around affordability. We are consulting on this issue, including the points raised, and will reflect on responses. However, it would be premature and potentially unfair on some providers to restrict the fees in the way that the amendment suggests.

On Amendment 421A, I reassure the noble Baronesses, Lady Wolf and Lady Brown, that the Government remain wholeheartedly committed to the principles of the Regulators' Code. Clauses 2(1)(f) and 7 already require the OfS to have good regulatory practices reflecting many principles in the Regulators' Code. If necessary, the Government could make the body formally subject to the code by order. I say to the noble Baronesses that we are content to look into this further. The Government

do not believe that the designated bodies should be subject to the code, as they are not responsible for the rules of regulation and are not public bodies.

It is the Government's intention that these reforms should further strengthen the overall quality and diversity of our world-class HE sector. This is in the student interest and certainly in the interest of all providers. Sharing the costs of regulation between the Government and the sector is a more sustainable approach common to other regulators. It creates a strong incentive for providers to hold the regulator to account for its efficiency, and that efficiency is further assured by explicit safeguards in the Bill. The Government are absolutely committed to developing a charging system that is fair and proportionate, which is why we are consulting on this very issue. In these circumstances, having regard to my remarks, I ask the noble Baroness to withdraw Amendment 420.

Baroness Brown of Cambridge: My Lords, I thank the Minister for her detailed reply and her very strong assurances in this area. I thank noble Lords who have contributed to the debate. As the noble Baroness, Lady Wolf, said, a healthy relationship between the regulator and the sector will be hugely important to success. The assurances that the Minister has given us, and indeed her agreement to look further into whether the OfS should sign up to the Regulators' Code, are extremely helpful. Again, speaking as an engineer and a former vice-chancellor, I think the language of the Bill is sometimes quite hard for a novice reader to understand. The language of the Regulators' Code is excellent; it is clear and simple and is about building an effective relationship between the regulator and the regulated. It would be a real assurance for the sector if the Government looked hard at the OfS signing up to it. I thank the Minister for her reassuring response, and beg leave to withdraw the amendment.

Amendment 420 withdrawn.

Clause 64 agreed.

Clause 65: Other fees

Amendment 421 not moved.

Clause 65 agreed.

Amendment 421A not moved.

Clauses 66 and 67 agreed.

Schedule 7: Costs recovery: procedure, appeals and recovery

Amendment 422

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

422: Schedule 7, page 94, line 20, leave out from "when" to end of line 22 and insert "—

(a) an appeal under paragraph 3(1)(a) or (b), or a further appeal, could be brought in respect of the requirement to pay the costs, or

(b) such an appeal is pending."

Amendment 422 agreed.

Schedule 7, as amended, agreed.

Clause 68: Grants from the Secretary of State

Amendments 423 to 427 not moved.

Clause 68 agreed.

Clause 69: Regulatory framework

Amendment 428 not moved.

Clause 69 agreed.

Amendment 429

Moved by ***Baroness Brown of Cambridge***

429: After Clause 69, insert the following new Clause—

"Transfer of regulatory functions relating to higher education providers and students from Competition and Markets Authority to Office for Students

On the establishment of the OfS—

(a) the OfS assumes responsibility for the regulatory functions in respect of higher education providers and students enrolled on higher education courses hitherto performed by the Competition and Markets Authority; and

(b) the Competition and Markets Authority ceases to have responsibility for those regulatory functions."

Baroness Brown of Cambridge: My Lords, Amendment 429 is in my name and that of the noble Baroness, Lady Wolf. This is a probing amendment to investigate the relationship between the two higher education regulators—the Office for Students and the Competition and Markets Authority. The perception of overlap between the two regulators, the potential for conflicting advice and requirements, and the perception of the difficulty of collaboration under Competition and Markets Authority regulation are all issues causing concern in the sector. As an aside, this is part of the reason behind our desire for the OfS to promote both competition and collaboration.

I ask the Minister: would it not be possible for the sector to work with a single regulator, the OfS? If this cannot be the case, will she explain how the two regulators will work together with the sector to ensure they support,

"those they regulate to comply and grow",

as the Regulators' Code says? I beg to move.

Baroness Wolf of Dulwich: My Lords, I strongly support what my noble friend Lady Brown said. Up until now, higher education has been fortunate in that it has had relatively few different regulatory authorities. The OfS will be quite different from anything that we have had before.

I refer to other sectors. I personally know the social care sector quite well. Those of us who have worked with or in this sector or the health sector, for example, know that, when you have more than one regulator, if they overlap or if it is not really clear who is responsible for what, you get regulatory and expenditure creep. This is not necessarily what the regulators mean—at least, not at the top level—but it is very much the experience that one has. The noble Lord, Lord Willetts,

[Baroness Wolf of Dulwich]
referred to this earlier in our deliberations. He talked about the problems that you could have in the health sector as a result of Monitor thinking that bringing institutions together was not a good idea when other people thought it was.

This is a probing amendment to ask for clarity, if not total simplicity, because there are very real costs when a sector does not have it.

Lord Stevenson of Balmacara: My Lords, I apologise to the Minister. I was watching a figure behind who seemed to be moving towards an upright position and therefore might speak. If he is not I will carry on.

This is an interesting amendment and I am glad that it has been raised in the form that it has. We cover a number of points every time we debate this, but here is a question that cannot be ducked. The reality is that universities have to face a number of different regulators already. Those that are charities obviously have the Charity Commission as their regulator. Then there are those that are established as companies. As we have heard, many higher education providers have the permission of the Secretary of State to use "university" in their title or, even if they do not, are subject to anything that may be required under the Companies Acts. Many will have a variety of regulators; it is not unknown to have companies that are also charities. There are also bodies that are not for profit—corporations that are subject to the Companies Acts, but in a different way from those that are set up for profit.

However, I think the main purpose was to try to untangle the relationship between the CMA—a recent entry to this area—and the universities. It is a little surprising that the CMA has entered this area rather late given that it stated recently that providers of higher education that now come within its scope are subject to the Consumer Protection from Unfair Trading Regulations 2008; the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; the Unfair Terms in Consumer Contracts Regulations 1999, for contracts concluded prior to 1 October 2015; and Part 2 of the Consumer Rights Act 2015. That Act went through your Lordships' House just over a year ago and included the application of consumer rights to public bodies such as institutions of higher education. It was amended during its passage through the House.

As I think is well known, the CMA has carried out a preliminary investigation into the new responsibilities that it has taken on in the last 18 months, and has obtained undertakings from more than a few universities to secure improvements to their terms and/or practices. It has written to all higher education providers, drawing the findings of the compliance review to their attention, and asking them to review and revise their practices and terms, as necessary, to ensure compliance with consumer protection law.

Where will this wave of regulatory practice, which is sweeping in with unforeseen and possibly unpleasant purposes, stop? I do not object to the CMA's engagement or to anything that raises standards and keeps public bodies moving forward. However, there will be regulatory overload, as has been mentioned. We must be very careful to guard against that. The way most sectors operate in the event of overlapping regulators is to obtain a memorandum of understanding between the principal regulator—or in this case regulators—and the one closest to the bodies concerned. If the OfS is to be a regulator, we will need to know how this will operate in practice. It is welcome news that the Bill team is considering whether to engage more directly with the Regulators' Code, as that would solve a lot of problems.

Before we proceed further with the Bill, we should be told exactly what the boundary between the CMA and the OfS, as envisaged, is. Indeed, it would be helpful to be informed of the boundary between the Charity Commission and the Registrar of Companies, if that is relevant. We should also probe a little further whether it is envisaged that a memorandum of understanding between these regulators will be drawn up to protect the provision we are discussing. If so, what timescale applies to that? Could that be provided by Report, at least in draft form, so that we can discuss it further?

Viscount Younger of Leckie: My Lords, I thank the noble Baronesses, Lady Brown and Lady Wolf, and others for laying this amendment as it gives me the opportunity to clarify the role of the Competition and Markets Authority in the higher education sector. I say at the outset that I understand that the CMA is content that there is no conflict between the two organisations. The Government share that view.

In summary, the CMA is not a sector regulator but an enforcer of both competition and consumer protection law across the UK economy. It also has a number of other investigatory-type functions across the economy, including investigating mergers and conducting market studies and investigations, so I shall say a little more about competition and consumer enforcement in particular.

Enforcing competition law is a specialist activity requiring particular economic and legal expertise. Enforcement cases require substantial input of specific skills over a sometimes protracted period of time. The OfS will not have these and it would be unnecessary and expensive to replicate them. Placing a duty on the OfS to encourage competition between higher education providers in the interests of students and employers is a very different matter to enforcing competition law. We believe that there is no conflict between these two different responsibilities. Arguably, giving the OfS additional competition enforcement powers would risk distracting it from its important regulatory duties, or would possibly create conflicts of interest.

To answer concerns that encouraging competition would be at the expense of collaboration, there should be no conflict between providers collaborating and the OfS's duty to have regard to the need to encourage competition where that competition is in the interest of students and employers. We are wholly supportive, as is the CMA, of collaboration and innovation where they are in the interest of students.

5.45 pm

I turn now to the enforcement of consumer protection law carried out by the CMA and other such enforcers such as trading standards. Students can have consumer

rights and, as such, are protected under law. As outlined in our White Paper, we want the OfS to be a consumer-focused market regulator putting students' interests at its heart. This includes looking after their consumer rights, ensuring the right information is available for them at the right time and making sure they have a route of redress should something go wrong. Compliance with consumer law is important not only in protecting students, but in maintaining student and public confidence in the higher education sector. I know that higher education institutes have been working hard on meeting their consumer rights obligations. I remind noble Lords that the CMA operates extremely effectively alongside a wide range of sector regulators such as Ofcom, Ofgem and Ofwat. I am grateful for the continued involvement of the CMA in preparatory work to establish the OfS. Its experience is valued tremendously. With that short explanation I invite the noble Baroness, Lady Wolf, to withdraw her amendment.

Baroness Brown of Cambridge: I thank the Minister for his explanation and the further detail he supplied. I would be interested to know whether there is any thought that there might be an MoU between the regulators. I also ask him to encourage the CMA to produce some advice for universities in simple language to explain its role and how it works alongside the OfS. I very much hope that we will hear more about a potential MoU and, in the light of his detailed explanation, I beg leave to withdraw the amendment.

Amendment 429 withdrawn.

Clause 70 agreed.

Clause 71: Secretary of State's power to give directions

Amendments 430 to 433 not moved.

Clause 71 agreed.

Clause 72: Power to require information or advice from the OfS

Amendment 434 not moved.

Clause 72 agreed.

Amendment 434ZA

Moved by ***Baroness Wolf of Dulwich***

434ZA: After Clause 72, insert the following new Clause—

"Power to require information on the need for new providers

(1) The Secretary of State must establish an independent committee to provide information to the Secretary of State and to the OfS on emerging needs for new providers within the higher education sector.

(2) The independent committee may provide recommendations to the Secretary of State on matters including—

(a) the type and location of new provision that is required;

(b) how best to make validation arrangements for particular new providers, should they be required, and whether mentoring by established institutions will be required.

(3) In making recommendations under this section, the independent committee must take into account—

(a) skills shortages, including forecast skills shortages, within the economy of the United Kingdom;

(b) lack of adequate provision within the higher education sector for certain disciplines;

(c) restricted access to higher education, or to particular disciplines, in certain areas of England, including restricted access for part-time and employed learners.

(4) In this section "validation arrangements" means arrangements between the Secretary of State, the Office for Students and a registered higher education provider under which the higher education provider is authorised to grant taught awards or research awards or both."

Baroness Wolf of Dulwich: Amendment 434ZA, in my name and that of the noble Viscount, Lord Ridley, is not exactly a probing amendment but it seeks to emphasise the importance of something that gets rather little attention in the Bill as it stands. In speeches and discussions we have heard a great deal about the importance of innovation, opening up the sector and preventing vested interests getting in the way. There has also been quite a lot of discussion on the Floor of the House about the need for diversity. However, there is remarkably little about diversity in the Bill. When I looked through it did not appear at all, although the Lords spiritual had a couple of amendments that explicitly talked about it. The point of this amendment is to make explicit that diversity is truly important and we stand to benefit from a far more diverse set of institutions. However, diversity will not happen by magic or automatically simply by virtue of making it easier for a certain number of new providers to enter the higher education sector.

It is very important that we think positively about diversity and not negatively in terms of possible barriers. Diversity does not happen automatically, and one reason that Governments exist is to tackle what are in effect major barriers to entry when those barriers mean that we do not serve the long-term or even the short-term interests of the country and of students.

Having more providers that offer business degrees may be very good for the quality of business degrees but it will not in itself do anything either about the need to think of very different ways of delivering higher education and lifelong learning or about the areas where we know that we have enormous skills shortages in this country, which will not be solved without active government.

Over the last 15 or 20 years, there has been a very large increase in the number of providers, although possibly there should be more. Alternative providers offer courses which are cheap, which you can afford to put on with the resources at hand and which do not put you at risk of going broke in week one. That is absolutely as it should be but, when you look at the profile and detail of what is being offered, as I have done, you find that it is accounting and business and business accounting—things that do not need huge up-front investment.

A similar pattern can be seen in, for example, the apprenticeship statistics. Again, there has been a regime of effectively inviting people to offer apprenticeships—not dissimilar to what we are talking about for higher education. The result has been overwhelmingly a growth in apprenticeships that do not require expensive equipment or involve high-risk activity, which means that you can cover your costs and more with relative ease.

[Baroness Wolf of Dulwich]

Therefore, the purpose of the amendment is to argue that it is truly vital that the Government take a more active approach to encouraging new and different institutions. If they do not, then simply enacting the current regime as proposed will not solve the problem. New entrants will not on the whole do science or engineering. I am sure that lots of them would love to do exciting and expensive things, but the reality of being a new, small institution is that they do not.

I have mentioned the history of apprenticeships. Another example is the fight over saving archaeology A-level. I have considerable sympathy with the examination boards. Running things where you lose money heavily is quite hard to do. Unless you are large enough to spread those courses, by and large you just do not do them. These courses are very expensive and, without government support, they will be too risky and long-term for most people, but they are areas that are badly needed.

In a week in which an industrial strategy has just been launched, it would be appropriate for the discussions on the Higher Education and Research Bill also to take account of the fact that, in the past, Governments in other countries have felt the need to take a very active role in this area. They have felt the need to put long-term planning and substantial government money into the sector in a directed and planned way, because otherwise things would not happen. In this context, it seems to me that the Dyson Institute of Technology, which is clearly a wonderful initiative, makes the point. How many very rich individual entrepreneurs with the ability and money to take these decisions are there in this country? So far, there has been James Dyson. As a strategy for providing that part of the higher education sector, relying on the beneficence, good will and commitment of rich individuals is not very sensible. Obviously we cannot go back to the 1960s but it is worth looking at the commitment, vision and expenditure that were put in back then.

Therefore, the amendment asks for the Secretary of State—not the OfS—to have an obligation to take, on a regular basis, a strategic view of where in the country and in what disciplines we might need something more, something new, something different and something involving government commitment and government money. We suggest that the Government also look at how these institutions can be set up. We have gone on a lot this afternoon about validation. Going back to the 1960s, we had institutions that were developed over time. They launched forth, they had their own degree-awarding powers from day one and they had royal charters.

I think we are getting into a sort of mindset here in which there is the existing sector and then there will be new, brave little institutions, which may or may not need validation by other institutions and, if they do not, maybe the OfS will do it. That is too narrow and far too limited a view of what our universities and our higher education need to look like. I am sure that one possible response will be to say, "Oh, I'm sure the Office for Students will do it". The Office for Students is already being asked to do an amazing number of things. I do not believe that this is a matter for a regulator; it is for the Secretary of State, on behalf of the nation and on a regular basis, to look at how, in new ways or "back to the future" ways, something can be done to create genuine diversity and genuine responsiveness to the needs of the economy and of society now and in the decades to come. I beg to move.

Viscount Ridley (Con): My Lords, I support the amendment, which also stands in my name. I did not speak at Second Reading but I hope the Committee will indulge me. I attended nearly all of the Second Reading debate but, because I thought I would not be there at the end, I did not put my name down to speak.

I share some of the doubts that have been expressed about the Bill in other parts, but I am enthusiastic about one of its principal aims, which is what the amendment seeks to reinforce. I refer to the encouragement of diversity and innovation, as the noble Baroness, Lady Wolf, has eloquently explained, and the encouragement of new entrants, not just passively but actively—letting 1,000 flowers bloom but planting 1,000 flowers as well.

I am a great believer in competition, so it is important that we do our best to bring forward new ways of doing higher education, as well as new types of courses and new locations for them, especially in vocationally relevant areas—areas that are in demand with employers and where the signal is not being transmitted well enough to students. As the noble Baroness, Lady Wolf, said, it is not just a matter of opening the gate and seeing a flock of new entrants come through; starting a new university is a huge investment and there are enormous barriers to entry. You need premises, people, programmes and quite a lot of pennies. So, before taking the plunge, as the noble Baroness said, entrepreneurs will need to be given signals that the state prioritises supporting certain courses and certain disciplines. As has been said, the industrial strategy makes the case for singling out and encouraging certain things that we think will be important in the future.

The example that I would give is data science. I know somebody who, as a sideline, retrains the holders of physics PhDs as data scientists, because that makes them much more valuable to employers in the private sector. There is a huge demand for data science in business, and that is the kind of thing that perhaps it would not be immediately obvious to existing universities to supply, or indeed obvious to new entrants, who might be hard pressed for cash and so on. I think that with the right kind of encouragement from government, advised by independent expertise, the sector could benefit from this sort of duty on the Secretary of State to consider where new ideas should come from.

I am no fan of committees for committees' sake, so I am not wedded to the exact form of the amendment. In that sense, I see it as somewhat probing—raising the issue and seeing whether the Government are interested in responding in a positive way to this suggestion.

6 pm

Baroness Garden of Frognal: My Lords, I support the amendment. As the noble Baroness, Lady Wolf, said, the possible proliferation of new universities is likely to include a great many offering subjects such as business and management, and far fewer offering subjects such as civil engineering, artificial intelligence and

modern languages—whereas it would make sense for any new provision to arise out of shortages in disciplines and skills within the UK.

Secondly, there are parts of the country that are ill served by further and higher education. I have noble friends from Berwick-upon-Tweed who often relay the lack of local provision for local people to study. This is a cause of unfairness, not only in the north-east but in other parts of the country which are also ill served. If new provision were being set up it would make a lot of sense to look geographically at the parts of the country where there is less provision for people to study. Surely it would be a helpful part of the duties of the Office for Students to ensure that new providers should be established only—or mainly, perhaps—where they meet needs both of location and of provision. The amendment therefore seems a helpful addition to the Bill.

Lord Lucas: I too support the amendment. There are things that only Governments can do. If we want an example of creating universities, we should look at the career of our late colleague Lord Briggs and what he did, and what the status of the institutions he created is now. They are considered to be top-ranking universities. As the noble Baroness, Lady Wolf, said, they were just made and put in place and they ran. It can be done. Indeed, it is happening overseas: other countries are doing it.

We are proud that we have a collection of top-ranking international universities. Why do we not want another one? What would it take to make another one? It would take substantial action by the Government. Do we need a tech powerhouse on the lines of Stanford or MIT? Yes, I think we probably do. As my noble friend Lord Ridley said, there is a space for that—but it is not going to happen through little institutions founding themselves. We have seen enough of what that is like. I am involved with a couple of small institutions trying to become bigger ones, and it is a very hard path. Reputation is hard won in narrow areas, and it takes a long time. Look at how long it has taken BPP to get to its current size: it has taken my lifetime.

The Government can make things happen much faster, and if they realise that things need to be done, they can do that. For them to come to that realisation, a process of being focused on it is needed, and the committee proposed in the amendment certainly represents one way of achieving that. I would like to see, for instance, much wider availability of a proper liberal arts course in British universities. By and large, they are deciding not to offer such courses. If the Government said, "We want to see it; we will fund this provision", and if the existing universities did not respond, we could set up a new one, in a part of the country that needed it. That would be a great thing. Equally, the idea might be taken up by existing universities. That is not going to happen through the market, because the market in this area is far too slow. But the Government can do it, and they ought to be looking to do it.

Lord Stevenson of Balmacara: I support the amendment and endorse everything that the noble Baroness, Lady Wolf, said in introducing it. She hit the nail on the head very firmly. There are issues around new providers. There is not very good evidence, and the evidence that there is seems to be anecdotal rather than scientific. The information published recently by HEPI threw doubt on whether many of the institutions that have come forward were bona fide or would survive, and some questionable practices were exposed—so there is an issue there.

In addition to the points that the noble Baroness made, which I endorse, there is, again, a gap in the centre of what the Office for Students is being established to do. It could have been imagined—pace the points made by the noble Lord, Lord Willetts, about not wanting to overload the OfS—that it would have a responsibility to speak for the sector to the Secretary of State about the gaps that it may see in provision, and the issues that may need to be picked up in future guidance. I would have expected that to be the normal thing.

However, it is interesting to see that the general duties in Clause 2 do not cover it. They are all about functions to do with quality, competition, value for money, equality of opportunity and access. They are nothing to do with surveying and being intelligent about the future and how it might go. However, as the noble Viscount, Lord Ridley, said, the game may have changed a bit now with the publication of a strongly worded industrial strategy—or at least, we hope it will turn into an industrial strategy after the consultation period. Out of that will come a requirement to think much harder about the training and educational provision that will support and supply the industrial machine that we will need as we go forward into the later parts of this century. It therefore makes sense to have advance intelligence about this, and to recruit from those who have expertise. It makes even more sense to do that in the way suggested by the amendment.

Baroness Goldie: My Lords, we agree that it is necessary to have a holistic overview of the sector to understand whether our aim of encouraging high-quality, innovative and diverse provision that meets the needs of students is being achieved. However, I do not agree that to achieve this an independent standing committee is necessary. There are already a number of provisions in the Bill that allow the Secretary of State, the OfS and other regulatory or sector bodies, where necessary, to work together to consider these important issues.

For example, Clause 72 enables the Secretary of State to request information from the OfS, which, as the regulator, will have the best overview of the sector. Clause 58 enables the OfS to co-operate and share information with other bodies, and, as we have discussed at length, the Secretary of State can give guidance to the OfS to encourage this further.

We have already debated the issue of new providers at length, but let me reiterate that there is a need for new innovative providers. The Competition and Markets Authority concluded in its report on competition in the HE sector that aspects of the current system could be holding back greater competition among providers and need to be addressed. In a 2015 survey of vice-chancellors and university leaders, 70% expected higher education to look the same in 2030. This risks becoming a self-fulfilling prophecy.

We must not be constrained by our historical successes, because if we place barriers in the way of new and innovative providers we risk diminishing the relevance

[Baroness Goldie]
and value of our higher education sector to changing student and employer needs, and becoming a relic of the last century while the rest of the world is moving on.

Baroness Wolf of Dulwich: I do not think that the amendment was proposing barriers of any sort. We need to be clear about that. It does not propose barriers in aid of diversity. It just says that simply removing barriers to entry would not deliver diversity. I apologise if that was not made clear.

Baroness Goldie: I thank the noble Baroness for her intervention. I fully accept that the express text may not have intended that—but we have to look at what the consequences of this new independent committee would be, and infer from that what effect it might have on the broader sector.

At the moment we have a university sector that needs to do more to support its students and the wider economy: it has built up over time to serve only parts of the country; it is not providing employers with enough of the right type of graduate, especially STEM graduates; it can do more to offer more flexible study options to meet students' diverse needs; and it can to do more to support social mobility. It is not enough simply to ensure that all young people with the potential to benefit have a theoretical opportunity to go to university and secure a good job when they graduate.

Alternative providers are already supporting greater diversity in the sector: 56% of students at alternative providers are aged 25 or over, compared with 23% of students at publicly funded institutions. They also have more BME students: 59% of undergraduate students at alternative providers are from BME groups, compared with 21% at HEIs.

The Government are determined to build a country that works for everyone. That is why we have announced a number of opportunity areas that will focus their energy, ideas and resources on allowing children and young people to fulfil their potential. That, in conjunction with what the Act sets out to achieve—the broad vision that I think universities accept as positive for the sector—holds out hope that we are proceeding on a journey in which we can have a lot of optimism and confidence.

I note the references to skills and would stress that we are carrying out reform programmes in higher education and in technical and vocational education at the same time. This gives us the opportunity to ensure that these programmes of reform are complementary. The Government's recently published Green Paper on an industrial strategy outlines further our vision for skills and a system that can drive increases in productivity and improvements in social mobility. We are committed to reforms that will improve basic skills, create a proper system of technical education, address regional skills imbalances and shortages in STEM skills, and make it easier for adults to retrain and upskill in later life.

One of the 10 pillars of the industrial strategy is that we will create the right structures and institutions to support specific places and sectors. In some cases, this will mean strengthening existing educational institutions or creating new ones. We recognise the need for accurate information to identify and address current and future skills shortages, and we will work towards a single authoritative source of this information. To ensure a joined-up approach, the OfS's ability to co-operate with a range of other bodies, including the Skills Funding Agency and the Institute for Apprenticeships, will be important. Clause 58 enables that.

The important issue of part-time education was raised. 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 significant opportunities for mature students to learn. The OfS must—it is not a question of should, or if it feels like it—have regard to the need to promote greater choice and opportunities for students, and to the need to encourage competition between providers where that competition is in the interests of students and employers. That 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 also recently completed a consultation on providing, for the first time ever, part-time maintenance loans. We are now considering options. The Bill already provides for the mechanisms to enable the kind of information referenced here to be gathered effectively. I hope my remarks have reassured the noble Baroness, and I therefore ask her to withdraw her amendment.

Lord Mackay of Clashfern: Would it be worth considering inserting the phrase from this amendment,

"emerging needs for new providers within the higher education sector", into the general duties of the OfS in Clause 2? It might well be a mechanism for this being studied.

Baroness Goldie: As ever, my noble and learned friend makes a significant suggestion. I undertake that we shall reflect on that.

Lord Adonis (Non-Afl): I observe that a whole section of Schedule 1 relating to the Office for Students concerns committees. Paragraph 8(1) states:

"The OfS may establish committees, and any committee so established may establish sub-committees".

This appears to be a power without limitation. The noble Baroness not only can have her committee on new providers; she can have a range of sub-committees as well. We could spawn a whole bureaucracy around the provision of new providers. One hopes that, at the end of it, we will actually get some new providers and not just committees. In one of the many letters she is sending us, I wonder if the Minister could confirm that, under that power, it would be perfectly possible for the OfS to establish a committee for the purposes that the noble Baroness and the noble Viscount have in mind.

Baroness Wolf of Dulwich: It would be very helpful to have that confirmed.

Baroness Goldie: I thank the noble Lord for his intervention. He is quite correct that the schedule does indeed empower the OfS to set up committees. It is anticipated that that would be an important source of information to the OfS. I am happy to endeavour to clarify the position, as he seeks, and we will send a letter to him.

6.15 pm

Baroness Wolf of Dulwich: I thank the Minister. For part of the last five minutes I felt as though two different plays were going on in the Chamber, somehow scheduled on the same stage. The issue is not, to repeat, whether there should be new providers. The amendment clearly supports that. The issue is whether without direct intervention activity we will get the degree and type of diversity that the country needs. I thank the noble and learned Lord, Lord Mackay, for his suggestion, which would at least place the importance of this firmly at the beginning of the Bill. I hope that we might pursue that. This is not about hoping or having faith that new little providers will do all these things. We know, factually, that they will not, just as we know factually from the whole history of apprenticeships that if you throw it open in the way that is proposed for higher education and just wait to see what people will get from the general fee regimes available, you will not get the expensive ones.

Of course I will withdraw the amendment for the moment, but I hope we can return to it. This is not necessarily about committees—I share noble Lords' views about committees—but about making sure that there is a clear function and duty on the Secretary of State to address these issues. I would very much like to pursue the noble and learned Lord's suggestion, and I hope we can return to that on Report. I beg leave to withdraw the amendment.

Amendment 434ZA withdrawn.

Clause 73: Power to require application-to-acceptance information

Amendments 434A and 435 not moved.

Clause 73 agreed.

Clauses 74 to 78 agreed.

Clause 79: Other definitions

Amendments 436 and 437

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

436: Clause 79, page 48, line 29, at end insert—

""foundation degree only authorisation" has the meaning given by section 40(3);"

437: Clause 79, page 49, line 14, at end insert—

"( ) When construing references in this Part to a time when an appeal could be brought, any possibility of an appeal out of time is to be ignored."

Amendments 436 and 437 agreed.

Clause 79, as amended, agreed.

Clause 80: Power to make alternative payments

Amendment 438

Moved by ***Baroness Goldie***

438: Clause 80, page 50, line 42, at end insert—

"(ha) in relation to England, for contributions made in respect of an alternative payment to be dealt with, with the consent of the Treasury, otherwise than by payment into the Consolidated Fund;"

Baroness Goldie: My Lords, the Government want to make this a country that works for everyone. That is why we have introduced Clauses 80 and 81 of the Bill. Amendments 438 and 439 simply clarify the role of Treasury consent in establishing a system for alternative payment contributions to be dealt with other than by payment into the consolidated fund. They are narrow and functional amendments.

I know that the noble Lord, Lord Sharkeys has a considerable interest in the introduction of alternative student finance as provided for in Clauses 80 and 81. I beg to move.

Lord Sharkey (LD): My Lords, I will speak to Amendment 442 in my name and that of my noble friend Lord Willis. The Committee will know that sharia law forbids interest-bearing loans. That prohibition is a barrier to Muslim students attending our universities. This has been a problem for the Muslim community in this country since at least 2012. Prior to then, many Muslim students were able to attend university because they were financed by family and friends. This was possible when tuition fees were low, but it is much more difficult with fees at their current levels. Successive Governments have known about this problem. They have recognised that the current system effectively discriminates against devout Muslims for whom interest-bearing loans are not acceptable.

The system works to the direct disadvantage of our Muslim communities. Many Muslim students, although qualified, cannot progress to tertiary education. The system also works to the disadvantage of our society as a whole. An important part of the community is effectively deprived of access to higher and further education, of the opportunity to mix with others and to learn from and contribute to our culture. These are damaging and dangerous exclusions. They are also completely unnecessary.

In April 2014, BIS launched a consultation on possible sharia-compliant ways of financing students. This consultation generated an astonishing 20,000 responses. The consultation outlined the proposed solution, based on the widely used Islamic finance instrument, called a takaful. In their response to the consultation, the Government said:

"It is clear from the large number of responses … that the lack of an Alternative Finance product as an alternative to conventional student loans is a matter of major concern to many Muslims".

The response went on to say:

"There is demand for the proposed Alternative Finance product and responses to the consultation indicate that this would enable many of those who have been or will be prevented from undertaking both FE and HE, to attend by removing the conflict between faith and funding".

[LORD SHARKEY]

The Government's conclusion was equally clear; they said that,

"the Government supports the introduction of a Sharia-compliant Takaful Alternative Finance product available to everyone".

But there was a cautionary addendum:

"Given the complexity of these issues and the time needed to resolve them, it is unlikely that any Alternative Finance product could be available before academic year 2016/17".

That was written in September 2014—two and a half years ago—and only now is enabling legislation before us. If that sounds like criticism I should say immediately that I warmly congratulate the Government and Jo Johnson on finally producing the legal framework to solving the problem. It is a vital step forward, but it has one major defect. The Bill is silent as to when the takaful scheme will be in place. We are already in academic year 2016-17. We are too far into the year for any scheme to affect the 2017-18 intake and, worse, I have been told privately that it is likely that the scheme will not be ready until the academic year 2019-20. That is seven years after the problem was recognised, five years after the solution was agreed, and two academic years away from now. If that is correct, it means that Muslim students will continue to be discriminated against and disadvantaged for another two years; another two cohorts of young people who are unable to attend university.

My Amendment 442 addresses the problem directly. It simply requires the takaful scheme to be in place to benefit students going into further education or higher education in the autumn of 2018. I have tried to get to the bottom of why there might be this extended delay of five years between agreeing a solution and putting it into practice. I have consulted with Islamic finance experts and people familiar with the operational requirements involved in introducing a takaful scheme. I am told that, with the necessary political will, a working takaful system can be put in place within eight to 12 months, and that assumes that no significant work has already been done. That is why I have chosen the deadline of academic year 2018-19.

I am also told that the reason for the very likely prolonged delay that would otherwise occur is not lack of good intentions but the inability of the Student Loans Company and HMRC to organise themselves to deliver the product in a reasonable time. People I have talked to speak of a lack of resource in both agencies and an inability to process additional work in a reasonable time. A timetable that leads up to autumn 2019-20 is not reasonable and not necessary, especially when there is precedent for moving a lot faster. For example, the Sharia-compliant version of the Help to Buy guarantee scheme took five or six months, from the beginning, to develop and launch. These things can be done in good time, if there is the will and the allocation of the required resource. When the Minister responds he—or she—may say that the takaful scheme will in fact be in operation for the academic year 2018-19. If the Minister does say that, it will be heard, noted and welcomed as a commitment by the Muslim community and Muslim students, who will at last be able to go on to university. If he does that make that commitment to the Muslim community and to Muslim students I will not press my amendment.

Lord Cormack (Con): My Lords, I promised the noble Lord that I would try to be present for this brief debate, and I am sure it will be brief. I think he has performed a very signal service, not just for the Muslim community, but the student community in general. I sincerely hope that my noble friend Lady Goldie, who I am told is due to reply to this debate, will be able to meet the points made by the noble Lord in an extremely well-balanced, sensible and moderate speech, with a realistic timetable built into his amendment. In giving my support and expressing that hope, I also express the hope that we will not be disappointed.

Lord Willetts (Con): My Lords, having launched that original consultation document I am delighted that we now have these provisions in this Bill. It is welcome progress and the lack of legal framework to do it was the main reason for the delays. I very much hope that the new scheme can be brought in as quickly as possible. Although it is a familiar excuse, there are IT issues to be resolved and the noble Lord is right to press for rapid progress on that.

My one qualification to the noble Lord's otherwise excellent speech was that we have to be careful not to assume that all Muslims take the view that the current arrangements are not acceptable within Islamic law. The good news is that there are many Islamic students whose religious advice is that they can use the current framework. There is a small number who do not believe that that is satisfactory and that is why we need this provision, but it is very important that this Committee does not give the impression that Muslims cannot use the current scheme. Many of them do and their imams say that they can.

Lord Watson of Invergowrie: My Lords, it is very much to be welcomed that Muslim students are to be offered Sharia-friendly student loans which should assist in applying to university, although I accept the point of the noble Lord, Lord Willetts, that only some students have been put off in the past in the belief that taking out a loan conflicts with their religious beliefs.

This is certainly a big step forward, but as the noble Lord, Lord Sharkey, outlined, when will it happen? He has traced the path that has been followed since 2012, when a government commitment was first made. As he said, the consultation exercise was undertaken and the Government responded in September 2014—quite quick for government replies. Their response said that,

"the Government supports the introduction of a Sharia-compliant takaful alternative finance product available to everyone, and will work on its development".

That response also mentioned the need to find what was described as an "appropriate legislative window". Two years on—more than that, in fact—we are at that window, yet we do not have a date for the commencement.

Amendments 442 and 516 in the names of the noble Lords, Lord Sharkey and Lord Willis, appear to me to be rather contradictory. Amendment 442 calls for the scheme to begin in the autumn of 2018, while Amendment 516 seeks its introduction immediately after the Bill becomes law, but no matter. We wish to see the scheme introduced as soon as it is practical, and I trust the Minister will outline the timescale that the Government have in mind. In particular, I hope

they will offer some explanation if, as the noble Lord, Lord Sharkey, said, they suggested that a delay would be necessary until 2019. I found it very interesting that the noble Lord, Lord Sharkey, said that he had consultations with people in the Muslim community who said that it need not take that long, so we look forward to the Minister's response on this important matter.

Baroness Goldie: My Lords, the debate has been helpful. I think we all agree that participation and choice in further and higher education must be open to everyone with the potential to succeed, irrespective of their background, gender or religion. I thank the noble Lord, Lord Sharkey, for a sensitive and reflective contribution to that debate.

The Government recognise that, under the current system, there are concerns that some prospective Muslim students may feel deterred from accessing student loans; we appreciate that they might consider that student loans are not consistent with the principles of Islamic finance. Our research has suggested to us that Muslim students are less likely to use student loans than their contemporaries. That is why the Government have introduced Clauses 80 and 81, which are ground-breaking and innovatory and set out our intention to provide the Secretary of State with the power, for the first time, to offer alternative payments alongside existing powers to offer grants and loans. We are the first Government to legislate to make alternative student finance possible, and we have legislated at the first opportunity. We are fully committed to making alternative student finance available.

6.30 pm

I reassure noble Lords that the Government, while bringing forward this legislation, are also continuing to work on the policy and operational detail that will be needed for forthcoming regulations and for the new model to work within our systems and processes. It is only by exercising due diligence on all this detail, including with experts on Islamic finance, that we will be able to meet our policy objective—our shared policy objective—of supporting participation in education. This careful, sensitive and important work cannot be rushed towards a deadline that is simply chosen and written into legislation. Our timeframes must be grounded in the realities of the work necessary to deliver a workable system. The Government are reliant on the successful passage of Clauses 80 and 81 if we are to be able to make alternative student finance available. That is the issue which concerns us today.

The Government's commitment to alternative student finance is not in doubt. We are the first to legislate for it, we will continue to work on it and we will make it available. In these circumstances, I beg to move Amendment 438 and urge the noble Lord, Lord Sharkey, not to press his amendment.

Lord Mackay of Clashfern: There are commencement provisions in relation to Clauses 80, 81 and 82, which is why, I assume, the noble Lords, Lord Sharkey and Lord Willis, have put in a commencement provision. What they have done is not inconsistent, because it says that the provision comes into force as law when the Bill is passed, and the Bill says that it will come in in 2018. This is an important difference between what the Secretary of State proposes, which is pretty open—although it seems to relate only to the Welsh aspect of the matter. So there is a point in this relationship that has to be looked into.

Amendment 438 agreed.

Amendment 439

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

439: Clause 80, page 50, line 43, at beginning insert "in relation to Wales,"

Amendment 439 agreed.

Clause 80, as amended, agreed.

Clause 81 agreed.

Clause 82: Other amendments relating to financial support

Amendments 440 and 441

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

440: Clause 82, page 52, line 34, after "persons" insert "(whether before or after the regulations are made)"

441: Clause 82, page 52, line 46, after "persons" insert "(whether before or after the regulations are made)"

Amendments 440 and 441 agreed.

Clause 82, as amended, agreed.

Amendment 442

Moved by ***Lord Sharkey***

442: After Clause 82, insert the following new Clause—

"Sharia-compliant student finance: deadline

The Secretary of State must introduce a Sharia-compliant student finance scheme to be available to students expecting to enter tertiary education in the autumn of 2018."

Lord Sharkey: I am grateful to the noble Lords, Lord Cormack, Lord Willetts and Lord Watson, and the noble and learned Lord, Lord Mackay of Clashfern, for speaking to this amendment. I would say in passing to the noble Lord, Lord Willetts, that his own consultation answers the point he made, as it points out that the unattractiveness of conventional student loans is a matter of major concern to many Muslims. That is the point I was trying to make—and it is still of major concern.

I was going to answer the noble Lord, Lord Watson, in a slightly more prolix way than did the noble and learned Lord, Lord Mackay, but I think the noble and learned Lord made the point very eloquently about the commencement date.

[LORD SHARKEY]

I am extremely disappointed by the Minister's response, which was so vague and non-committal that it seems to send a message to the Muslim community that it is entirely possible that the next two cohorts of your children will not be able to take a student loan. That is an unsatisfactory situation, as it was nearly five years ago. I am extremely disappointed that the Government have not proposed any method of speeding it up. I acknowledge the point about IT failures, but that is a universal truth. I am not convinced by the apparent complexity that the Government are relying on as a cause for this delay. I have talked to Islamic experts—some of whom were involved in designing the scheme—who have told me explicitly that the scheme itself is judged to be sharia-compliant, and the problem is only one of administration within the Student Loan Company and HMRC. A delay caused by an administrative failure in those agencies is not a good reason to deprive two cohorts of children of funding to go to university.

As I say, I am very disappointed by the Minister's response. Will the Minister agree to meet me and other interested parties before Report to see whether we can find a way out of an extremely unsatisfactory situation? I do not see a response from the Minister, but perhaps he did not hear what I said. I was inviting him to agree to a meeting with me and other interested parties to discuss whether we can find a way out of this unsatisfactory situation. Since I still do not get a response, I assume that the answer is no—and I shall inquire on Report why that is the case. For the moment, I beg leave to withdraw.

The Deputy Chairman of Committees (Baroness Fookes) (Con): That is not possible. The noble Lord has spoken to it, so it must be moved, and I shall propose the amendment.

Lord Stevenson of Balmacara: We have run into a slight procedural problem, in that Amendments 440 and 441 in a previous group were moved formally when they should have been moved properly and debated. Given that they are of a relatively trivial nature, we can pass over that—unless the noble and learned Lord, Lord Mackay, has read them quickly and found that devastating little point that he always brings in at this stage. We can move on, but we should be a bit more careful in future on that procedural point.

Technically, the noble Lord, Lord Sharkey, spoke to Amendment 442 as part of the earlier group, but the Deputy Chairman has now called the amendment, so it would be appropriate if the Minister made a brief response and then we can move on.

The Deputy Chairman of Committees: Perhaps I should point out that even when an amendment is grouped, it is still open, when that amendment is reached, to move it formally or make remarks on it.

Viscount Younger of Leckie: My Lords, perhaps I can be helpful to the noble Lord, Lord Stevenson, in reply. Given that we did not have a full debate on government Amendments 440 and 441, and bearing in mind that noble Lords seemed reasonably comfortable with what we are proposing, I think it right that I write to explain what we are proposing. I hope that is helpful.

The Deputy Chairman of Committees: Would the noble Lord, Lord Sharkey, now like to beg leave to withdraw his amendment?

Lord Sharkey: I apologise for the procedural confusion, and I beg leave to withdraw the amendment.

Amendment 442 withdrawn

Amendment 443

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

443: After Clause 82, insert the following new Clause—

"Access to support for students recognised as needing protection

(1) Within six months from the day on which this Act comes into force, the Secretary of State must, by regulations, make provision for financial support for higher education courses offered to students with certain immigration statuses.

(2) The regulations specified in subsection (1) must include, but shall not be restricted to—

(a) provision for persons who have been brought to the UK under the Syrian Vulnerable Persons Relocation Scheme, or any equivalent scheme, and their family members to access student loans on the same basis as refugees recognised in-country, and

(b) provision for persons who have claimed asylum and been granted a form of leave to remain in the UK to be eligible for—

(i) home fees for a higher education course if they have been ordinarily resident in the United Kingdom and Islands since being granted leave, and

(ii) student loans for a higher education course, if—

(a) they have been ordinarily resident in the United Kingdom and Islands since being granted leave, and

(b) are ordinarily resident in the United Kingdom and Islands on the first day of the first academic term of that course.

(3) In this section—

"home fees" means fees for a higher education course charged to persons considered as "qualifying persons" under regulations made under the Higher Education Act 2004;

"student loans" means loans made to students in connection with their undertaking of a higher education course under the Teaching and Higher Education Act 1998."

Lord Stevenson of Balmacara: My Lords, this amendment has wide support across the House, and I look forward to hearing the comments from others who have joined my noble friend Lord Dubs's amendment. My noble friend apologises to the House for being unable to be present, but he has been asked to be the guest of honour at a Holocaust memorial service in Reading and felt that he could not stand up that occasion. I am sure the House will be sympathetic.

Very briefly, because I am sure others will make the point, the amendment deals with people who are in a bit of a lacuna as far as support for loans and maintenance

is concerned. Currently, people with refugee status in the UK are classified as having home fee status for purposes of higher education as well as being able to access student finance. However, other potential university students who have either been given a different form of protection or who, after claiming asylum, have been granted a type of leave other than refugee status encounter restrictions and delays in accessing home fee status and student finance. Therefore, they face a barrier to education that is often insurmountable.

The amendment would rectify this arrangement so that all refugees resettled to the UK, as well as people seeking asylum granted forms of leave other than refugee status, can access student finance and home fees. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I speak in support of the amendment, to which I was pleased to add my name. Access to higher education represents a potentially important avenue to the integration and strengthening of the life chances of young people forced to flee their home countries by increasing their employability, career prospects and earning potential, and integrating them into the community of students.

These are young people who are likely to be in this country for some time. Access to higher education can enhance the contribution they can make and wish to make to British society. If they are eventually able to return to their home countries, would we begrudge them being able to use what they have learned to contribute to those countries?

When this was debated on Report in the Commons, Paul Blomfield MP, who moved the amendment, suggested there had been some discomfort on the Government Benches when it was voted down in Committee. I believe that the Minister's arguments there were not found to be exactly convincing. Mr Blomfield focused in particular on the treatment of Syrian refugees resettled under the vulnerable persons resettlement scheme who are granted five years' humanitarian protection rather than refugee status, thereby denying them the access to student support enjoyed by those with refugee status. Earlier in Committee, he commented that the Government have never explained why this is so. Since then, however, the noble Lord, Lord Bates, explained in an oral answer to me that,

"what we have is people in acute need and we want to get them here as quickly as possible. Humanitarian protection is the vehicle by which we can do so. If we first have to go all the way through the route of establishing refugee status for a lot of people who have no identification papers, it means they are at risk for longer. That is why we have chosen to take that particular route, to ensure that we can get people here and give them the help they need as quickly as possible".—[*Official Report*, 10/1/17; col. 1859.]

I can see the logic in that, but it raises the question of why it is not possible to treat humanitarian protection as an interim status that can be, in effect, upgraded to refugee status once it is possible to establish that that is appropriate. The problems caused by the current position were raised by the Public Accounts Committee in its recent report on the Syrian vulnerable persons resettlement scheme. It noted the undue stress that those problems cause.

The Government have tended to argue that humanitarian protection is broadly the same thing as refugee status, but among other things, as we have already heard, it does not provide the same access to student support, hence this amendment. When giving oral evidence to the Public Accounts Committee, Paul Morrison, director of the Syrian VPRS, said that they are now aware of these issues and are working closely with DfE officials and others to look at them, and are keeping them under active review. I am not sure who will reply to the debate, but I suspect the noble Viscount will not be in a position to throw any light on what progress has been made in these discussions now. I ask him to relay our concern about the particular implications for access to higher education. If he is able to enlighten us, perhaps at Report or in one of his many epistles, that would be very helpful.

6.45 pm

Refugee Action tells me that this issue is causing considerable problems for resettled Syrian refugees. They cited one family encountering serious financial difficulties because the son had ceased claiming benefits in order to pursue a computer science degree with no financial support. If he had lived in Scotland, there would not have been a problem because the Scottish Government have introduced special fee status for this group that allows them immediate access to student support. Some universities, to their credit, make special provisions, but, welcome as this is, it is inevitably hit and miss. Refugees should not have to rely on the grace and favour of particular institutions.

Of course, we cannot resolve the issue of the refugee status of resettled Syrian refugees through the Bill. This amendment does, however, provide an opportunity to address one of the problems it causes, as well as help those on other resettlement schemes and young asylum seekers who have been given permission to remain. We are talking about a particularly vulnerable group of young people. Would it not be a wonderful thing if we could open up to them the whole world of higher education in this country? I hope very much that the Minister will take this away, discuss it with colleagues in the Home Office and DfID and respond more positively than the Higher Education Minister did when it was debated in the Commons.

The Lord Bishop of Durham: My Lords, it is my privilege to have added my name to this amendment. My favourite Christmas card of the past year came from a refugee from Burundi. Last summer, when I visited Burundi, I accessed the rector of the university that she had had to flee and arranged for her qualifications from that university to be released and forwarded to her in this country so that she could commence university, which she will do in September this year. It was a huge relief to her because without that piece of paper she would have had to return and undertake A-levels. In her Christmas card she not only thanked me, but said that it was being able to access higher education straightaway that made her feel welcome and wanted, and that we believed in integrating her into our country.

Amendment 443, tabled by the noble Lord, Lord Dubs, would allow all refugees resettled to the UK, including the Syrian refugees being resettled at present, as well as those young people who have made applications for asylum who are granted a form of leave other than refugee status, to access student finance and home fees. It is an important amendment because it addresses

[The Lord Bishop of Durham]
one element of how we as a country treat people to whom we have said we will offer protection. Currently, individuals with refugee status can access student finance and qualify for home fee status from the moment they are awarded their protection. However, those with a slightly different status—that of humanitarian protection—are treated differently. Those with humanitarian protection have to be able to show at the start of the academic year that they have been ordinarily resident for at least three years to be able to receive financial support. This is the case despite people granted humanitarian protection having been found to be at real risk of suffering if they were to return to their country of origin. This includes risk of the death penalty, unlawful killing and torture.

The group most impacted by this are the Syrian refugees currently being resettled under the vulnerable persons resettlement scheme, as these refugees are granted humanitarian protection rather than refugee status. The result of this is that a young Syrian refugee who arrived in the UK would not qualify for student finance until the start of the academic year in 2020. The only exception to this, as the noble Baroness, Lady Lister, pointed out, is in Scotland.

I currently serve on the inquiry of the All-Party Parliamentary Group on Refugees looking at the experience of refugees once they are settled in their status. We have heard from many witnesses, including refugees themselves, that there are several barriers to successful integration, and one of the most often cited is access to education. Amendment 443 would remove at least one of the barriers.

Subsection (2)(a) of the proposed new clause would ensure that all resettled refugees, no matter what status they were given or where in the UK they were placed, could access student support immediately. Subsection (2)(b) would make student finance available for those who were granted humanitarian protection after making an application for asylum. For people granted humanitarian protection after applying for asylum, their future is clearly in the United Kingdom, so they should be allowed to access university education in order to build their lives here and to be able fully to contribute to society.

Subsection (2)(b) would also provide access to student finance and home fee status to people who had applied for asylum and then been granted another form of immigration leave. Again, the Government have accepted that the immediate future of such individuals is in the UK and so they should be given every opportunity to contribute and develop, yet they face significant hurdles in doing so. This is because, in 2012, the Government changed the rules so that potential university students in this situation could no longer access student finance and would be reclassified as international students, meaning that they would face much higher fees.

The Supreme Court found these rules discriminatory and, as a result, a new criterion of "long residence" was introduced. However, young people who have gone through the asylum process, including those children who arrive as unaccompanied asylum-seeking children, are unlikely to meet the long residency criteria and so will have to watch their school peers go off to university, leaving them behind.

This amendment is not about creating special circumstances for refugees and other people who have arrived in the UK seeking asylum. Instead, it is about removing the existing barriers that prevent young people who came to the UK seeking protection and who are capable of attending university fulfilling their potential and gaining the skills and knowledge that will then allow them to participate fully in, and contribute to, the United Kingdom. I hope that the Minister will offer some support and agreement for the amendment, because it would help refugees feel more welcome.

Lord Judd (Lab): My Lords, I, too, am glad to have my name on the amendment. Appreciation and tribute should be offered to those universities which of their own initiative are doing what they can to meet the challenge in the current situation, but that is obviously not adequate.

In the long debates on this Bill, we have constantly returned to the argument about the quality and tradition of our universities. It is really rather sad to see universities with that quality and tradition caught up in such an oppressive and negative administrative policy.

I relate this to another amendment which we shall discuss quite soon, about security and terrorism. In the awful problems relating to security which we face, a key issue is the battle for the minds of the young. We want young people to have good education which helps them to form a more responsible and enlightened view about society and their role within it.

The potential students to whom we refer have been through the most dreadful experiences. It is important to keep reminding ourselves of that: they have been through harrowing experiences, and very seldom is it their fault. We have to look at the situation as they see it, and how they talk of it with their friends and contemporaries. They see it as oppressive and negative. It is not helping to build stability and peace in the world. If we take security and peace in the world seriously, we should want to do everything we can to meet this challenge and to enable potential students to have the advantage of education. I very much hope that the Minister will take on board the seriousness of this issue and try to meet it in some way in his response.

I sometimes worry already about the anecdotal evidence that I hear about how negative attitudes are beginning to build up across the world, and not just in the places from where those potential students come. I worry about how far the United Kingdom is really the sort of place in which they want to come and study, whether it really is the warm, welcoming society which it has traditionally been. There is too much evidence of a culture of "no", of rejection, unless there is an exception. This amendment would help to meet that situation and I hope that the Minister will find an opportunity to say something positive in response.

Baroness Hamwee (LD): My Lords, I should apologise to the Committee, as I did not speak at Second Reading, but I am very deliberately speaking from the Front Bench as a member of these Benches' home affairs team to add our support to the amendment.

I want to speak about integration—I cannot do so as eloquently or forcefully as the right reverend Prelate. I remind the Committee that we are talking about

people whose status here is legal. Integration is a two-way process. The Home Office uses much too often for my comfort the term "hostile environment" and does so very deliberately. In the context of the subject of this amendment, we should be talking about a supportive environment.

If one changes the perspective, many people in these categories can be seen as a resource for the UK, so this is not just an altruistic point. People who meet individual refugees are often startled at their high level of skills and education, and startled too at their determination to be educated. Of course that does not apply to every individual, but it is really quite notable. Noble Lords who attended a City of Sanctuary event recently were impressed by hearing a young woman's experience in overcoming the hurdles which the amendment seeks to address to get to university. She did but, my goodness, what a waste of time along the way.

As well as it being the right thing for us to do as a society, it would be to our benefit to facilitate the education of those who seek sanctuary and who are likely to be here on a long-term basis. Many of them come from cultures which value education very highly, perhaps because it is harder to attain. It often seems to me more highly valued among them than by those in our indigenous community, who perhaps take it rather more for granted. We very much support the amendment.

7 pm

Viscount Younger of Leckie: My Lords, I thank the noble Lord for bringing forward this amendment. I am very sorry that the noble Lord, Lord Dubs, is not in his place. I think the House is aware, as certainly I am, that he has worked assiduously in support of the Syrians. This is an important issue, and I realise that it is also a sensitive one, but it is already addressed within the student support regulations. The noble Lord, Lord Judd, talked about the importance of the UK being a warm welcoming country. I absolutely agree and I will make some very strong points on that matter in a subsequent debate, which I hope will take place today.

I am pleased to say that those who come to this country and obtain international protection are already able to access student support. Our regulations have for some time included provision for those granted refugee status or humanitarian protection and their family members. As the right reverend Prelate the Bishop of Durham said, people who enter the UK under the Syrian vulnerable persons resettlement scheme are granted humanitarian protection. Like UK nationals, they are therefore eligible to obtain student support and home fee status after only three years' residence in the UK. Persons on the programme are not precluded from applying for refugee status if they consider they meet the criteria. As Home Office officials said at the Public Accounts Committee on 7 November 2016, the department is aware of the issue and keeps it under active review. I believe that the noble Baroness, Lady Lister, understands that. I reassure the House that I have also had discussions with Home Office officials on this important matter, so there is joined-up thinking—if I may put it that way—between the DfE and the Home Office.

Those with refugee status are uniquely allowed to access student support immediately, a privilege not afforded to UK nationals or those granted other forms of leave. Recently, the Supreme Court upheld the Government's policy of requiring most persons, including UK citizens, to be ordinarily lawfully resident in the UK for at least three years immediately prior to starting their course in order to be eligible for student support. It also upheld the Government's case that it was legitimate to target the substantial taxpayer subsidy of student loans on those who are likely to remain in England—or at least the UK—indefinitely, so that the general public benefits of their tertiary education will ensue to the country's advantage. The second part of the amendment would break that long-established policy by extending support to failed asylum seekers who, it has been decided, do not need our protection but have been granted temporary leave to remain in the UK. In other words, these are persons who have only recently established a connection to the UK, which may well prove temporary. This amendment would therefore allow people who may subsequently be required to leave the country to access taxpayer funding for their study.

I realise that this is a sensitive issue but I hope that with these explanations the noble Lord will withdraw his amendment.

Lord Stevenson of Balmacara: But, my Lords, that is not what the amendment says. I have listened very carefully to the Minister and I will certainly read *Hansard* when it is published, but the intention behind the amendment—whether he has picked it up correctly or not—is for people who claim asylum and are not recognised as refugees but are granted another form of leave, such as humanitarian protection or leave as unaccompanied children, to be given the fee eligibility of home rather than overseas students if they satisfy the test of being ordinarily resident. That test is if they have lawfully and habitually resided in the UK out of choice since being granted leave, and being eligible for student finance if they are also ordinarily resident on the first day of their course. We are not talking about people who are temporarily here and who might suddenly be removed without notice, making them unable to take their course; we are talking about people with a right to be in the United Kingdom.

All the Minister's points about this not being in accordance with Home Office policy are therefore not correct, in my respectful view. We have picked up that there are people with an ordinarily resident status who do not technically qualify for refugee status, and that it is only for refugee status that the three-year ordinarily resident requirement is given. If that is where the Minister is coming from, surely what my noble friends Lord Judd and Lady Lister and the right reverend Prelate said were on point: imposing a three-year residency requirement for somebody who wishes to exercise their ability to remain in the UK in order to use that time to study is a ridiculously aggressive attitude for a caring Government to take. The Minister talked about a warm, welcoming, integrated and supportive environment but the facts are that an enormous barrier is being put in the way of people's ability to benefit from being given the ability to stay in the United Kingdom. That cannot be right.

[Lord Stevenson of Balmacara]

I understand that this is an emotional and difficult area and it may be better if we could meet outside to talk about it. Perhaps we could also bring in representatives from the Home Office who obviously hold the whip hand. If the Minister is able to do that it would be a great deal better. This is not something we can give up on but in the interim I beg leave to withdraw the amendment.

Amendment 443 withdrawn.

Amendment 444

Moved by ***Baroness Garden of Frognal***

444: After Clause 82, insert the following new Clause—

"Student support: requirement to assess repayment terms

(1) The Teaching and Higher Education Act 1998 is amended as follows.

(2) In section 22 (new arrangements for giving financial support to students)—

(a) in subsection (3)(b), after "and" insert ", subject to subsection (3A)";

(b) after subsection (3) insert—

"(3A) Regulations under subsection (3)(b) must include a level of earnings below which a person shall not be required to make repayments of such a loan."

(3) After section 22 insert –

"22A Duty to assess consumer prices in determining terms for loan repayments

(1) In relation to regulations made subject to the requirement in section 22(3A), the Secretary of State must, for each tax year, review UK consumer price inflation for the period since the last review under this subsection.

(2) If the review concludes that consumer prices for the previous tax year have increased, the Secretary of State must, by regulations under section 22(3)(b), amend the level of earnings specified in accordance with the requirement in section 22(3A) by the same percentage increase as UK consumer price inflation as determined under subsection (1).

(3) If the Secretary of State is not required to make regulations under this section, the Secretary of State shall lay before each House of Parliament a report explaining the reasons for arriving at that determination.

(4) For the purpose of this section—

"consumer prices" means the Consumer Price Index;

"consumer price inflation" refers to the annual assessment made by the Office for National Statistics' Consumer Price Inflation Statistical Bulletin.""

Baroness Garden of Frognal: My Lords, Amendment 444, in my name and that of the noble Lord, Lord Storey, seeks to mirror the rules around the benefits system, which require the Secretary of State to uprate benefits automatically each year in line with inflation unless he passes, as is currently the case, law to freeze them. The clause would mean that similar procedures have to be followed in uprating the starting point of £21,000 for repayment fees. Under the current tuition fees system, a graduate starts to repay their fees only if they are earning about £21,000 a year. One of the principles we agreed in coalition was that this threshold should rise in line with inflation from April 2017 so that only those earning a decent salary are repaying their fees. This is important in ensuring that only those who can truly afford to over their careers pay back the full £9,000 a year fees.

Liberal Democrats therefore strongly oppose the bad-faith decision of the previous Chancellor to freeze the repayment threshold. This effectively amounts to a change in contract terms for those with fees to repay that would be wholly unacceptable in any private business dealing. It is no wonder that Martin Lewis, who helped explain the Government's original scheme, has sought legally to challenge this unfair retrospective action. The freeze means that people on relatively low incomes will start paying back fees, meaning those on low and middle incomes will end up paying back more while those on the top salaries, who will pay off their fees before they reach the 30-year cut-off, will be unaffected.

The issue is even more important considering rapidly increased inflation due to Brexit. Our amendment therefore seeks to provide a mechanism to ensure that the repayment level must rise with inflation. It uses rules around social security benefit increases to require the Secretary of State to consider whether prices have changed over the last 12 months—ie, inflation has taken place—and, if so, to increase the repayment threshold by a similar level. This would therefore require a new order every year to be placed before Parliament, ensuring the Government can never again unilaterally decide to freeze the point at which students start to pay.

Liberal Democrats hesitate, for good reason, to talk about university fees. We suffered the political consequences of breaking our contract with the electorate. The Chancellor was very clever, but there was very little saving in the end to the Exchequer and there were concessions to the Liberal Democrats. What we are looking at now is the elimination bit by bit, piece by piece, of those concessions, starting with grants and moving on to access, and so on. So the policy has clearly worsened, and what we have currently, with the raising of the threshold, is nothing short of a scandal. A contract has been broken and there has been a one-sided redefinition of the terms of the loan. In any other context, as Martin Lewis quite correctly said, this would lead to legal action. The only reason legal action is not possible in this case is the small print, which, as far as most undergraduates are concerned, was very small indeed.

This amendment is simply an attempt to avoid a repetition of that bad situation by defining a minimum level of earnings and a mechanism for adjusting it in a rational, open way. It would avoid partiality, exploitation, misunderstanding and lack of trust, which is absolutely crucial. That, surely, is the way to go. The Government would be doing the right thing by accepting this amendment. I beg to move.

Lord Willetts: My Lords, perhaps I could briefly challenge the proposals of the noble Baroness, Lady Garden. I do so very aware of how the Conservative Party and the Liberal Democrats worked together on this years ago, and I pay tribute once again to my former ministerial colleague, Sir Vince Cable, with

whom it was a pleasure to work. But I think her account of the way the decision was taken is not quite correct and I do not think that her proposals for the future will work in the best interests of students or the Exchequer.

When we set the £21,000 repayment threshold in 2011, we were working on the basis of forecasts of where earnings would be by 2017. We thought we were setting the £21,000 repayment threshold at about 75% of earnings—I cannot remember the exact figure. What has happened since then is that earnings have grown by much less than was forecast, as a result of which the repayment threshold has become significantly more generous relative to earnings than we expected when we set it. With the wisdom of hindsight, I wish that we had put in brackets alongside £21,000, "that is, approximately 75% of earnings", but what is relevant for graduates is that this is relative to their earnings and average earnings. On that basis, the purpose of the current freeze of the £21,000 threshold is to bring it back gradually towards the kind of relationship to average earnings that was envisaged when it was first proposed in 2011.

I agree with the noble Baroness, Lady Garden, that it would be worth having some kind of mechanism for review of this threshold. I have proposed a kind of five-year review at the start of each Parliament of the right place to set the repayment threshold. I do not think some fixed relationship to the RPI is relevant. The big social decision—it is a decision—is where it should be relative to average earnings. Of course, the coalition decided it should be a significantly higher threshold than that in the old system. Although I remember working with Martin Lewis on this, I think his argument that this is some terrible breach of faith is incorrect. This is actually a relationship to earnings which has ended up much higher than was originally expected.

I also think that Amendment 449 is misconceived and would be very dangerous indeed. It proposes that these loans should be regulated as if they are commercial loans by the Financial Conduct Authority. The student loans scheme steers a very narrow course between two equal and opposite problems. One problem would be if student finance were once more counted as public expenditure, as a result of which it would be rationed and we would not see the increase in cash for universities that we have seen. Although some people think this is public spending—to my surprise, the noble Baroness, Lady Garden, talked about there being very little saving to the Exchequer—the fact is that the shift to fees and loans achieved a very significant reduction in public spending. We do not want to go back to the days of it being public spending.

However, neither do we want it to be a commercial loan scheme. It is absolutely not a commercial loan scheme. I worked very closely with Lib Dem colleagues at every opportunity to explain to prospective students that this is not a commercial loan. This is not like an overdraft or a credit card. It is a universal scheme accessible to almost all students and is in no way like taking out a loan from a bank regulated by the Financial Conduct Authority. If the Student Loans Company were regulated by the Financial Conduct Authority, it would immediately have to go through requirements such as the "know your customer" requirement. It would have to decide: "Should we lend to young John Smith? Is he going to be able to repay? Should we lend to young Janet Smith? Is she going to be able to repay?". That panoply of assessment of whether individuals should take out loans, which is part of the regulatory regime for commercial loans, should not apply to this provision. This is a universal scheme using taxpayer finance. Therefore, requiring it to be regulated as if it is a commercial loan would be a retrograde step and very regressive.

All three parties in this Chamber today, when faced with the dilemma of how to finance university education, have ended up with an essentially similar model: fees and loans, with a universal loan scheme. It is no accident that we have ended up with this model. It is because it steers between two equal and opposite perils. These Lib Dem amendments would destabilise that model, which is now working to the advantage of students, universities and the Exchequer.

7.15 pm

Lord Watson of Invergowrie: My Lords, Amendments 446, 449 and 449B are in my name. Amendment 446 is a reaction to the fact that Conservative education policy has had a detrimental effect on the education and life chances of those from low and middle-income backgrounds. We can trace that back to 2010, when Labour left office, with 71% of state-educated pupils going to university. By 2014, that had fallen to 62%.

The change from maintenance grants to loans is a regressive policy, introduced last year, that will leave students from low and middle-income backgrounds facing higher debts, which they may never be able to repay; we will discuss this in a later amendment. Bringing back the maintenance grant, which is what is proposed in this amendment, is a necessary move to ensure there is that investment in our young people, helping more of them access a university education, and providing the country with the highly educated and highly skilled workforce that we need.

English students already face some of the highest levels of student debt in Europe, with the average student graduating with anything up to £50,000 of debt. This is a particular problem for students from low and middle-income backgrounds, who are more likely to need to rely on loans to fund their studies. It is well known that students from more affluent backgrounds do not need a loan—they may take one out because it provides access to cheap money—but for low and middle-income students, that is not an option; they have to take that loan out. Increasing the amount of debt they face by replacing grants with loans could act as a disincentive that will stop some of them pursuing higher education at all.

It may well be asked: if you were to reintroduce this, what would it cost? Labour has in fact costed it. We reckon it would cost about £1.5 billion in each academic year but our policy is quite clear and has been stated before: we would raise corporation tax by 1% to 1.5%. By funding the policy in this way, it is a direct correlation: companies would be contributing to the education and training of the highly skilled,

[Lord Watson of Invergowrie]
highly trained workforce that is needed to help Britain's economy thrive in the 21st century. It would be a cause and effect in that respect.

I heard what the noble Lord, Lord Willetts, said about Amendment 449. I bow to his greater experience and, indeed, direct involvement in this until quite recently. The Student Loans Company appears to be a law unto itself. In many ways, it seems out of control. Repayment levels are well below projections and there is very little confidence in the company. The loans are regarded as a non-contingent tax liability, not a normal loan, and therefore they are not regulated. I hear what the noble Lord, Lord Willetts, said, and there are reasons for that, but the money has to come from somewhere. I accept that for those seeking a loan affordability is an issue. We are very concerned about the way in which the Student Loans Company operates.

Just a few minutes ago, in a quite unrelated set of amendments, we were treated to a further example. When the noble Baroness, Lady Goldie, told us that one of the reasons why the sharia-compliant finance product could not be introduced—and she did not appear to have the faintest idea of when it would be released—was that the Student Loans Company needed time to get its processes into suitable order. So thousands of Muslim students are forced to wait while the Student Loans Company dithers. That is symptomatic of the way in which that organisation operates. The Student Loans Company does need proper regulation, if not by the Financial Conduct Authority, then by some other means. If the noble Lord, Lord Willetts, thinks it is operating satisfactorily, he should say so, but I would be very surprised if he does.

The last amendment I will speak to is Amendment 449B. It traces back to when the noble Lord, Lord Willetts, was Higher Education Minister. In the 2015 Autumn Statement the then Chancellor announced that the repayment threshold on student loans was to be frozen at £21,000 from April 2017, instead of being uprated in line with earnings, as was promised in the marketing materials and in writing from—and I am not trying to score particular points—the noble Lord, the Minister at the time. That is an important point.

Labour MPs submitted a raft of amendments to this Bill in another place that were designed to stop retrospective changes to student loans by Ministers, and to bring them under regulation by the FCA. The key issue is that millions of students have taken out loans with an understanding that the threshold would increase with earnings, and have had their loans changed retrospectively and regressively. I say to both Ministers opposite that that is the sort of underhand tactic that undermines the public's trust in politics and politicians, and that alone would be sufficient reason to overturn this decision. Worse, however, the change places additional financial burdens on poorer students and sets a dangerous precedent. It also falls short of the standards that we would expect from the private sector, where the FCA has the power to stop this happening.

The noble Baroness, Lady Garden, outlined the effect on students. Our amendment would prevent any changes to the repayment of a student loan after the terms and conditions of repayment had been agreed. This would apply to existing loans after the commencement of the Act, and it would ensure that such a situation would not recur by bringing loans under the regulation of the Consumer Credit Act 1974. These amendments demonstrate the need to regulate the student loan market and would provide the protection that students need and, we believe, deserve.

Baroness Royall of Blaisdon (Lab): My Lords, I broadly support, in particular, Amendment 446, tabled by my noble friend Lord Watson. Opportunistically, however, I ask the Minister, since we are discussing student fees, when there will be clarity vis-à-vis student finance for EU students who want to register for courses in 2018-19. They have no clarity at the moment, and this is putting some EU students off even thinking about applying to UK universities.

Baroness Goldie: My Lords, I thank noble Lords for their contributions. I am aware that this is an issue that stimulates debate and the contributions have been genuinely informed and reflective.

When the Government reformed student finance in 2011 we put in place a sustainable system designed to make higher education accessible to all. It is working well, because total funding for the sector has increased and will reach £31 billion by 2017-18. These amendments cover a number of areas of the student finance system.

I refer first to the issue of the student loan repayment threshold. The decision to freeze the repayments threshold for post-2012 loans was taken to put higher education funding on to a more sustainable footing. To do this, we had to ask those who benefit from university to meet more of the costs of their studies. I thank my noble friend Lord Willetts for providing a very clear explanation of the threshold freeze and the circumstances that led to it. Freezing the threshold enabled us to abolish student number controls, lifting the cap on aspiration and enabling more people to realise their potential.

On average, graduate earnings remain much higher than those of non-graduates. Students continue to get a fair deal: the current threshold remains £3,500 higher than that for pre-2012 loans. Uprating the threshold in line with average earnings would cost around £5 billion in total by April 2021 compared to the current system. The total cost of uprating by CPI would be around £4 billion over the same period. Taxpayers—many of whom will be non-graduates earning much less than the graduates who would benefit—would have to bear that cost.

On the matter of student loan terms and conditions, I share your Lordships' desire to ensure that students are protected. That is why the loan terms are set out in legislation. However, it is important that, subject to parliamentary scrutiny, the Government retain the power to adjust terms and conditions. Student loans are subsidised by the taxpayer, and we must ensure that the interests of both borrowers and taxpayers continue to be protected. This amendment would also prevent the Government making any changes to the loan agreement that would favour the borrower. Finally, we believe that the Government should continue to be able to make necessary administrative amendments to the terms and conditions to ensure that the loans can continue to be collected efficiently.

With regard to the replacement of maintenance grants with loans, I reassure noble Lords that this Government remain committed to increasing access to higher education. Indeed, the proportion of students from disadvantaged backgrounds entering higher education has increased from 13.6% in 2009 to 19.5% in 2016. We have, furthermore, increased support for students on the lowest incomes by over 10%. Reinstating the system of maintenance grants would reduce the up-front support available for students from some of the most disadvantaged backgrounds, while costing the taxpayer over £2.5 billion each year. Students recognise the value of a degree. Lifetime earnings are, on average, higher for graduates than non-graduates and it is right that students who earn more contribute towards the cost of their education. Repayments are related to the ability to pay and start only when a borrower is earning £21,000.

I turn now to the amendments relating to the regulation of student loans. I agree that it is important that students are protected. However—as my noble friend Lord Willetts set out—student loans are not like commercial loans: we must remember that. They are not for profit and are available to all, irrespective of their financial history. Repayments depend on income and the interest rate is limited by legislation. The loans are written off after 30 years with no detriment to the borrower. The key terms and conditions are set out in legislation and are subject to the scrutiny and oversight of Parliament. This means that additional regulation is unnecessary.

Lenders regulated by the FCA are obliged to assess the creditworthiness of all their borrowers, and the affordability and suitability of the loan product for each borrower. Were the Financial Conduct Authority to regulate student loans—as Amendment 449 seeks—it could affect the ability of some students to obtain them. My noble friend Lord Willetts spoke powerfully about that.

Our system allows the Government, through these subsidised loans, to make a conscious investment in the skills of our citizens. I hope that this addresses the concerns raised by noble Lords and I therefore ask that Amendment 444 be withdrawn.

Baroness Garden of Frognal: My Lords, I thank the Minister for her detailed response. I bow, of course, to the remarks of the noble Lord, Lord Willetts. I remember working with him in coalition when I was Higher Education Minister in the Lords—heady days indeed.

In spite of his reassurances, I am still concerned that the less well-paid and less privileged students should not be disproportionately penalised or deterred by repayments. After all, they repay for longer than the better-paid students, and there are problems in that. I also support the amendments of the noble Lord, Lord Watson. I think that the noble Baroness, Lady Royall, will find that we may touch on those issues when we come to the amendments on international students. She makes, however, a very valid point that needs consideration. At this stage, however, and in the light of the Minister's remarks, I beg leave to withdraw the amendment.

Amendment 444 withdrawn.

Amendments 445 and 446 not moved.

Amendments 447 and 448 had been withdrawn from the Marshalled List.

Amendments 449 to 449B not moved.

7.30 pm

Clause 83: Qualifying institutions for purposes of student complaints scheme

Amendment 450

Moved by ***Baroness Goldie***

450: Clause 83, page 53, line 13, at end insert—

"( ) in the words before paragraph (a), omit "in England or Wales",

( ) in the opening words of paragraph (a)—

(i) after "university" insert "in England or Wales", and

(ii) after "the 1992 Act" insert "or section 37 or 87 of the Higher Education and Research Act 2017 ("the 2017 Act")","

Baroness Goldie: My Lords, these amendments make a number of largely technical changes to this clause, which deals with the student complaints scheme in higher education. It may help if I begin by explaining that none of these changes impacts on the policy intent. This is to ensure that the definition of a qualifying institution for the student complaints scheme is widened to ensure that all providers on the OfS register will be required to join the scheme. Amendments 455 and 456 go slightly further by confirming, as is current practice, that higher education providers delivering courses in a franchise arrangement will also be required to join the student complaints scheme.

This approach means that all higher education students should have the same right to have their unresolved complaints considered through this route, provided that their complaint meets the requirements for consideration under the scheme. The key change we are now introducing is to ensure that the requirement we are putting into legislation that deals with providers that are no longer regarded as qualifying institutions of the complaints handling scheme will apply in both England and Wales. That is important given that the complaints handling scheme has operated successfully across both nations for over 10 years. In practice, this means that providers that cease to be qualifying institutions are classed as transitional providers and still subject to the scheme for a further period of up to 12 months. This ensures an additional protection for students.

In addition, through Amendment 457, we are making a minor change to ensure that the operator of the student complaints scheme continues to have the discretion to agree with individual providers what courses should be covered by the scheme. This is existing practice, and the amendment simply ensures it applies correctly to all those providers who are part of the scheme. Without this discretion, it is likely that the complaints handling scheme could inadvertently stray into other parts of the education sector, such as schools or further education. Many of the providers now joining the complaints handling scheme offer more than higher education courses. This might include courses considered as part

[Baroness Goldie]
of the schools or further education sector, where separate complaints arrangements are already in place. Finally, the amendments make some minor technical changes, mainly to ensure that this clause is linked to all the appropriate clauses in the Bill. I beg to move.

Amendment 450 agreed.

Amendments 451 to 461

Moved by ***Baroness Goldie***

451: Clause 83, page 53, line 14, leave out from "section 40" to end to line 15 and insert "or 43 of the 2017 Act","

452: Clause 83, page 53, line 15, at end insert—

"( ) in paragraph (b), after "institution" insert "in England or Wales",

( ) in paragraph (c), after "institution" insert "in England or Wales",

( ) in paragraph (d), at beginning insert "an institution in Wales which is","

453: Clause 83, page 53, line 17, after "(da)" insert "an institution in England which is"

454: Clause 83, page 53, line 19, at end insert—

"(ba) in paragraph (e)—

(i) after "institution" insert "in England or Wales", and

(ii) for "another paragraph" substitute "any of the preceding paragraphs","

455: Clause 83, page 53, line 19, at end insert—

"(bb) after paragraph (e) insert—

"(ea) an institution in England (other than one within any of the preceding paragraphs of this section) which provides higher education courses leading to the grant of an award by or on behalf of—

(i) another institution in England within another paragraph of this section, or

(ii) the Office for Students where the grant is authorised by regulations under section 47(1) of the 2017 Act;", and"

456: Clause 83, page 53, leave out lines 20 and 21 and insert—

"( ) in paragraph (f)—

(i) after "institution" insert "in England or Wales", and

(ii) after "the 1992 Act" insert "or section 40 or 43 of the 2017 Act"."

457: Clause 83, page 53, line 21, at end insert—

"( ) In section 12(3) (qualifying complaints), for "paragraph (e)" substitute "paragraph (da), (e), (ea)"."

458: Clause 83, page 53, line 24, leave out "in England"

459: Clause 83, page 53, line 33, leave out "in England"

460: Clause 83, page 53, line 40, leave out "paragraph (e)" and insert "paragraph (da), (e), (ea)"

461: Clause 83, page 53, line 41, leave out "either of those paragraphs" and insert "the paragraph in question"

Amendments 451 to 461 agreed.

Clause 83, as amended, agreed.

Amendment 462

Moved by ***Lord Hannay of Chiswick***

462: After Clause 83, insert the following new Clause—

"Students at higher education establishments: treatment for public policy purposes

The Secretary of State has a duty to encourage international students to attend higher education establishments covered by this Act, and to that end shall ensure that no student, either undergraduate or postgraduate, who has received an offer to study at such a higher education establishment shall be treated for public policy purposes as an economic migrant to the UK, for the duration of their studies at such an establishment."

Lord Hannay of Chiswick (CB): My Lords, Amendment 462 is in my name and the names of the noble Baroness, Lady Garden, the noble Lord, Lord Patten of Barnes, and the noble Baroness, Lady Royall of Blaisdon. The subject of this amendment is the practice of treating higher education undergraduate and postgraduate students as long-term economic migrants. It is a subject that is, frankly, extremely familiar to the House. We have debated it on a number of occasions in the last six years to my knowledge, and speakers from all corners of the House have deplored this method of treating students as economic migrants. I remember an occasion, I think when the noble Lord, Lord Bates, was standing up for the Home Office, when 20 people in succession denounced this system, and not one spoke in its favour. Noble Lords are familiar with this matter, so I will not go on at great length, but we have an opportunity to do something about it, not just to wring our hands and talk about it.

I will not weary the Committee with a shower of statistics, but no one contests that the excellence of our higher education establishments is a massive national asset, making the sector one of our largest invisible exports and putting us second only to the United States in the league tables of that sector. In addition, no one contests that overseas students who pay in ready cash for their fees and maintenance costs put huge resources into our economy and create, rather than substitute, employment. They are an important part of our universities' ability to function effectively and, as they have done in recent years, to expand.

To give just a few figures, 13% of undergraduates are overseas students, while 38% of postgraduates are. No one contests that when these students return to their home countries, they represent a substantial, if unquantifiable, source of soft power for this country for decades to come. Yet we categorise these students as economic migrants, and in recent years have piled up a mass of obstacles, both bureaucratic and material, to their coming to study here, and post-Brexit, there could be more. The consequences are pretty clear: overseas student figures are down substantially. Overall, the number of non-EU students is down by between 2% and 8%. The number of students from India is down by a half in the last two or three years.

The Government protest that we are doing extraordinarily well because of the numbers from China, but I really would ask whether it is wise to depend to an increasing extent on students from an authoritarian country which could quite easily turn the tap off, just like that, if there was a political spat between us. Look at our main competitors: the US, in that same period that we were down by between 2% and 8%, was up by 7.1%; and Australia was up by 8%. We are losing market share—it is as simple as that.

This amendment has two objectives, one positive and the other negative. The objective of the positive part of the amendment is to place a duty on the Secretary of State to encourage overseas students to come to this country—not just to not discourage that but to positively encourage it. I know the Government make efforts to do that, but most of the efforts they make are countered by this pile of obstacles that they put up at the same time. The objective of the negative part of the amendment is to cease treating these students, whether postgraduates or undergraduates, for public policy purposes, as economic migrants. This is much more than just a statistical issue—although the statistics are part of it—but I sometimes ask myself how there could be any rational explanation for a Government who are under criticism for the level of immigration insisting on artificially boosting the figures by including students. It makes no sense when it is not done by the United States, Australia or others where the issue of immigration is also very sensitive. They do not make this mistake.

The wording of the amendment, therefore, goes wider than statistics and addresses the whole range of policies that might discourage higher education students from studying here. I hope very much that this can be pursued and adopted as part of the Bill. I beg to move.

Lord Patten of Barnes (Con): My Lords, my default position is always to try to be helpful. That is one reason why I was so pleased to support this very important amendment to this legislation. How can I be helpful? First, we know that having now shaken off the chains of membership of the European Union, and having turned our back on a millennium of introverted, insular history, we have become "global Britain". It would be extraordinary if, having become "global Britain", we were to prevent the huge numbers more of international students coming to study here. It has been said again and again in this debate that our higher education system is one of the jewels in our crown. It is not surprising, therefore, that so many other people want to enjoy its benefits.

The noble Lord, Lord Hannay, pointed out some of the absurdities of the present situation, such as the fact that we choose to define students as immigrants. They are not immigrants. There is arguably a problem about immigration in the medium term or the long term. What we do is simply take the figure that represents those who have come to the country in one year and those who leave it in four or five years' time. We count them as immigrants. Why do we do it? Why do we deny ourselves and our universities the benefits of educating more young people from around the world? Why do we deny ourselves that benefit? It is not, frankly, because people in this country think we would be crazy to define students as what they are.

Every bit of research that I have seen, including research undertaken by the Conservative Party, has made it absolutely clear that people understand the difference between a student and an immigrant. People understand the contribution that students make to local economies. People understand the benefits, in the long term, of having out there—I noted what the noble Lord, Lord Judd, said about this—people who understand what it is to have a great education in a liberal, plural society. It is an enormous benefit to us, so it is not just about money or price, but about values.

Why do we behave so foolishly? It is because of our fixation with the immigration target. Let us be clear: we put higher education in a more difficult position and we cut ourselves off from a great deal of economic benefits because of that obsession with an immigration target, which we fail to reach, very often because we are growing so rapidly year after year. We cannot say that we are doing this because people in this country think we would be crazy to make a change: they do not; they think it would be sensible. We cannot say that we do this because other countries around the world do not behave like that. They do, as the noble Lord, Lord Hannay, said. We take advice from the Australians on immigration policy, apparently, and look what they do. Look at what the Americans and Canadians do. They all know that at the moment, with the growth of the middle class in Asia, more and more people want to spend their money on educating their children in great western universities. We—global Britain—have made the choice to cut ourselves off from that. It is completely crazy

7.45 pm

I support this amendment and, if necessary, I will go on supporting it as long as we debate this issue in this House. I support it, first, because I think I am being helpful to global Britain and to the Government, including the Prime Minister. When she went on that trip to India the other day, which I am sure was very successful, she wanted to talk about trade and they wanted to talk about students. I also do it because of my regard for the Minister of State. It is not only that Minister's brother who has said how crazy it was to pursue this policy and that we should change it. I first became convinced of the importance of changing it when I read an article two and a half years ago by that admirable man Nick Pearce and Jo Johnson. Nick Pearce was then head of the Prime Minister's think tank in No. 10. At the end of that article in the *Financial Times*, Mr Johnson, the Minister of State—who is not in his normal place today, so we must send him this bonne bouche down the Corridor—and Nick Pearce wrote this:

> "Changing the way students are classified will have little effect on the Government's ability to control medium to long-term net migration … The Government faces real choices over policy on international students. The difference they make to long-term net migration is relatively small. The difference these choices make to the education sector, to Britain's soft power around the world and to the UK economy is very significant".

That was the Minister in the *Financial Times*, so it must be true.

By supporting these important amendments, the whole House, as well as individual Members, is being very supportive of the Government and particularly supportive of the Minister for Higher Education, who wants us to do what is in the amendments.

Baroness Garden of Frognal: My Lords, I have added my name to this amendment; I strongly support the words that we have heard from the noble Lords, Lord Hannay and Lord Patten. I, too, will try to be helpful

[Baroness Garden of Frognal]
because this amendment highlights the significant impact of international students and their contribution to the success of UK universities. It builds on Amendment 127, which I spoke to earlier in Committee, so I shall curtail my remarks at this stage.

As has been said, counting international students in migration targets is a poor policy choice. It damages the reputations of UK universities. There seems to be universal agreement that it should be reversed and that other countries do not treat their students in this way. We will doubtless hear from the Government that there is no limit on the number of international students who can come into the country. The trouble is that they follow that up by saying, "But we will count them in immigration targets and we are intent on reducing immigration". This sends very mixed and misleading messages to students who are left mystified about this but feeling generally unwelcome. It does not help now that we make them leave the country as soon as they finish their studies, rather than staying on to make some postgraduate contribution to the country.

Our messages are unwelcoming and overseas students hear those unwelcoming messages. We understand that these decisions are within the Home Office, not within the department the Minister represents, but we ask him to take back to his colleagues in the Home Office—or, indeed, to his right honourable friend the Prime Minister—how very strongly this House feels that these measures should be changed.

Baroness Royall of Blaisdon: My Lords, I too have added my name to the amendment. Everything has already been said. I would merely say that Nick Pearce is now a professor at the University of Bath—so that is good, isn't it?

Like the noble Lord, Lord Patten, and all other noble Lords, I find it particularly bizarre that in this brave new world, where we want to be outward-facing, persuade the world to trade with us and attract people to study at our universities, we still persist in including students in the immigration figures, which, as the noble Baroness has just said, sends out bad feelings. It is perception that is important. The noble Lord may be right that we are welcoming everyone but, even if that were true—and I am not sure it is—the perception is that we are not, and that is a big problem.

In an earlier debate on an amendment tabled by the noble Lord, Lord Lucas, which unfortunately I missed although I supported his amendment, he said he was searching for ways in which,

"the university sector could organise and present itself so that the nation would be on its side and it would be equipped with the data".—[*Official Report*, 11/1/17; col. 1999.]

Of course I agree with that, but I would add, as the noble Lord, Lord Patten, said, that the public are already onside, with 57% of them saying that foreign students should not be in the immigration figures compared with 32% who thought that they should be. So as the Government are so determined to pursue a hard Brexit because a mere 52% of the population voted in favour of leaving the EU while 48% were against, why can they not now act on the 57% who say that they would be content with taking students out of the immigration figures?

We are all against bogus institutions, and we are glad that the Government have acted on that. We are all against those who overstay, but the figures on overstaying cited in the past by the Government are, at best, merely estimated and, at worst, being used for political ends. When will better data be available, and when will the consultation on the study immigration route be concluded?

I well understand the political importance of immigration and immigration figures, as well as the concerns expressed by the citizens of our country. However, bona fide students studying at bona fide institutions are not economic migrants but visitors, and that is the view of the people of this country. I hope that the Government will act accordingly.

Baroness Smith of Newnham (LD): My Lords, I declare my interests as someone employed at the University of Cambridge. One of my roles is as co-director of the Master of Studies programme, which brings in international students on a regular basis. They come not for a year or two at a time but for temporary periods, yet they have to go through the whole visa regime, which is long and complicated. One of the things that is so difficult in higher education and recruitment is that over the years UKBA has made it so difficult for students to come here. The procedures are lengthy and time-consuming, and very often are done out of country. Yesterday I talked to one of my tutees who said that from Kazakhstan she has to apply for a visa in the Philippines—not necessarily the most obvious thing to have to do.

In many ways, part-time students have an easier time than full-time students because most of them have full-time employment so can fulfil visa requirements quite easily. However, as the noble Lord, Lord Hannay, said in his opening remarks, there is something very strange about treating international students as economic migrants. Normally we think of economic migrants as people coming to work and taking jobs. That may be a good thing or it may be bad, but it is very specific. International students are paying fees. They are contributing to the local economy, contributing jobs and making a real difference. Yet time and again, usually led by the Home Office, we get decisions that make it harder for us to recruit international students.

I was going to refer to "global Britain" but the noble Lord, Lord Patten, has already mentioned it. So I will not go much further, except to say that there seems to be something very odd when a Government who are saying, "We want to make a success of Brexit and are looking for international opportunities", do not see international students as a major opportunity.

Should the Government not be thinking of the situation for EU students? The noble Baroness, Lady Royall, has already mentioned them. At present EU students are treated as home students. Presumably on the day we leave—we keep being told that nothing changes until that day—EU students become international students. Are they then going to become part of our immigration target? Are we then going to say that EU students appear even less welcome than students have traditionally done? What are we saying? What sort of message is going to be given? What opportunity can

we as Members of your Lordships' House offer to assist the Government and the Minister of State in getting the rules changed?

In a Question for Short Debate a few weeks ago, the noble Lord, Lord Lucas, asked, "What is the problem?". In the past, under the coalition Government, the problem appeared to be the then Home Secretary, who was not very keen to liberalise international student numbers. That former Home Secretary is of course now the Prime Minister, and she does not seem to have changed her mind.

The noble Lord, Lord Hannay, referred to all corners of this House supporting the amendment. When I made my maiden speech, I was sitting exactly where the noble Lord is sitting now. I spoke on European matters and said I looked forward to working on them with Members from all parts of your Lordships' House. All parts of your Lordships' House appear to be in agreement on this amendment, with one exception: some Members on Her Majesty's Front Bench. Can we find a way of persuading the Government to accept this amendment, take international students out of the immigration figures and accept that international students are an export and are not about economic immigration?

Baroness Brown of Cambridge: My Lords, we have heard about the importance of international students in the context of soft power and global Britain. I want to talk about the importance of international students from my perspective as an engineer. They are crucial to the delivery of our industrial strategy and to the UK being able to develop the STEM skills that it will need to deliver that strategy.

When I was principal of the engineering faculty at Imperial College, many of my engineering courses had more than 50% overseas students. Those students were not taking the places of UK students; they were providing the additional fee income that enabled Imperial College to provide the outstanding facilities to train UK students in key engineering disciplines. Some of those courses would not have been sustainable without the income from our overseas students. The noble Lord, Lord Lucas, has highlighted to us a number of times that universities have used additional funding that they now get for arts students in order to subsidise the high-cost subjects.

An outstanding institution such as Cranfield, for example, relies on overseas students to run the wide range of industry-focused Master's programmes that are of huge benefit to UK industry. Again, those programmes would not be sustainable without the higher levels of overseas student fees that they can charge. These overseas students are critical to enabling us to maintain the quality of engineering education in our universities that will enable us to ensure that UK students can develop the STEM skills that we will need in future.

Lord Rees of Ludlow (CB): My Lords, I support the amendment. I do not have much to add to the eloquent comments that have been made by the noble Lord, Lord Hannay, and other speakers. I would like to express bafflement that we are still banging on about this issue, which surely has been a compelling argument for more than two years. In the time of the coalition there was already discussion about this but the Government resisted, although there was clearly support for this within BIS.

It is clear that what is happening is an own goal in a number of ways. We need these students in our universities for academic reasons, to sustain specialised courses, to maintain academic quality and to make friends in the long term. It is a matter of perception as well as reality. The reason why the numbers from India plummeted more than from China was that the Indian press were able to present the message that students were not welcome any more in the UK. So perception is very important. We will lose a great deal of soft power in the long run if we maintain this perception. The present Government's policy is baffling, not only to many of us on the Cross Benches, but to many people within the Government and on the Conservative Benches. George Osborne expressed concern about this, and other Ministers have too.

There is the separate issue of whether we should be more liberal in allowing graduates with talent to stay in this country. Our policy has been strongly attacked by James Dyson, one of our leading entrepreneurs, who presented a report for the Conservative Government.

On all these grounds, I support this amendment and renew my bafflement that it is—at least up till now—meeting so much resistance from the Government. I hope that there will be a change of view and a realisation that it is an own goal to sustain this policy.

8 pm

Lord Judd: My Lords, I congratulate without qualification those who have put this amendment forward. When I was a young MP in the other place, back in the 1960s, I cut my teeth by making my first major speech on this subject. Anthony Crosland was the Minister at that time and we became great friends.

The world is totally interdependent. It is simply impossible to think of a place that calls itself a university that does not reflect this reality—that international character in every dimension of its activity which is so important to the learning process. We talk about overseas students in financial terms, but what interests me is their indispensable contribution to the whole character, quality and calibre of the university.

I am an emeritus governor of the LSE. I have been involved in the place for a very long time, since I was an undergraduate. I am also a member of Court at Lancaster and Newcastle. There is absolutely no question that the quality of these universities is related to the overseas students and staff. They contribute to the dimension of the university—not only in their specialist studies but by their presence.

Post Brexit—lamentable Brexit—we are going to be faced with this reality of global interdependence more acutely than ever. Let us come to our senses in time.

Lord Willetts: My Lords, I support the amendment introduced by the noble Lord, Lord Hannay. As my noble friend Lord Patten displays such a close familiarity with Conservative slogans, let me add a second—one of the great Brexit slogans, "Take back control". I do

[LORD WILLETTS]
not see why our migration policy should be determined by the United Nations. No other country says its policy should be determined by how the United Nations has chosen to define immigration. If we want to take back control, I do not see why we should allow our policy to be determined by the United Nations. We should take back control of our migration policy and set it in accordance with our national requirements, rather than allowing this dangerous, global institution to decide who we should or should not count as migrants. As well as being about global Britain, the excellent proposition from the noble Lord, Lord Hannay, is about taking back control.

I have two brief questions for the Minister. We all appreciate the difficult position that he is in. One of the problems for universities has always been planning ahead and marketing themselves around the world when there is always a danger of further changes to the migration rules. If there is anything he could say that would indicate that the Government are not planning any changes in the regime for overseas students that would be a modest but helpful step.

Secondly, could the Minister indicate where he thinks education could sit within the industrial strategy? In the brief reading I have made of the documents so far, what has surprised me has been that I did not immediately see education in the list of key potential sectors. I hasten to add that education is not simply a business sector; it has a value in its own right. Nevertheless, it is a very successful British export. If, in response to the consultation on the industrial strategy, there were a message from the education sector that it would like to be backed by the Government in an exporting mission and be seen as an important part of GDP, I hope the Minister would be able to indicate that they would strongly support education as a key British export sector as part of their industrial strategy.

Baroness O'Neill of Bengarve (CB): My Lords, I felt that this part of the debate would not be complete without the voice of the overseas student. I was an overseas student. I did my PhD at Harvard. The process for getting a visa was rather fierce. I remember going to the American embassy in London with a chest X-ray in a very large brown paper envelope, and there were other things that had to be produced. When the time came to leave, I had an American husband and a baby with an American passport. That made no difference. I was a foreign student who had come in under a particular programme, with a particular sort of visa, and I had to leave.

The point that is relevant now is that it is the accuracy and precision of the control process that prevents any drift from student status to economic migrant status. This is what matters and pretending that they are one and the same does not really address the problem. The problem is surely clarity about categories and controls.

Lord Stevenson of Balmacara: My Lords, this has been a terrific debate. It must rank as one of the better ones on this topic that have taken place over the years. It has lacked only one thing. We normally like to have the comfort of the noble Lord, Lord Cormack, making an orotund statement to sum up our feelings and allow us to drift off into the night in a comfortable way. The noble Lord is present but he is not going to speak and I am saddened by this. There is nothing more that needs to be said—the points have been put across so well.

Perception is always at the heart of this. We send messages that we are unwelcoming. We do not live up to the best that could happen in UK plc and we are missing huge opportunities in soft power and the development of our own arrangements. It may be a step too far to take back control from the United Nations. Even the noble Lord, Lord Willetts, when he comes to his senses—if ever—will realise that it may not be the best argument we have heard tonight. The arguments are almost irresistible. I cannot believe that the Minister will not want to endorse them in every respect.

Viscount Younger of Leckie: My Lords, I mentioned something about hot seats in respect of my position later in Monday's debate. I feel that the temperature has risen somewhat in debating this issue. As one noble Lord said, it is rather an old chestnut for this House. Nevertheless, I acknowledge that it is an important matter.

I am grateful to the noble Lord, Lord Hannay of Chiswick, for moving this amendment and to those noble Lords who have put their names to it. This debate has demonstrated considerable strength of feeling and provided a useful opportunity to discuss international students.

Before dealing with the specific amendment, I should like to make clear the Government's position on international students generally. As has been said—the noble Baroness, Lady Royall, put it pretty succinctly—perception is vital. It is important that we give the impression that the UK is a welcoming place for international students. I make no apology that, when we came to power in 2010, we took steps to rid the system of abuse that was then rife. No one denies now that action needed to be taken then. More than 900 institutions lost the ability to bring in international students. However, there is a world of difference between clamping down on abuse and our policies on genuine students. The Government welcome genuine international students who come to study here. Their economic contribution is significant. Not only do they enrich the experience of home students, they should also form a favourable view of the UK which should serve this country well. That is why we have never imposed any limit on the number of genuine international students who can study here, and why—I must emphasise this point—we have no plans to impose such a limit. Educational institutions will continue to be able to recruit as many international students as they want. I agree that it is a major opportunity, as the noble Baroness, Lady Smith, said.

Noble Lords have said that UK educational institutions are in competition with other countries for the best student talent. I want to outline the UK's offer and how it compares internationally. Students from outside the EU need a visa to study in the UK. They need to show that they have the necessary academic ability, competence in English and funds to support themselves.

Other developed countries, quite reasonably, set similar requirements. The system already allows students from low-risk countries to produce fewer documents. In 2015, 93% of student entry clearance visa applications were approved, a number that has risen every year since 2010, and 99% are approved within 15 days.

The terms which apply to students once here are again highly competitive. International students attending higher education institutions are allowed to work 20 hours per week during term time, the maximum that is compatible with devoting sufficient time to their studies, and similar to the rules in the United States, Australia and Canada. International students are additionally allowed to work full-time during holidays.

Post-study work is a matter of considerable interest to the education sector. Any international graduate of a UK university who is able to secure a skilled job can move into the workforce. There is no limit on the number who can do so and numbers have been rising year on year, with over 6,000 recent graduates doing so in 2015. If international students have been undertaking a course lasting more than a year, which covers the majority, they can remain in the UK for four months after finishing their studies, during which time they can work. The only country in the world with more international students than the UK is the United States. In the US, international graduates, other than when they are undertaking work directly relevant to their degree, must leave the country within 60 days of the completion of their programme.

I give a few statistics to support my proposition that the UK does welcome students. The UK is the world's second most popular destination for international higher education students. Since 2011, university-sponsored visa applications have risen by 8%. Although Indian student numbers have fallen, as was mentioned earlier, we have seen strong growth in respect of other countries, including a 9% increase in Chinese students in the year ending September 2016, as was also mentioned. This shows that our immigration system allows for growth. I apologise for speaking at some length on these matters but it is important to lay out the facts and address this very important point of perception.

I turn to the specifics of the amendment before us. While I am grateful to the noble Lord, Lord Hannay, for the clear way in which he introduced it, I must confess that I am somewhat puzzled by it as it requires that no student should be treated as an "economic migrant". But what is an economic migrant? I suspect that we all have a view of what we understand the phrase to mean, but no such term exists in law. We believe that it is used in the media; it is just a term which is used. I assume that those behind this amendment have in mind, when they refer to economic migrants, people who come to the United Kingdom on tier 2 work visas. People on a tier 2 visa come for a specific purpose on a time-limited visa and are expected to leave again when it expires, but that is precisely what the education sector tells us happens with international students. Similarly, those coming on a work visa may have conditions attached about the kind of work they can do. Equally, international students are limited in the number of hours they can work during term time. Again, this seems unexceptionable, and I am not sure why a parallel between international students and economic migrants would be seen as a bad thing. In one important regard there is a difference between economic migrants and international students. The main tier 2 (general) work visa is capped, with an annual limit of 20,700. By contrast, there is no limit on the number of genuine international students who can come to study here.

I should also deal with the inclusion of students in net migration statistics. Immigration statistics are produced by the ONS, the UK's independent statistical authority. It would be inappropriate for the Government to seek to influence how statistics are compiled. By including international students in its net migration calculations, the ONS is following international best practice. I say in response to a point raised by the noble Baroness, Lady Garden, on this matter that this approach is considered best practice by the United Nations, which I think was mentioned by my noble friend Lord Willetts, and is used by a wide range of countries, including the United States of America, Australia and New Zealand. International students use public services and contribute to population levels. Those planning the provision of such services need to know who is in this country.

With respect to the Government's net migration target, so long as, in any given year, the number of arriving students broadly corresponds to the number who leave having completed their course, students should make a minimal contribution to net migration. I repeat that genuine international students are absolutely welcome here. We do not, and will not, seek to cap or limit the number of international students.

The noble Baroness, Lady Royall, asked when the Government's consultation would be published. I suspect she has heard this response in the House before but we intend to seek views shortly. I am afraid that at present I cannot give the House an exact date or timetable.

The noble Baroness, Lady Smith, asked about the arrangements for EU students post Brexit. We recognise that future arrangements after we leave the EU for students and staff who come to the UK is a key issue for the higher education sector. The noble Baroness will have heard my next point before, but this issue will need to be considered as part of the wider discussions about the UK's future relationship with the EU.

My noble friend Lord Willetts asked a couple of questions, including one on the ability of universities to plan ahead. He asked me to confirm that the Government were not planning changes to the visa regime. He also asked where education was placed within the industrial strategy. I have made it clear that we have no plans to limit the number of genuine international students whom our educational institutions can recruit. They can plan on that basis. I do not have a full answer to his question on the industrial strategy. However, having attended a number of meetings, I know that the skills aspect is very much a key part of that strategy. I think it is best that I follow that up with a full brief on how that fits into the industrial strategy and, indeed, any other educational matters which fit into that area.

As the noble Lord, Lord Stevenson, said, this has been a good debate. I am sure that I have not answered every question that was asked or, indeed, satisfied the

[Viscount Younger of Leckie]
Committee given that this is a hot topic and an old chestnut, as was said earlier. I am very grateful indeed to all those who have contributed. However, with the assurances that I have given, I hope that the noble Lord will see fit to withdraw this amendment.

8.15 pm

Lord Lucas: My Lords, can my noble friend confirm, as I gather from his speech, that the proposals made by the Home Secretary in her speech to the Conservative Party conference in relation to students are no longer being proceeded with?

Viscount Younger of Leckie: My understanding is that during that speech she undertook to go ahead with the consultation, as I have made clear.

Lord Hannay of Chiswick: My Lords, I am most grateful to all who have taken part in this extremely lively and, I think, rather useful debate—useful, at any rate, if the Government Front Bench has understood the depth of feeling around the Committee. I took a slight risk in saying that my amendment was likely to draw support from all corners of the Committee. It is always a bit unwise to say that before it has actually happened. I thank everyone for preventing me suffering the ignominy of having wrongly predicted that. In fact, it has turned out to be the case.

I do not wish to get into a long argument with the Minister except to say that he has put before the Committee arguments which we have heard for about six years. I accept absolutely that the action taken by the Prime Minister when she was Home Secretary to close down "dodgy" language schools was valuable and necessary. I just wish that the Government would not now snatch defeat from the jaws of victory, because that is what they doing. They have cleaned up the biggest problem in the area, yet still go on introducing measures and using language which discourages overseas students. Therefore, I hope that the noble Viscount will use the gap between now and Report to reflect on the views of the House, which were so strongly expressed tonight. I hope I am not disobliging when I say to him that I propose to withdraw this amendment but not because of the reasons that he advanced.

Amendment 462 withdrawn.

Amendment 463

Moved by ***Lord Hannay of Chiswick***

463: After Clause 83, insert the following new Clause—

"Students at higher education establishments: immigration

Persons, who are not British citizens, who receive an offer to study as an undergraduate or postgraduate student at a higher education establishment shall not, in respect of that course of study, be subject to more restrictive immigration controls or conditions than were in force for a person in their position on the day on which this Act was passed."

Lord Hannay of Chiswick: My Lords, the two amendments in this group, Amendments 463 and 464, are separate from, but to some extent linked with, Amendment 462, which we have just finished discussing, on the public policy treatment of students and whether they should be treated as economic migrants. These two amendments are quite specifically related to the way that students are treated in the context of Immigration Rules, either existing ones or new ones which may be introduced. When the Minister replied to the previous amendment he frequently used the words "the Government have no plans" to do this, that and the other. Unfortunately we have been told that quite frequently and then suddenly another one comes along, or, perhaps like buses, several come along.

These amendments are particularly relevant in the context of the Brexit debate because the Prime Minister made clear in her Lancaster House speech that there are going to be new controls on migration. That is what she said. That is why she junked the single market. That is why we are in a lot of trouble. It is not imaginary. The amendments do not attempt to roll back the, in my view, rather excessive requirements already placed on overseas students from outside the EU and perhaps about to be placed on EU students. My hope would have been that we could have rolled them back. We do ourselves no good at all by making it difficult for students to move into our labour market after they have qualified at the end of their studies. Most experience in countries where it is made easier to do that is that they benefit the economy. But I am not trying to change that. These amendments merely seek to ensure that immigration law does not place new obstacles in the way of students and academics.

It is very important that there are two provisions here. Amendment 463 applies to undergraduate and postgraduate students; and Amendment 464, which obviously had to be worded slightly differently, applies to academics. The hope is that we could freeze the situation as it is now and not move in a more damaging direction for either of those categories. The way the amendments are drafted does not, for example, refer to an EU citizen who comes here to look for a place at university or to look for a job as a member of academic staff. They fit perfectly well within the sort of work-permit approach that may well emerge as the Government's policy in this matter. I think there cannot be many people who try to come to university here or try to get a job at university here who have not had an offer before they come. That is how the system works. The proposals in these two amendments are Brexit related, but they will require offers to be made of either employment or a place at university.

To give noble Lords some idea of how significant these categories of students and academics are to the prosperity and functioning of our universities: EU-origin academics currently number 31,635. That is 16% of the total—quite a substantial amount. Non-EU academics number 23,360 and make up 12% of the total. In total the academics from overseas are 28% of our university staff. Undergraduates from the EU make up 5% of the total and overall international undergraduates, 13%. Postgraduates from the EU make up 9% with the overall international total being 38%.

As was noted in the previous debate, students make a positive contribution to our universities and to the country as whole. I beg to move.

Baroness Royall of Blaisdon: My Lords, I fully support everything the noble Lord has said but I have one thing to add. Everyone speaks of, and is rightly proud of, the excellence of our universities, but one of the reasons—perhaps one of the major reasons—that we have such excellence is that we have many brilliant academics and, as my noble friend Lord Darzi said at Second Reading:

"We must secure and sustain our ability to attract, excite and retain the world's greatest minds".—[*Official Report*, 6/12/16; col. 663.]

I fear that, as has been said many times while debating this Bill, some of those finest minds are already deciding not to apply for posts because of their perceptions and feeling that they are more welcome elsewhere. If more restrictive immigration controls were put in place on EU or other academics and students it would be a disaster for our world-class research and for the high-quality teaching which is the reason that so many students wish to study in this country.

Lord Patten of Barnes: Obviously these amendments are relevant to the debate we have just had, and I do not want to speak at length, but I endorse everything that the noble Lord, Lord Hannay, has said. I want to pick up just two points, one of which was made by the noble Lords, Lord Judd and Lord Rees, earlier. It is the huge importance of international students, international academics and postgraduates to the quality of our universities.

The university I know best recently came top of the league tables for universities. We were pleased about that—and of course we believed the methodology wholeheartedly. In previous years, when we did not believe the methodology quite so enthusiastically, we had come second to Caltech. There are more American students at Oxford than at Caltech. Our great universities would not be able to do the spectacular research they do without the academic staff from other countries, without postgraduates in particular, and we are delighted to have so many students from other countries.

The points that the noble Lord, Lord Hannay, made are really important to the quality and the vitality of our universities, and that is where Brexit is decidedly relevant. Some people say that we have been ridiculously emotional about the impact of Brexit on our universities. You try talking to an academic from Europe or elsewhere at the university I know best and tell him or her that they are really not citizens of the world or that citizens of the world are second class because they do not really understand where they have come from.

Brexit sent a chill through our universities. We were talking about perception earlier. It is really important to give people the confidence that we are not going to change the rules about students and academics coming here during the discussions on Brexit in the years ahead. It is really vital to the quality of our universities. If Ministers do not understand that in the months and years ahead then we will all be in very big trouble. I think at the moment we are probably underestimating the impact of Brexit on our universities. It is not particularly the money—although that matters. It is not just the research collaboration—although that matters hugely. It is the people. It is whether we are able to attract the postgraduates and undergraduates to our universities because they are an enormously important part of our higher education system and have been ever since the 13th century.

Baroness Lister of Burtersett: My Lords, although I do not have the details with me, I should like to support what the noble Lord, Lord Patten of Barnes, said with an anecdote from my university—Loughborough. Immediately after Brexit, an email was circulated around my department, social sciences, with the permission of a prospective postgraduate student from a country within the European Union—I forget which one—who had been offered a very good studentship at Loughborough, which he had accepted. After Brexit, he emailed to say that he did not feel that he could come because he would no longer feel welcome in the UK. That was very sad because it was a loss to our university and a loss to the student. I suspect that such ripple effects are happening all over the place.

8.30 pm

Baroness Garden of Frognal: My Lords, I add my support to what has already been said. Amendment 463 builds directly on the discussion that we had on the previous group.

Amendment 464 complements Amendment 490, which we have tabled and which will be discussed on Monday. Amendment 464 would ensure that members of staff from other countries were not in future subjected to more restrictive immigration controls or conditions than were in force on the day this Act was passed. Both amendments point to the concern that restrictions on freedom of movement following Brexit will have very serious consequences for universities—both for students and for academics. We have heard from the noble Baronesses, Lady Lister and Lady Royall, and the noble Lord, Lord Patten, about the difficulties that academics currently face in planning their future, thinking ahead and considering what they will do about their families, with young academics in particular wondering where their future lies. Like a lot of people planning their lives, they want a bit of security.

Recently I spoke at a conference of modern foreign language academics, who were asked how many of them were EU citizens. There were about 80 people there and over half put up their hands. They were all wondering what the future held. Some were having difficulties becoming UK citizens. Even those who had lived all their lives in the country were being put through hoops. They had never lived anywhere else, but getting a British passport was suddenly proving to be incredibly difficult for them. They play an absolutely essential part in the provision of modern foreign languages in our universities. We heard earlier from the noble Baroness, Lady Brown, about the important role that they also play in engineering. However, I assure noble Lords that those working in modern languages departments are really concerned about how they are going to continue their provision if EU academics feel unwelcome.

Therefore, this is a personal issue for a lot of valuable and skilled people, some of whom are already facing—unbelievable though this is—incredible hate

[Baroness Garden of Frognal]
crime and racial discrimination from universities where they have previously been seen as valued contributors. Of course, if they go, some of our courses simply will not take place. We need these people—the students and the academics—and our university life will certainly be the poorer without them.

This proposed new clause would help to remedy the very unfortunate situation that we now find ourselves in, and I hope that we can move forward in making life better for the EU citizens who make our universities much better places.

Lord Judd: My Lords, in at least one of the universities in which I am involved, I know of a specific example where a very able and impressive member of staff was offered, and encouraged to take, a promotion in the department but turned it down because he and his family had come to the conclusion that the UK was not a place where they saw their future.

Lord Rees of Ludlow: My Lords, I fully endorse the amendment and the remarks of the noble Lord, Lord Patten. I am from a different university but it has entirely similar concerns. I work in a small department where all of the last five faculty appointments were of people from outside the UK. Crucially, we depend upon being attractive to these people but it has been much harder to persuade them to accept positions post Brexit, because not only is there uncertainty about their future employment but they will almost certainly risk losing the freedom for their family to come here in the post-Brexit era. Therefore, we have the same concerns of many other segments of society.

One has only to imagine a young academic from, say, India, Singapore or China deciding which country they wish to work in. It is clear that the attraction of the UK compared with other countries has been greatly diminished by recent events and, unless we can send a signal to counter those trends, we will lose out in the long run. I note that the Government promised some special treatment for bankers; I think that, equally, they should provide it for other skilled occupations, including academics.

I want to make one further remark. Of the last six presidents of the Royal Society, three were born outside this country. We have had a great tradition of attracting to this country scientists who have made their careers here because of the appeal of our universities and our scientific excellence. All that is in jeopardy if we do not pay regard to the concerns expressed in connection with this amendment.

Lord Lucas: My Lords, I hope that in the course of this Bill we will make an amendment somewhere in this area or in that of the previous amendment, and I think that we will have to consider carefully what that amendment is. We know that we will be up against a tough negotiator who, in the case of Brexit, has said that no deal is preferable to a bad deal. Unless we can steel ourselves to that level, we will not get our way.

Lord Stevenson of Balmacara: My Lords, this has been another good debate. In some senses the previous amendment and the two amendments in this group are two sides of the same coin. The first amendment, proposed by the noble Lord, Lord Hannay, set an aspiration for what we were trying to do about the flow of students that, for all the reasons we gave, we wanted to see. The two amendments we are discussing now deal with the detail of how we could achieve that—they could probably be combined to make the point made by the noble Lord, Lord Lucas.

I do not need to say much more about this; I just want to put one point. On our first day in Committee we spent a lot of time talking about what we thought about our universities, what they were and what they were about. We have not really come back to the amendment we were debating then—which is probably just as well, as the wording was, I admit, not very good. The essence of it was an attempt to reach out to an aspiration that everyone in the Chamber, apart from those on the Government Front Bench, felt—that universities do have a particular distinctive nature and character. I argue that these two amendments help us to articulate that in a rather special way: for all the people who attend those universities—our children, and any other students who come to them—we want the very best quality of teaching and research available. That aspiration can be met only if we are able to recruit for it, and that is what these amendments would achieve.

Viscount Younger of Leckie: My Lords, I thank the noble Lord, Lord Hannay of Chiswick, for moving the amendment. I set out in some detail the Government's approach to international students in response to the previous amendment, so I do not intend to repeat those points. However, I want to say something about the position of international academic staff, since they are specifically referred to in Amendment 464. Again, the Government have a very good record in supporting the sector.

The UK's immigration system recognises the critical role academic staff can play in the economy and wider society, and that human mobility is linked to the UK's ability to remain at the forefront of science and research. Immigration reforms since 2010 have explicitly taken account of the needs of academics, including scientists and researchers. The Government have consistently protected and enhanced the treatment of academics in the immigration system.

In tier 2, we have given PhD-level occupations higher priority. None of these occupations has ever been refused places due to the limit being oversubscribed. We have also exempted PhD-level occupations from the £35,000 earnings threshold for tier 2 settlement applications. In recognition of the fact that universities compete in a global talent pool, we have relaxed the resident labour market test to allow the best candidate to be appointed to PhD-level occupations, regardless of nationality and whether there are suitable resident workers available.

The amendments would provide that the immigration controls applying to non-British students or academic staff could never be more restrictive than those applying on the day the Bill receives Royal Assent. I wonder what "more restrictive" means in practice. The terms that apply to international students and workers contain a number of elements. Focusing on students, there are

rules on how many hours they can work, how long they can stay in the UK after graduation, how they can move into work immigration routes, and on dependants.

Every student will have a different view on how important those various elements are. Suppose—I stress that I am offering this merely as an illustration, rather than making a statement of the Government's intentions—we were to reduce the weekly hours that a university student can work during term time from 20 hours to 15 hours but, as compensation, lengthened the period for which undergraduate students can stay in the UK after their studies from four months to six months. Is that more or less restrictive than what currently exists? Some students would certainly see it as such; others would regard it as more liberal. It would all depend on particular circumstances and requirements. If we were to go down the route envisaged by these amendments we would be inviting the prospect of endless litigation as we sought to understand what constitutes greater restriction.

As for academic staff, as I have said, PhD-level university staff are currently prioritised within the limit for tier 2 visas. But what if we wanted, for very sound economic reasons, to give priority to another sector of the economy? Again I make no statement of the Government's intent, but it is surely a possibility. Even if all the evidence pointed in one direction, the amendments would prevent such a change being made.

However, my principal concern about the amendments is that they seek to set the immigration system that applies on the date of Royal Assent in stone. Imagine that, as sometimes happens, a particular loophole in the immigration rules emerges, which everyone agrees needs to be dealt with. If the remedy was arguably restrictive, nothing could be done to close the loophole—even if government and universities agreed it was a problem—without amending primary legislation.

I am sure the House will acknowledge that we sometimes encounter instances of unintended consequences in immigration rules. We remedy these through minor changes. For example, we have very recently tidied up the rules on academic progression to deal with concerns raised directly by the education sector to the Home Office. These changes have been welcomed as improving the rules on academic progression but, under these amendments, had anybody been able to argue that what we were doing was in any way more restrictive, we would have been unable to respond to the sector's concerns.

I understand the motivation behind the amendments, but I cannot advise your Lordships to accept them. Setting in stone the immigration system as it happens to be on a particular day, exposing ourselves to the possibility of extensive litigation and denying ourselves the opportunity to make even desirable changes is surely not the way forward. On that basis, I hope that the noble Lord will withdraw Amendment 463.

Lord Hannay of Chiswick: My Lords, I have listened carefully to what the Minister said—although I was fairly appalled by some of the script that he had been given to present to the House. The answer to his question about what would happen if the Government wanted to make the provisions for the amount of work students could do during their study here less generous, but also wanted to increase the amount of time for which they could stay on in the labour market afterwards, is perfectly simple. You can do the second any day you like; as for the first—no, you cannot do it. It is not very difficult to answer that question.

As for setting things in concrete, of course that would not be happening. The amendments would allow the Government to make the rules more liberal any day they liked. It is just that they could not make them more restrictive. That is all. It is not a huge thing because of course the Government, as the Minister himself recognised, can any day they like come down with a piece of primary legislation saying, "An appalling loophole has appeared. Here are all the statistics and evidence for it and, despite this provision in the Higher Education and Research Act 2017, this will override it". They can do that, if they have the evidence. At the moment, they have no evidence whatever. Such evidence as there is is that some 1% of students overstay. I will not place the whole weight on that because I know that the figures are based on fairly small samples, but the Government do not have any figures at all.

Of course I will withdraw the amendment now, but I am afraid to say that I do not do so because of the arguments that have been advanced in favour of withdrawing it. I say very clearly that we will return on Report and I hope that the Government, instead of polishing yet another series of unconvincing reasons to not accept them, will find some way of accepting them. I beg leave to withdraw the amendment.

Amendment 463 withdrawn.

Amendments 464 and 465 not moved.

Clause 84 agreed.

8.45 pm

Amendment 466

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

466: After Clause 84, insert the following new Clause—

"Disapplication of duty in Counter-Terrorism and Security Act 2015 to higher education institutions

(1) The Counter-Terrorism and Security Act 2015 is amended as follows.

(2) In section 27(2) at the end insert—

"(k) a qualifying institution as defined by section 11 of the Higher Education Act 2004;

(l) an institution providing courses of a description mentioned in Schedule 6 to the Educational Reform Act 1988 (higher education courses);

(m) an institution providing fundable higher education as defined by section 5 of the Further and Higher Education (Scotland) Act 2005."

(3) In section 31(1)—

(a) in paragraph (a) after "1996" insert "or the Further and Higher Education (Scotland) Act 2005";

(b) omit paragraphs (b) and (c).

(4) In section 32 (monitoring of performance: further and higher education bodies)—

(a) in subsection (1) omit from "2015" to the end;

(b) in subsection (2) omit "or a relevant higher education body";

(c) in subsection (4) omit "or a relevant higher education body";

(d) omit subsection (5)(b);

(e) in subsection (9)(a) omit ", and includes the Open University".

(5) In section 33 (power to give directions: section 32)—

(a) in subsection (1) omit "or a relevant higher education body";

(b) in subsection (4) omit ", "relevant higher education body"".

(6) In Schedule 6 (specified authorities)—

(a) in Part 1 omit—

(i) "The governing body of a qualifying institution within the meaning given by section 11 of the Higher Education Act 2004.";

(ii) "courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).";

(b) in Part 2 after "post-16" insert "further".

(7) In Schedule 7 (partners of local panels)—

(a) in Part 1 omit—

(i) "The governing body of a qualifying institution within the meaning given by section 11 of the Higher Education Act 2004.";

(ii) "courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).";

(b) in Part 2 after "post-16" insert "further"."

Lord Stevenson of Balmacara: My Lords, again, my noble friend Lord Dubs is not able to be present because he is attending another event, which I mentioned earlier. I am also aware that neither the noble Baroness, Lady Jones of Moulsecoomb, nor the noble Lord, Lord Macdonald of River Glaven, can be here today, but I know that the noble Baroness, Lady Garden of Frognal, will make some remarks that will at least encompass those of the noble Lord, Lord Macdonald.

The amendment would disapply the statutory Prevent duty set in the Counter-Terrorism and Security Act 2015 in so far as it applies to higher education institutions. The reason for that is that we place a strong accent on—and we will discuss in a later group of amendments—the question of how and in what circumstances we can make higher education institutions, and in particular universities, centres in which the practice of freedom of speech and the prevention of unlawful speech are routine and built into their very fabric and operations.

When Parliament discussed the then Counter-Terrorism and Security Act Bill in 2015, there was considerable doubt about whether it should extend to universities because it imposed a duty on universities to have due regard to the need to prevent people being drawn into terrorism. It created a structure involving monitoring and enforcement of the Prevent duty and further mandated the co-operation of academic staff in the Channel referral process.

Accompanying government guidance has exacerbated concerns. While universities are not the only institutions affected by the statutory Prevent duty, the regulation of lawful speech and assembly in these institutions carries particular concern. Our higher education institutions, as I have said, should provide a space for the free and frank exchange of ideas. These ideas should be challenged through robust argument and not suppressed. The Joint Committee on Human Rights concluded, as part of its legislative scrutiny of the 2015 Act, that, because of the importance of freedom of speech and academic freedom in the context of university education, the entire framework that rests on the new Prevent duty is simply not appropriate for application to universities.

Having said that, university staff are bound by the law, including the requirement to disclose information to the police when they know or believe it could assist in the prevention of acts of terrorism. The removal of the statutory Prevent duty in universities would not remove the responsibility of staff and institutions to co-operate with police to tackle suspected criminality. The amendment would remove a heavy-handed structure designed to restrict lawful speech. Suppressing unpleasant or offensive views is not only illiberal, it is often counterproductive and risks pushing ideas into the shadows where they are less likely to be effectively challenged. I beg to move.

Baroness Garden of Frognal: My Lords, I added my name to the list, as the noble Lord, Lord Stevenson, said, in the absence of my noble friend Lord Macdonald of River Glaven, who has overriding university commitments. He is a great expert in this area and has briefed me.

The application of Prevent to the university sector is different from its application to any other category of public body. In a university, the Prevent duty has the wholly unwanted effect of undermining an essential pillar of the very institution it is supposed to be protecting to the wider detriment of civil society. First, universities have a pre-existing statutory duty under Section 43 of the Education (No. 2) Act 1986,

"to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers".

Secondly, because of the foundational importance of free expression to intellectual inquiry and therefore to the central purpose of a university, which cannot function in its absence, it cannot be appropriate, in the university context, to seek to ban speech that is otherwise perfectly lawful, as the Prevent duty requires it to do.

The Prevent duty requires universities to target lawful speech by demanding that universities target non-violent extremism, defined in the Prevent guidance as,

"vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs".

If applied literally as a proscription tool in universities this definition would close down whole swathes of legitimate discourse conducted in terms that represent no breach whatever of the criminal law. It is very difficult to imagine any radicalising language that a university should appropriately ban that does not amount to criminal speech in its own right, such as an incitement to violence, or to racial or religious hatred and so on. These categories of unlawful speech should therefore be banned by university authorities to comply with pre-existing law. To do so is entirely consistent with free expression rights and academic freedom. But banning incitement speech is sufficient. Apart from anything else, it is this speech that is more genuinely

"radicalising". We do not need Prevent in universities to protect ourselves. We need just to apply the current criminal law on incitement.

In the university context, "radicalising" speech that is not otherwise criminal should be dealt with through exposure and counterargument. Universities should be places where young and not so young people can be exposed to views and ideas with which they disagree or find disturbing, unpleasant and even frightening, but be able to address them calmly, intellectually and safely. Freedom of speech should be an essential part of the university experience.

Baroness Deech (CB): My Lords, I regret that I have to challenge the view that has been put forward by Members here whose views in general I respect greatly, but I pin my remarks to a phrase used by the noble Lord, Lord Patten, just moments ago. He said that students come from overseas to this country for a great education in a liberal, plural society. Unfortunately, great damage is being done to precisely that concept. In no way would I dissent from a view expressed that freedom of speech within the law must be allowed. Non-lawful speech—and there are lots of statutes, whether you like it or not, that make speech illegal—should not be allowed, but the universities are not doing their duty.

I shall give a few examples. Jihadi John was a university graduate; Michael Adebolajo—Lee Rigby's murderer—was at the University of Greenwich; the underpants bomber, Abdulmutallab, was at UCL. There are numerous other examples of killers who were radicalised at university right here. That is because, although the Prevent duty guidance requires such speech that we disapprove of to be balanced, this is not happening. Speakers are turning up and giving speeches to audiences that are not allowed to challenge them. At best, they can only write down their questions. There are tens of such visiting speakers every year—there are organisations that keep tabs. Just over a year ago, at London South Bank University, a speaker claimed that Muslim women are not allowed to marry Kafir and that apostates should be killed. A speaker at Kingston University declared homosexuality as unnatural and harmful, and another—a student—claimed that the Government were seeking to engineer a government-sanctioned Islam and that the security services were harassing Muslims, using Jihadi John and Michael Adebolajo as examples. The problem is not only coming from that area; it is the English Defence League turning up to present its unpalatable views too.

It is incomprehensible to me that the National Union of Students opposes the Prevent policy and has an organised campaign to call it racist—a "spying" policy and an inhibitor of freedom of speech. These are the same students and lecturers—the ones who oppose Prevent—who have been supine in the face of student censorship and the visits of extremist speakers and who will not allow, for example, Germaine Greer or Peter Tatchell to speak, but sit back and do nothing when speakers turn up who say that homosexuals should be killed.

The Home Affairs Select Committee and the Office for Security and Counter-Terrorism have identified universities as vulnerable sectors for this sort of thing. Universities are targeted by extremist activists from Islamist and far-right groups. Very often they are preaching against women's rights and gay people's rights, and suggest that there is a western war on Islam. They express extreme intolerance—even death—for non-believers, and place religious law above democracy.

Some misguided student unions and the pro-terrorist lobby group CAGE are uniting to silence criticism of their illegal activities. There is no evidence of lecturers spying on students or gathering intelligence on people not committing terrorist offences. Students are conspiring to undermine the policy; they ignore its application to far-right extremists, just as to far left, if there is a difference, and spread the misunderstanding that it targets political radicalism.

The Prevent guidance is necessary, but needs to be limited to non-lawful speech, which is a very wide concept and of course includes the counterterrorism Act, but I would not suggest for a moment that now is the time to lift it, especially when in its most recent report HEFCE claimed that more and more universities —though not all of them—were getting to grips with and applying the Prevent guidance in a reasonable way. I therefore oppose the amendment.

Baroness Lister of Burtersett: My Lords, I support the amendment. The noble Baroness, Lady Jones of Moulsecoomb, asked me to pass on her apologies, because she had another engagement and could not stay for the debate. During Committee on the then Counter-Terrorism and Security Bill, I moved a number of amendments on behalf of the Joint Committee on Human Rights, two of which would have excluded higher education institutions from the statutory Prevent duty. I thought it worth reminding noble Lords of the debates that we had then. I was a member of the JCHR at the time. The amendment stemmed from the JCHR's conclusion—my noble friend Lord Stevenson has already quoted it, but it bears repetition—that,

"because of the importance of freedom of speech and academic freedom in the context of university education, the entire legal framework which rests on the new 'prevent' duty is not appropriate for application to universities".

The JCHR warned that terms such as "non-violent extremism" or views "conducive to terrorism" are not capable of being defined with sufficient precision to enable universities to know with sufficient certainty whether they risk being found in breach of the new duty, and feared that this would have a seriously inhibiting effect on bona fide academic debate in universities. We have heard some of the problems with trying to define that in the guidance.

On Report, I summed up the mood in Committee, saying:

"In Committee, the consensus in favour of amending this part of the Bill was striking. Noble Lords did not consider that the Government had made a persuasive case for putting a statutory duty on higher education institutions—moving 'from co-operation to co-option', as the noble Baroness, Lady Sharp, put it"—

and we miss her wise counsel. I continued:

"Where was the evidence base? Until the evidence for the necessity of such a statutory duty is marshalled, to use the Minister's phrase, it is not possible to assess it. Concerns were raised on grounds of both practice and principle. Warnings were given on unintended consequences and counterproductive effects, including the erosion of trust between staff and students, which

[Baroness Lister of Burtersett]
could undermine any attempts to engage with students who might be tempted down the road towards terrorism. I do not think that anyone was reassured by ministerial assertions that academic freedom and freedom of speech would not be endangered. Indeed, I think that it is fair to say that the majority of those who spoke were in favour of the total exclusion of the HE sector".—[*Official Report*, 4/2/15; cols. 679-80.]

I did not pursue that amendment on exclusion of the sector and focused instead on ensuring that there was a proper duty to protect freedom of speech and academic freedom, but it is clear that, despite what has just been said, the application of the Prevent duty to universities continued to cause real concern.

9 pm

I continue to oppose the application of the duty to universities, because I believe that the concerns raised by the noble Baroness, Lady Deech, are better addressed through appropriate laws, not through the Prevent duty. I support the amendment, but I also support wider calls for an independent review of the Prevent duty being made by the Joint Committee on Human Rights and more recently by the Home Affairs Select Committee and David Anderson QC in his role as reviewer of terrorist legislation. There are concerns, and that would be an appropriate way to consider them, both in the context of universities and more widely.

Baroness Hamwee: My Lords, the noble Baroness, Lady Lister, left the JCHR at the moment I arrived on it. I wanted to refer to its more recent report of July last year, following an inquiry into counterextremism in preparation for the Bill which we expected but which has not emerged, perhaps because of the difficulty in defining "nonviolent extremism". I follow her in my thinking as well. We took evidence from a number of people, and in our report quoted Professor Louise Richardson from Oxford, who said:

"My position on this is that any effort to infringe freedom of expression should be exposed, whether it comes from what I take to be the well-intentioned but misguided Prevent counterterrorism policy or from student unions that do not want to hear views that they find objectionable. A university has to be a place where the right to express objectionable views is protected".

We went on to report that our evidence suggested that it is important for universities to ensure that debate is possible. Our conclusion and recommendation in this part of the work was that:

"Any proposed legislation will have to tread carefully in an area where there is already considerable uncertainty. For example, in the university context, it is arguable whether the expression of certain views constitutes putting forward new ideas in the form of controversial and unpopular opinions, or whether it amounts to vocal and active opposition to the UK's fundamental values. The potentially conflicting duties on universities to promote free speech, whilst precluding the expression of extremist views, is likely to continue to cause confusion. We believe that free speech is precious, particularly in universities, and should not be undermined".

I accept that the context is slightly different from the objective of this amendment, but the points are important. The Government, in their response, said that,

"universities have to balance their duty to promote freedom of speech with their other legal responsibilities including equalities law, health and safety responsibilities … We recognise that balancing these responsibilities is not always an easy job and that there are difficult decisions to be taken".

That entirely misses the point about freedom of speech. The Prevent strategy is discredited in so many eyes. What is most important is that it has lost confidence. As the noble Baroness has said, I wish that the Government would accept the need for an independent review—not its own internal, unpublished review—called for by such a variety of very authoritative people who should and do understand the importance of such a review.

Lord Judd: My Lords, the suggestion of an independent review bears very serious consideration. A very difficult issue confronts us on the matter raised in this amendment. In the considerable amount of time that the House has spent in recent years on issues of security, one thing that has always concerned me deeply is the dividing point between essential action and what in fact begins to be counterproductive.

We have to approach the issue of how universities play their part in the security of the nation by considering the danger of fostering extremism and unacceptable views by heavy-handedness or the appearance, however far from reality it is, that universities are acting as agents of the security services. If that perception gains ground, it will certainly provide more potential recruits for extremism and unreasonableness in the student community. I do not dissent, with the evidence of anti-Semitism and hostility to Islamic people, from the view that urgent action by the state is necessary. Security is the responsibility of the state and universities must play their part within the law and vigorously ensure that they uphold it—of course, that is right—but when we start using words such as "prevent", I think myself into the position of young students discussing issues and saying, "What the hell is going on? Is this university really a place where we can test ideas?". We must have self-confidence in the middle of all this; we must not lose our self-confidence. The whole point of a university is that we encourage people to think and develop their minds. Therefore, it is a very good place to bring into the open the most appalling ideas that some people have, so that they can be dealt with in argument, and the rationality and decency of most people can prevail. They are places where what is advocated may be argued against effectively and where those arguments may be demonstrated. If there is any move towards preventing such opportunities to take head on in the mind the issues which threaten us, we will be in great danger of undermining our security still further.

I said in an earlier debate, and I mean it profoundly, that the battle for security in the world must be won in hearts and minds. It will not ultimately be won by controls; it will be won by winning the arguments. If the opportunity to win the argument is not there in universities or begins to be eroded, what the dickens are we doing in terms of undermining our own security?

Baroness Goldie: My Lords, the threat we face from terrorism is unprecedented and very real. In addition to the framework of the criminal law, we must have a strong and robust preventive element to our counter-terrorism efforts. We must collectively help in the fight against terrorism and try to protect those who may be vulnerable or susceptible to radicalisation towards acts of terrorism.

I want to make it clear that HE providers are not being singled out as the potential cause or root of radicalisation. Responsibilities under this duty have also been placed on schools, hospitals, prisons, local authorities and colleges, and other institutions which regularly deal with people who may be vulnerable to the risk of radicalisation. In higher education, the Prevent duty exists to ensure that providers understand radicalisation and how it could impact on the safety and security of their staff and students.

I thank the noble Baroness, Lady Deech, for her helpful, informed and powerful contribution, which was cogently authoritative. What the Prevent duty does not do is undermine free speech on campus. Higher education providers that are subject to the freedom of speech duty are required to have regard to it when carrying out their Prevent duty. This was explicitly written into legislation to underline its importance both as a central value of our HE system and of our society.

The Higher Education Funding Council for England, the body responsible for monitoring compliance with this duty in England, reports that the large majority of institutions have put in place clear, sensible policies and procedures that demonstrate they are balancing the need to protect their students and their obligations under Prevent, while ensuring that freedom of speech on campus is not undermined. We have seen higher education institutions become increasingly aware of the risks to vulnerable students and there have been some really good examples across the sector of how to proportionately mitigate these risks.

On the whole, the higher education sector is embedding the requirements of the Prevent duty within its existing policies and procedures. It gets ongoing advice and support both from HEFCE and from our own regional Prevent co-ordinators. There is a wide range of training available to staff in HE and there is an ongoing dialogue between the Government, the monitoring body and the sector to ensure that the implementation of this duty is done in a pragmatic way.

It is also important to note that this amendment has another consequence because it seeks to disapply the Prevent duty not only in relation to English higher education providers but in relation to Scottish and Welsh institutions. That would require the consent of the Scottish and Welsh Ministers.

We welcome discussion about how Prevent is implemented effectively and proportionately, but blanket opposition to the duty is unhelpful and, dare I say it, dangerous, given the scale of the terrorist risk before us—the threat level currently stands at severe. The Prevent duty is an important element of our fight against the ever-increasing threat of terrorism. We must have an efficient strategy for trying to prevent people being drawn into it. On this basis, I very much hope that the noble Lord will feel able to withdraw Amendment 466.

Lord Stevenson of Balmacara: I thank all speakers in this debate. It is a difficult area and we certainly went into several of its most difficult parts. Surely my noble friend Lord Judd is right that there is a tension in attempting to address the worries expressed by the Minister in her concluding remarks by preventing the debates and discussions that might win hearts and minds and protect us, and which need to be protected against the changes the Government are seeking to impose.

The analysis is relatively straightforward. There is no room for illegal acts in any institution. I am sure the noble Baroness, Lady Deech, will accept that in proposing this amendment we do not wish to change that very obvious and important guideline. But the tension between free speech, which should exist in universities, and actions taken to inoculate against unpleasant and difficult ideas taking root does not seem well expressed in the legislation. This is a probing amendment which attempts to take that forward. In that sense, I felt that the Minister struck an odd note by suggesting that even discussing these issues in this Chamber was dangerous. If I am mistaken, I will withdraw that remark.

Baroness Goldie: What I said was that we welcome discussion about how to implement Prevent effectively and proportionately, but that we consider blanket opposition to the duty unhelpful.

Lord Stevenson of Balmacara: Unhelpful is certainly not the same as dangerous but I think the word "dangerous" was used—we will check the record for it. I do not regard it as dangerous to discuss these issues because they raise very important matters about freedom of speech and the ability to discuss and debate issues across a range of topics, not necessarily all concerned with terrorism. Therefore, in that sense, I resist that—but obviously not to the point that I would resile from the fact that this is really a tricky area and it is very hard to approach it without raising emotional and other issues that get in the way of the debate.

Maybe a review is required—maybe that would be the way forward. Maybe the Joint Committee on Human Rights will be able to take its work further. It was helpful to know that this work is still being considered, and maybe that is a way forward. The main achievement of this amendment was to get us into this whole debate and ensure that we understood and recognised the opportunities but also the threats that there are in trying to debate that. Maybe we can return to a more detailed discussion of this when we get to the group of amendments which raises the two particular issues about freedom of speech and preventing unlawful speech that are at the heart of the debate. I beg leave to withdraw the amendment.

Amendment 466 withdrawn.

9.15 pm

Amendment 467

Moved by ***Lord Storey***

467: After Clause 84, insert the following new Clause—

"Offence to provide or advertise cheating services

(1) A person commits an offence if the person provides any service specified in subsection (4) with the intention of giving a student enrolled at an English or Welsh higher education provider of an unfair advantage over other such students.

(2) A person commits an offence if the person advertises any services specified in subsection (4) knowing that the service has or would have the effect of giving such a student an unfair advantage over other such students.

(3) A person commits an offence who, without reasonable excuse, publishes an advertisement for any service specified in subsection (4).

(4) The services referred to in subsections (1) to (3) are—

(a) completing an assignment or any other work that a student enrolled at an English or Welsh higher education provider is required to complete as part of a higher education course in their stead without authorisation from those making the requirement;

(b) providing or arranging the provision of an assignment that a student enrolled at an English or Welsh higher education provider is required to complete as part of a higher education course in their stead without authorisation from those making the requirement;

(c) providing or arranging the provision of answers for an examination that a student enrolled at an English or Welsh higher education provider is required to complete as part of a higher education course before they complete it and without authorisation from those setting the examination;

(d) sitting an examination that a student enrolled at an English or Welsh higher education provider is required to sit as part of a higher education course in their stead or providing another person to sit the exam in place of the student, without authorisation from those setting the examination.

(5) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale."

Lord Storey (LD): My Lords, plagiarism is a form of cheating and an academic offence. "Contract cheating" is a particular type of plagiarism where a student commissions a third party to complete an assignment. They might even employ a ghost-writing tutor. The QAA says it poses a risk to the security of academic standards and the equitability of assessments, as well as reliability and validity. "Essay mills" produce assignments that are not completed under exam conditions, and other pieces of work such as coding assignments in computer science can be completed by a third party as well.

I knew nothing about this 18 months ago. It was not something I understood. Then a group of students from one of our redbrick universities made contact with me. They came to the House of Lords to talk about it. We sat out on the Terrace. They were genuinely upset that they saw this practice happening regularly among their fellow students. They said, "Why are we diligently doing our work when you can pay and you can cheat?". As a result of them coming to see me, I wrote to the chief executive of the QAA, who kindly wrote back and said, "We don't regard this as a particularly serious problem. The number of people we are talking about is minuscule". I contacted him again and furnished him with quite an important file of evidence. He very kindly arranged to come and see me, and we talked it over—in quite robust terms. He then organised a private round-table discussion with a number of other academics. From that, a number of issues arose. I am very grateful to them for taking that initiative.

So how many students are we talking about? According to the QAA, about 17,000 students—about 0.7%—get caught cheating each year. Remember, those are the ones who are caught. The data do not show how many students plagiarised. Another report commissioned in 2014 showed that 22% of students reported having paid someone to complete their assignment. As I said, this type of cheating is referred to as contract cheating, a specific type of plagiarism where a student commissions a work produced by a third party for a fee.

How does this happen? Different approaches are taken and different sites can be used. The more established sites will have a bank of people who have previously written for them and essay commissions will go to those people, with the essay mill acting merely as an intermediary. Other sites go instead to an online freelance writer: the work will be reverse-auctioned and any writer registered on those sites will be able to bid for the work.

In a recent publication, Professor Phil Newton and Christopher Lang looked at the operational aspects in some depth. They found that turnaround times for commissioned essays are very small: between a day—25% of those analysed—and 24 days. The average was five days. Most—80%—were fulfilled in the specified time. For every fulfilled request on a freelancer-type site, another 10 people bid for the work, suggesting significant spare capacity in the market. The prices range from £15 for law—a master's, a 3,000-word dissertation—to £6,750 for a PhD or a 100,000-word dissertation, with a seven-day deadline.

I was talking to some students only yesterday who told me that people even approach them on their campus and say, "We can get you a 2:1. We can write your essay for you. We can write your dissertation for you". These people actually approached them on the university campus.

What about the students themselves? Well, it must be noted that some students do not plagiarise intentionally. A disproportionate number of students who are caught cheating, I am sorry to say, are foreign students. We had the debate earlier on foreign students. Language competence is one of the main reasons for them cheating. There are also sometimes cultural difficulties. Interestingly, according to the *Times* investigation, foreign students are four times more likely to cheat. Universities have been criticised for enrolling foreign students with poor command of the English language because they pay higher fees. There is then real pressure on those students to complete their assignments.

What should we do about it? My amendment is based on what has happened in New Zealand, where it was quite a serious problem. As a result of them making the practice illegal, the problem has significantly improved.

I am minded to quote the QAA, which said that the way forward can be described in three words: "Education. Detection. Deterrence". The QAA goes on to say that at present it has no legal or regulatory powers to take action against students quickly for plagiarism, using essay mills, websites or ghost writers. We see this as academic fraud. We need to take action now.

We are in our sixth day of Committee, and we have heard so many eloquent speeches about the importance of higher education, the incredible work our universities and students do and how important it is to maintain that quality. Well, maintaining that quality means

making sure that academic fraud does not happen, and that all students are on a level playing field. I beg to move.

Lord Watson of Invergowrie: My Lords, I will say a few words in support of the noble Lord, Lord Storey. I commend him on the amount of preparation he has done for this amendment. I am very surprised at the extent of what he has revealed. I think we all know that, to a greater or lesser extent, cheating goes on—it is important to use that word—and in some cases fraud, but the extent of it is such that action needs to be taken. I am disturbed by the QAA more or less dismissing it, as the noble Lord, Lord Storey, said. And yet, as he pointed out, 17,000 students had been caught, and if that number were caught how many were getting away with it?

It is an issue that has to be addressed. Although there are means of catching cheats these days—software can be, and is, employed by universities that can spot and pick up patterns of writing—there are other ways that cannot be tracked easily. It would be helpful to have a recognition that this is a problem and for something at least to be said, if not done, by the Minister to indicate that the matter will be taken forward in a way that it has not been, effectively, up until now.

Baroness Goldie: My Lords, this amendment raises an important issue that is central to the quality and reputation of higher education in the UK. Plagiarism in any form, including the use of custom essay-writing services, or essay mills, is not acceptable and the Government take this issue very seriously. That is why the Government asked the QAA to investigate the use of essay mills in the UK. Following the QAA's publication on this issue in August 2016, the Minister, my honourable friend Jo Johnson, said:

"Plagiarism is not acceptable and, on this industrial scale, represents a clear threat to standards in our universities … we are looking closely at the recommendations in this report to see what further steps can be taken to tackle this scourge in our system".

The Government thank the QAA for its work exploring this issue and continue to work closely with it to progress the options and recommendations put forward. As a first step to addressing the issue, the Government have already met with Universities UK and the NUS to discuss a co-ordinated response. Within the next few weeks, my honourable friend the Minister will be announcing a new initiative, working with the QAA, Universities UK, the NUS and HEFCE, to tackle this issue.

On the amendment specifically, although we share the general intent, we are keen to ensure that non-legislative methods have been as effective as they can be before resorting to creating new criminal offences. That is where the initiative mentioned comes in. If legislation does become necessary, we will need to take care to get it right. We have to be absolutely clear about what activity should be criminalised and what activity should remain legitimate. That requires evidence, discussion and consensus. We do not yet have that.

To that extent, it is crucial we get the wording of the offence right. In the amendment tabled, it is unclear who would be responsible for prosecuting and how they would demonstrate intention to give an "unfair advantage". For example, it may be difficult to prove that a provider intended to give an unfair advantage, or that an advertiser knew that an unfair advantage would be bestowed, and there is a risk of capturing legitimate services such as study guides under the same umbrella definition. What is an "unfair advantage"? On one view, a student who is able to afford a tutor when others cannot obtains an unfair advantage. That is surely not what this amendment is trying to catch. But can we be sure that it does not, and where do we draw the line instead? These are not things that can, or should, be rushed when the result is a criminal record.

The effectiveness of a legislative offence operating as a deterrent will depend on our ability to execute successful prosecutions, and as such, we will need to be confident about these principles, as well as about who has the power to prosecute and how they will capture sufficient evidence. Rather than taking a premature legislative response to this issue, we believe it is best first to work with the sector to implement non-legislative approaches. We will of course monitor the effectiveness of this approach and we will certainly remain open to the future need for legislation if it proves necessary.

I hope I have reassured the noble Lord that the Government are committed to addressing this issue. Although the Government remain open to future options, as we do not believe that legislative action is the best response at this time, I ask that the amendment be withdrawn.

9.30 pm

Baroness Deech: Has the noble Baroness brought her mind to bear on whether the students who solicited the cheating essay would also be caught up in the criminal offence? This is not really my area of law, but I suspect that conspiracy to commit a criminal offence might catch those students.

As has been said—and as I know from my experience as the independent adjudicator for higher education—many foreign students, some for quite innocent reasons, get caught up in this. Part of the cure is to have better orientation for foreign students to explain to them what is expected. This applies in particular to Chinese students. I am painting this with a broad brush, but apparently they are told from the age of five onwards that one should collaborate rather than compete, and that one should listen to every word the venerable professor says and repeat it in exams, which is not the way we do things. They are therefore innocent in their own minds, so we need to clarify this amendment and ensure that foreign students know what is expected of them.

Baroness Goldie: I thank the noble Baroness for her helpful intervention. I cannot answer on behalf of the noble Lord, Lord Storey, but no doubt he will make some concluding remarks.

Lord Storey: The Minister is absolutely right: this should not be rushed and we should get it spot on. We have a responsibility to universities, students and academics. I am glad the noble Lord, Lord Watson, mentioned software. There is a software programme called Turnitin, which will identify parts that have been plagiarised.

[LORD STOREY]

Professor Deech—I am sorry, I mean the noble Baroness, Lady Deech; I am not sure whether I am promoting or demoting her—raised the issue of students who are caught. Interestingly, there are solicitors who advertise their services on campus to represent and help those students who are caught. When students are caught, as noble Lords can imagine, there are varied practices right across the sector about how they are treated. Some students who are caught are given a slap on the wrist; others are actually sent down. Some have to repeat a year and some lose marks, so there is no consistent policy in higher education as a whole.

I am delighted that the Minister told us of the new initiative that will be announced. The NUS, as well as supporting students—your heart goes out to students who are caught in such a situation, perhaps for all sorts of reasons—will be there on campus to make sure students realise how serious this is. If they are caught, the NUS, wearing another hat, is there to represent them, I suppose. I am delighted that this initiative is taking place and we will see where it leads.

Finally, I mentioned Professor Newton, who emailed me. It was interesting, and this is why I hope to come back to this. He wrote that he just wanted to highlight the word "intent":

> "The amendment as currently proposed would make it quite easy … for essay-writing companies to hide behind a defence that they provide 'custom study aids' and that it is the students' responsibility to use them appropriately. If the amendment could be tweaked to take 'intent' out of the equation, then the law would become much more powerful".

I hope that between now and Report, we could perhaps meet to talk this over and see where the initiative goes. We really do need to take action on this matter. I beg leave to withdraw the amendment.

Amendment 467 withdrawn.

Amendment 468

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

468: After Clause 84, insert the following new Clause—

"Higher education providers: freedom of speech

All registered English higher education providers must ensure that their students, staff and invited speakers are able to practise freedom of speech in the provider's premises, forums and events on all matters not specifically prohibited by law."

Lord Stevenson of Balmacara: My Lords, this amendment deals with the question of how we put into statute a definition that will adequately cover some of the debates we had on the group of amendments before last, relating to freedom of speech. It is interesting that alongside that is Amendment 469 in the name of the noble Baroness, Lady Deech, and the noble Lord, Lord Polak, which deals with the same issue but from completely the opposite direction. Amendment 468 in my name tries to stress the need for the definition and practice of freedom of speech in premises, forums and events, affecting staff, students and invited guests. The alternative version of this, which I think aims to come to the same place, is written in terms of completely the reverse option—that is, to avoid unlawful speech by the same people in the same areas. There is a very interesting question about which of these two approaches would be better if one had to choose between them.

In some senses, that picks up the theme of the last debate, which I have been reflecting on during the interregnum of the very important discussion on the advertising of cheating services, about what we are trying to do here. Without wishing to pre-empt the discussion, I will say that I still think there are probably two issues here: first, whether we believe that our higher education providers, particularly our universities, have to have regard to the issues raised in these two amendments; and, secondly, whether there are external constraints or opportunities to use other statutes and practices to bolster that. There is absolutely no point in having the most well-worked and beautifully phrased approach to this issue if it is not implemented in practice. The problem we all have is that we may well aspire to good words, good intentions and good practice but, if there is not an effective, efficient and speedy determination of where these things are not being practised well, we will all fail. I beg to move.

Baroness Deech: My Lords, I have spoken many times before about freedom of speech. I want to link together the Prevent guidance amendment, this amendment and Amendment 469. In my view they stand and fall together because they are trying to demarcate the line between lawful and unlawful freedom of speech. That is all that matters, including in the Prevent guidance.

People often see freedom of speech as too broad and as encompassing everything, but it is always within the law. I anticipate that in response the Government will say that freedom of speech is already guaranteed. However, Section 43 of the Education (No. 2) Act 1986 is too narrow. It is treated as limited to meetings and to the refusal of the use of premises to persons with unpopular beliefs. Universities have not handled this well. They have wrongly refrained from securing freedom of speech where student unions are involved, on the grounds that the unions are autonomous. That is not the case under charity law, nor does it fit with the universities' own public sector equality duty. Moreover, Section 43(8) of that same Act expressly includes student unions. Universities have treated their duty as fulfilled if they have a code of practice concerning freedom of speech.

However, the practice of censorship is spreading, both by universities and by student unions. As I have explained before to this House, many explicit restrictions on speech are now extant, including bans on specific ideologies, behaviours, political affiliations, books, speakers and words. Students even get expelled for having controversial views. The National Union of Students has a safe-space policy and brands certain beliefs as dangerous and to be repressed, without regard to what is legal or illegal. The academic boycott of Israel-related activities is illegal as it discriminates against people on the grounds of their nationality and religion, and is contrary to the "universality of science" principle. Indeed, in this era of Brexit we should point out that attempts to put barriers in the way of exchange between scientists and other academics, inside or outside the EU, who wish to collaborate in research and conferences conflict with the principle of the universality of science,

and it would be the same if other European states put barriers in the way of UK researchers. A recent bad example of behaviour is the LSE, which silenced a lecture by its own lecturer Dr Perkins because of his unpopular views on unemployment.

Freedom of speech in the UK is limited. I will not give noble Lords the whole list of measures; I shall name just a few. It is limited by the prohibition of race hatred in the Public Order Act 1986, the Protection from Harassment Act 1997, the Equality Act 2010, and the Charities Act 2006 as it applies to student unions, defamation, the encouragement of terrorism and incitement to violence. There is a great deal of law for universities to take on board in permitting lawful freedom of speech in any case.

We need a new clause to go beyond meetings and make all this clear. Students have been closing down free speech and universities have neither intervened, nor protected it, nor taken action when it is lawful—or unlawful. We all recall when the Nobel laureate, Sir Tim Hunt, was hounded out of University College London. Section 43 was irrelevant, because his tasteless joke was made abroad. Universities are not taking up training offers about freedom of speech—what is lawful and what is unlawful. This amendment would ensure that lecturers and university authorities took cognisance of the law, got training in it and ceased to treat student unions as autonomous. They should know that they have a duty to promote good relations between different groups on campus under the Equality Act. I wish this amendment were not necessary, but it is.

Lord Lucas: My Lords, I very much support Amendment 468. It puts the matter clearly and positively. It needs doing. You only need to look at what is happening in US universities. There is a particularly nasty story coming out of Princeton today on the suppression of free speech. This ought to be the core of what is happening in universities. Within universities, we ought not to prohibit people from offending other people. There has to be the free exchange of ideas and this can be pretty buffeting from time to time. As is said in Amendment 468, if there are things going on which are illegal, then we should deal with them as illegal. Beyond that, we should not. We should allow ideas to flourish and grow and contest with each other at universities.

I do not support Amendment 469 in the same way. The idea of preventing speech requires you to know in advance what is going to be said. This means, if you fear that someone might say something, you are justified in stopping them coming to speak. This is a very difficult road to go down. Yes, take sanctions against people who allow illegal speech—this seems reasonable. If I invite a speaker in and they are then horrifically unlawful, I should face sanctions for that, even if I lose my right to arrange future meetings. However, to prevent it—to say that somebody at the university should know what someone is going to say in the future—I do not think is a good way to go.

I hope we will have the courage to stand behind Amendment 468 and say where our principles are because there is a great tide of the opposite coming across the Atlantic.

Viscount Younger of Leckie: My Lords, I thank all Peers for raising the important issues of freedom of speech and of unlawful speech in our higher education system during this short debate. I agree that free speech within the law is a value that is central to all our higher education institutions. Being exposed to a wide range of ideas and opinions and learning the skills to debate and challenge them effectively is key to the experience of being a student in the UK. My noble friend Lord Lucas put it well in his short intervention.

The existing duty requires certain higher education institutions to take reasonably practical steps to secure freedom of speech within the law for their members, students, employees and visiting speakers. The duty currently applies to a large number of providers, but not to all. Those subject to it already take this duty very seriously and we agree that it is absolutely right for them to do so. We are considering how to make sure that providers continue to be subject to this duty under the new definitions in this Bill. However, the requirement in the amendment changes the nature of the duty so that providers must ensure that staff, students and invited speakers are able to practise free speech in providers' premises, forums and events.

It is not clear how this would interact with the existing freedom of speech duty and there is a real risk that it would introduce a lack of clarity in relation to that duty. So, while I am sympathetic to the intention, I fear that the word "ensure" unreasonably and unnecessarily imposes an additional and disproportionate burden on providers. To ensure that something happens, regardless of how reasonably practical it is, may well require them to address matters that are realistically outside their control and potentially override other important considerations, such as the security of attendees at a particular event.

9.45 pm

Noble Lords will also want to note that students on the whole do not think there is a problem with free speech. A 2016 survey of over 1,000 full-time undergraduates at UK higher education institutions by the Higher Education Policy Institute found that 83% of students felt free to express their opinions and political views openly at university.

I turn to unlawful speech. There is no place whatever for hate speech, discrimination, intimidation or harassment against anyone, including on the basis of their race, religion, gender, sexuality or disability, and I am sure we all agree that there is no room for anyone who is trying to incite violence or support terrorism. This is why there is already a wide range of existing legislation in this area, including legislation which makes certain forms of behaviour and hate speech a criminal offence—laws which higher education staff, students and visiting speakers must comply with. They must also comply with laws against encouraging terrorism and inviting support for a proscribed terrorist organisation.

Most providers already have clear policies about discrimination, harassment and hate incidents. Providers subject to the Prevent duty are required to have due regard to the need to prevent people being drawn into terrorism, and as part of this to consider the impact of extremist speakers on campus. There are effective mechanisms for reporting hate speech and other incidents,

[Viscount Younger of Leckie]
such as through university procedures, directly to the police or to organisations including Community Security Trust and Tell MAMA.

We would not want to put in place a law that results in higher education providers being overly cautious and risk-averse to the extent that free speech is stifled. I am sure the noble Baroness would agree with me on the importance of exposing students to controversial and sometimes unpalatable opinions provided they are within the law. Therefore, I am happy to provide assurance to the Committee that we are considering how to make sure that higher education providers continue to be subject to the existing freedom of speech duty under the new definitions created by this Bill. For unlawful speech, I believe that working with the sector to implement existing legislation is the best way of protecting staff and students rather than the introduction of another law. With those explanations, I hope that the noble Lord will feel able to withdraw Amendment 468.

Lord Stevenson of Balmacara: I thank the noble Viscount for his considered response. This is a matter on which we should all reflect. I am sure that we are all trying to achieve much the same ends. However, I still think it is important to keep discussing the matter and hope that we will do so. If there is an opportunity to hold a meeting to discuss possible wordings or stronger wordings, we would be very happy to take it up. In the interim, I am happy to withdraw the amendment.

Amendment 468 withdrawn.

Amendment 469

Tabled by ***Baroness Deech***

469: After Clause 84, insert the following new Clause—

"Higher education providers: unlawful speech

All registered higher education providers must put in place measures to prevent unlawful speech by staff, students and invited speakers in the provider's premises, forums and events."

Baroness Deech: My Lords, I wish to add just a few words on this issue as virtually everything has been said. I remind the Committee how horrified everyone in this country has been at the apparent outbreak of hate incidents post the Brexit referendum. We deplore it yet we run the risk—I mentioned this in relation to the Prevent guidance—of allowing our most intelligent young people to pass through universities where an atmosphere of hate, disrespect for the "other" and bad language are being tolerated. If we want to live in a harmonious world post Brexit, we need to tackle this issue in schools and higher education institutions. In some ways this amendment does not go far enough. However, I think we all know what is at issue and, given the lateness of the hour, I shall not move the amendment.

Amendment 469 not moved.

Schedule 8: Higher education corporations in England

Amendment 470

Moved by ***Baroness Brown of Cambridge***

470: Schedule 8, page 96, line 3, at end insert—

"(4) The Secretary of State may by order provide for a research institution which offers research degrees accredited by a higher education institution to become a higher education corporation."

Baroness Brown of Cambridge: My Lords, noble Lords will be glad to hear that I will move Amendment 470 in my name and that of my noble friend Lady Wolf as quickly as possible. This is a probing amendment with a simple purpose. We have many distinguished research institutions with long track records of PhD students receiving excellent support. However, some of these institutions are not able to award their own research degrees but have to do this through university collaborators. Examples, I believe, include the John Innes Centre and Rothamsted Research for plant sciences, and Pirbright Institute and the Moredun Institute for animal diseases.

The purpose of the amendment is to ask the Minister to think about whether there is an appropriate route to offer these institutions a path to research-degree awarding powers, should they wish to obtain them. There is a very strong focus in the Bill, understandably, on what is required for new institutions to get taught-degree awarding powers. These institutions come into a very different category. They are typically smaller and with smaller numbers of research students. Will the Minister be happy to think about whether there is an appropriate route to research-degree awarding powers for these institutions? I look forward to hearing the Minister's thoughts. I beg to move.

Lord Watson of Invergowrie: My Lords, Amendment 471 in this group is in my name. It seeks to remove part of new Section 123B on supplementary powers of a higher education corporation in England:

"A … corporation in England has power to do anything which appears to the corporation to be necessary or expedient for the purpose of, or in connection with, the exercise of any of their principal powers".

We want to withdraw this because we do not see why it should be necessary. It seems almost nonsensical. It is completely open ended. It would be interesting for the Minister to tell us to what he thinks it refers or might refer. I feel like coming out with a list of ridiculous examples of things that a corporation might choose to do that may be within the law and indeed within the exercise of its principal powers. I am not going to do that but just in the last few minutes we have had a couple of examples. What if a corporation decided to turn a blind eye to the sort of activities that the noble Lord, Lord Storey, outlined in terms of plagiarism and so on? What if a corporation thought, "Well, that helps our pass rates"? It is not illegal as yet—I hope it will be. In the amendment the noble Baroness, Lady Deech, just spoke to about free speech, the corporation could take action or not which may be seen to be offensive by students, staff or the public where the university or college was situated. I say to the Minister: what is this about? Why is it necessary and really should it not be deleted?

Viscount Younger of Leckie: The noble Lord has set me a task. I will keep my response suitably short, given the lateness of the hour. The Bill amends the Education

Reform Act 1988 to deregulate the prescriptive statutory requirements that apply to higher education corporations in England, while ensuring that the route for FECs to achieve HEC status is kept open. The noble Baronesses, Lady Wolf and Lady Brown, suggested that research institutes should be given a similar legislative route. However, dozens of collaborative relationships exist between universities and research institutes across the country and they do not agree that these relationships are a shortcoming. For example, one such institute, the Laboratory of Molecular Biology, says on its website:

"This relationship, between the LMB and the University of Cambridge, gives our graduate students membership of two of the world's leading research institutions".

Further, there is no legislative barrier in this Bill that would, in principle, prevent an institution that provides supervised programmes of research embarking on the process of achieving registered higher education provider status, and ultimately seeking to gain its own degree-awarding powers, if it wished to do so and could meet the applicable requirements.

I turn to Amendment 471, spoken to by the noble Lord, Lord Watson. I begin by offering reassurance that these provisions are not new and nor do they allow a HEC to do whatever it pleases. The provision's wording is the same as that already contained within existing legislation on HECs—specifically, Section 124(2) of the 1988 Act.

All the Bill does is remove the list of ways this power to do what is necessary or expedient can be exercised. This might include, for example, the power to supply goods and services, to enter contracts, or to acquire land or property. This list is detailed and non-exhaustive, and setting out specific powers in this way is perceived as outdated and unnecessarily restrictive. As a consequence, there is a risk that it stifles innovation and growth and slows down institutional change. It is also inconsistent with the Government's commitment to establish a more level playing field in higher education.

We want to allow HECs the power to do anything that is necessary or expedient to further their objects, as many of their counterparts established under different corporate forms can do. For example, higher education institutions that are incorporated as companies under the Companies Act 2006 do not have their specific powers listed in legislation in this way.

I wish to reassure noble Lords that this will not give HECs an unfettered ability to do anything. A HEC's powers must be permitted by law and exercised in furtherance of its objects. We also understand that HECs may wish to explicitly specify some or all of their powers, and they will be able to do this in their articles of government.

With that short explanation, I hope that the noble Baroness will withdraw her Amendment 470.

Baroness Brown of Cambridge: I thank the Minister for his response. I am disappointed that he does not recognise that the content of the Bill is somewhat heavyweight for the kinds of institutions with existing track records to which I was referring. However, in the light of his explanation, I am happy to beg leave to withdraw the amendment.

Amendment 470 withdrawn.

Amendment 471 not moved.

Schedule 8 agreed.

House resumed.

Wales Bill

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

House adjourned at 9.56 pm.

Grand Committee

Wednesday 25 January 2017

Health Service Medical Supplies (Costs) Bill

Committee (2nd Day)

Relevant document: 12th Report from the Delegated Powers Committee

3.45 pm

Clause 6: Provision of information to Secretary of State and disclosure

Amendment 32

Moved by ***Lord Lansley***

32: Clause 6, page 5, line 32, at end insert—

"(4A) In connection with the requirements in subsection (2), the Secretary of State may serve a notice (an "information notice") to a UK producer in order to require the person to supply the specific information required.

(4B) An information notice must include particulars of—

(a) the form in which the information must be supplied;

(b) the date by which the information must be supplied;

(c) the purpose for which the information is required;

(d) with whom the information may be shared; and

(e) the right of appeal under this section.

(4C) A UK producer to whom an information notice has been served may appeal to the Upper Tier Tribunal against the notice.

(4D) Regulations may make provision for, and in connection with, the determination of appeals under this section."

Lord Lansley (Con): It is a pleasure to start this, the second and concluding session in Committee. We have reached Clause 6, which relates to the provision of information. In the 2006 Act as it stands, there is a wide-ranging requirement to provide information under the statutory scheme for medicinal products. However, in the Bill the Government have resolved to go rather wider in the scope of the information-gathering power. We will come on to some of the reasons why I think that process of gathering information more rigorously is necessary and why I support it.

Happily, we are in this Bill discussing legislation that is, in principle, supported by the industry—it recognises the importance of securing a good relationship between the Government and the industry in determining the right pricing structure. This is particularly true because, in the past, under the voluntary scheme and statutory scheme, the information-gathering capacity was built into the schemes themselves.

In addition, there is the issue of gathering information relating to the reimbursement of pharmacies under what I think is known as scheme W. I completely understand why it is necessary. I remember that, back in about 2006—I am not sure which of our noble friends, if I may be so bold, was in ministerial office at that time—the issue that arose with pharmacies was the lack of contemporaneous data that enabled the gap between the wholesale purchasing and the reimbursement price on dispensed drugs to be determined accurately. At that time, I was the shadow spokesman, and whistleblowers came to me to tell me that the pharmacy industry was taking anything up to £500 million a year more, by way of its margin over its purchasing of drugs, than was allowed for in the global sum negotiated with the department. That was investigated by the National Audit Office and the whole system was tightened up.

We are, however, still not where we should be. On Monday, we debated the idea that if one ends up hearing about purchasing only from large organisations, one will get it wrong because one might leave out the fact that small pharmacies cannot necessarily purchase at quite so fine a price. However, unless I am very much mistaken, and contrary to that, if you gather information only from small pharmacies—even if they have a collective purchasing operation—and leave out the very biggest pharmacy chains, the chances are that you may be overestimating the wholesale price. Of course, there are some integrated operations, and getting that information from an integrated supply chain is extremely difficult.

The starting proposition for this debate is that there is a need to broaden the information-gathering power. Amendment 34, in my name, is consequential, but Amendment 32 is about what happens once one goes down the route of gathering quite so much information, potentially. I do not seek to amend the purposes that are set out, as the Committee will see, in Clause 6(3).

In Clause 6, there is a long list of the reasons why the Secretary of State might wish to gather information and the purposes required for that. It is potentially necessary for the information to be gathered. As a consequence, I do not wish to change all that list but at the moment, compared to most of the analogous information-gathering requirements for government laid upon industry, there is no safeguarding process. There is no process which, in itself, requires the Government to be much clearer about the information they require, the purposes for which they require it, the character of the use to which it will be put or, since there is a power to share information, with whom that information will be shared. Amendment 32 sets out to do this.

Under the voluntary or statutory schemes, there can be a scheme for gathering information that does not necessarily require information notices. Amendment 32 essentially says that in any circumstances where the Secretary of State does not receive the information the Government are looking for under a scheme, including presumably scheme W and others, there should be a power for the Secretary of State to issue an "information notice". But where a notice is to be issued to somebody, it would then have to say some very specific things: what is required, in what form, by when, for what purpose, with whom it will be shared and about giving a right of appeal. There may inevitably be circumstances where there is a belief on the part of industry that the information being sought is not required—that the Government are unnecessarily hoovering it up, as it were. It may have a particular set of reasons of its own to try to resist this.

[LORD LANSLEY]

This amendment would give industry an opportunity to seek appeal if the Government are being disproportionate. Of course, it would have a right to judicial review but it would be much easier if this were governed under statute by way of simple appeal to the General Regulatory Chamber, as happens in a number of other areas where there is a requirement to gather information from people. I hope that the Minister will be sympathetic to an understanding that, notwithstanding the general support of industry, concerns have been properly raised about the scope and extent of the information-gathering power the Government propose in the Bill. I hope he will recognise that the amendment would reassure the industry that it would be properly informed about what information is required, and would have some recourse if it objects to that information being taken. I beg to move.

Lord Hunt of Kings Heath (Lab): My Lords, I want to express some sympathy with the remarks of the noble Lord, Lord Lansley. I am not sure whether he has got the terms of his amendment right; my noble friend Lord Warner has an amendment in the next group which, in a sense, covers the same ground.

The noble Lord, Lord Lansley, knows that I am sceptical about whether these powers should be extended to non-medicines but the issue here is that they are very broad, as he says. As far as I can see, there are absolutely no safeguards regarding how these powers will be used. The safeguards are not in the Bill or the 2006 Act, and certainly not in the draft regulations as far as I can see. We are looking for the Minister to table amendments on Report to build in thresholds or safeguards to stop the department simply undertaking fishing expeditions. That would give us some sense of proportionality. I am not sure whether the noble Lords, Lord Lansley and Lord Warner, have got their amendments quite right but I am certain there will be a consensus for building in some safeguards over the use of these powers.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, it is nice to be back with you again today to finish the Bill's Committee stage. I am grateful to my noble friend Lord Lansley for tabling his amendments, and for his support for the Bill's ultimate purpose: more rigorous gathering of data to support voluntary and statutory schemes and pharmacy reimbursements. That support is very welcome. I have huge sympathy with his argument. It is because we agree with the need properly to set out the information powers that we have published two sets of illustrative regulations to help Parliament scrutinise the information powers in the Bill. Reflecting on those, I believe that I can reassure my noble friend about the concerns behind his amendment.

I start by addressing the general proposition that a UK producer should be provided with an information notice every time the Secretary of State seeks to require information from that producer. Many noble Lords have expressed concerns about the regulatory burden the Bill might impose, and the amendment could exacerbate those worries. Regarding routine information collection, the Government already collect information on prices and volumes every quarter to support the operation of the PPRS and statutory schemes, and to inform reimbursement prices for community pharmacies. The Bill would expand routine collections to inform reimbursement prices to enable us—as my noble friend pointed out—to use data from more companies, to make the reimbursement of community pharmacies fairer and more robust, and to set reimbursement prices for more products.

For the purposes of requiring information on a routine basis, the illustrative regulations clearly set out what information would need to be provided, the form in which it would need to be supplied, the period of time it would need to cover and the date by which it would need to be supplied. Where information is required on a non-routine basis, the illustrative regulations demonstrate that the Secretary of State would notify a UK producer of that request. The regulations set out the notice that the Secretary of State would give a UK producer, the form in which the notice would be given and the type of information that would be required. The regulations would also require the Secretary of State to inform UK producers of the time period the information would need to cover and the time within which the information would be required.

Turning to the purposes for which information can be required and the persons to whom confidential and commercially sensitive information can be disclosed, I reassure the Committee that the Government take these matters very seriously. We have sought clearly to set out in the Bill the limited purposes for which information can be required and the persons to whom confidential or commercially sensitive information can be disclosed in relation to those purposes. The Bill makes it clear that information can be required for only three purposes: first, to reimburse community pharmacies and GPs; secondly, to support the PPRS and the cost-control provision in the NHS Act 2006; and thirdly, to ensure that healthcare products provide value for money.

The information that we would collect under the first two purposes would generally involve routine collections, to operate the reimbursement system and our voluntary and statutory schemes. However, assuring ourselves that products or the supply chain provide value for money would be done through ad-hoc collections. This is where we get to the critical issue of thresholds. Those collections would be triggered by evidence from existing data that there may be an issue with pricing—for example, when the reimbursement price we set in primary care is increasing without obvious reasons—or patients, clinicians, commissioners or the industry raising concerns, for example about price rises without obvious reasons or access problems. I hope that that makes it clear that this is not intended for fishing expeditions, to use the expression of the noble Lord, Lord Hunt.

Lord Hunt of Kings Heath: Have I missed this? Are those qualifications for the use of the provisions set out in the Bill?

Lord O'Shaughnessy: They are not. I am using this opportunity to set out on the record the reasons why information would be sought.

The Bill is also clear about with whom confidential and commercially sensitive information can be shared. This is restricted to other Government departments, the devolved Administrations and specific NHS bodies and persons providing services to any of these bodies. The information can be disclosed to these bodies only for the purposes set out in the Bill—which I just reprised. The Bill also enables the Secretary of State to share information with trade bodies, and Regulation 11 of the illustrative regulations sets out the trade bodies with whom the Secretary of State might want to share information, and the type of information that he would want to share with them.

The illustrative regulations currently limit the information that we can share with trade bodies to aggregated data that cannot be led back to a specific company. Furthermore, the Bill enables the Government to prescribe in regulations any other person to whom the Secretary of State can disclose information. The flexibility provided by this regulation-making power allows the Secretary of State to disclose information to other persons who may become involved in payment or reimbursement for health service medicines, medical supplies or other related products, including, for example, in circumstances of regional devolution. Again, it would be possible to disclose confidential or commercially sensitive information to these persons only for the purposes set out in the Bill. We will have further opportunities to discuss these powers of disclosure when we discuss the amendments relating to the report of the DPRRC. In summary, we would not be able to disclose information to bodies not listed in the Bill or prescribed in regulations, so the legislation will restrict to whom we can disclose information.

4 pm

Appeals were a key part of my noble friend's amendment. The second aspect of the amendment would enable companies to appeal against any request for information or information notice. The Bill already includes a right of appeal for UK producers in relation to enforcement decisions, which I think is what my noble friend is talking about—not so much requests, but enforcement when information was not forthcoming after requests for information. Where a UK producer refuses to comply with a routine or non-routine requirement for information, the Secretary of State has the power, as amended by the Bill, to make an enforcement decision against that UK producer. The UK producer would have the right to appeal that enforcement decision if there were any concerns with the request, as has been set out in both sets of illustrative regulations. As the Bill and the regulations are now drafted, if the manufacturer or supplier did not provide us with the information, we would issue an enforcement decision that could be appealed through the tribunal established by the Health Service Medicines (Price Control Appeals) Regulations 2000.

I hope that my explanation of the Bill and the two sets of illustrative regulations has clarified that the Government have carefully considered the issues of disclosing confidential and commercially sensitive information by restricting in the Bill the purposes for which information can be required and to whom information may be disclosed. I hope that I have also clarified that there is an appeal mechanism in place, albeit in a slightly different manner than that proposed by the amendment. On that basis, I ask my noble friend to withdraw his amendment.

Lord Lansley: I am grateful to the noble Lord, Lord Hunt, and my noble friend for their response to this amendment. I can see from the illustrative regulations that, as I said earlier, there would be a general scheme for the collection of information, and I am not looking for the amendment to replace a general scheme with a requirement to issue individual information notices. That would be excessive and burdensome. However, under the illustrative regulations there is, in addition to the general scheme, what is effectively the restatement of the power for the Secretary of State additionally to require specific information from companies that breach the requirements of the general scheme—frankly, for any other purpose that the Secretary of State is looking for. That is in draft Regulation 19(2), which really just restates what is already in the legislation: that there is this general ability to say "just give me this information".

I entirely understand the point that my noble friend is making about the appeal against enforcement, but there is no appeal against such a specific information notice. I may not have got it absolutely right, but in the case outside the general scheme of information, when the Secretary of State asks a company to provide specific additional information, I was proposing not an appeal against enforcement of request, where the company resisted, but for the company to be able to appeal against the information notice on the basis that it is an excessive use of powers; that is, rather than a judicial review, an appeal against that specific information notice.

My noble friend referred to the Delegated Powers and Regulatory Reform Committee's view, which relates specifically to the question of with whom the information may be shared. The illustrative regulations really do not add anything from that point of view; they do not tell us, beyond what the legislation already states, with whom they may be shared. From any company's point of view, there is little reassurance in the restrictions that the Minister has just referred to. The information could end up in all sorts of places. Remember, we are talking about an NHS body and, of course, all NHS bodies always behave absolutely properly in the use of information under all circumstances—I am being ironic.

From the point of view of a company engaged in selling these products, we are talking about a monopoly purchaser—a single payer—and a set of organisations with tremendous financial leverage in relation to the products that are being sold. If we are simply handing all the information over to the Secretary of State in the expectation that he could—I am not saying that he would—hand this information on to NHS bodies which are themselves the purchasers of these products, it could significantly skew what would otherwise be a proper commercial relationship between seller and buyer.

Companies must have a point at which they can cry foul, but I am not sure that we have yet given them the ability to do so at the appropriate stage when the information is being asked for. In a way, my amendment does that. I was rather comforted by the DPPRC's report, in that it seemed to me that my amendment at least

[Lord Lansley]
sought to make clear how the DPPRC's recommendation in relation to the Bill might be met. I am implying in what I say that I can see how the amendment is not right; we could go further.

Lord O'Shaughnessy: I thank my noble friend for that clarification. I think that we are talking about the same thing, but we should have the opportunity to explore it between Committee and Report. Certainly, we will talk about the DPPRC issues. It is understood that the powers as currently set out need to be looked at.

Lord Lansley: I am again grateful to my noble friend. On the basis of what I have explained, there is a conversation to be had and I hope that we may be able to resolve this satisfactorily before Report. I therefore beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Amendment 33

Moved by ***Lord Warner***

33: Clause 6, page 5, line 32, at end insert—

"( ) The Secretary of State may require information falling within subsection (4)(d) from a UK producer under circumstances where a specific health service product has significantly increased in price and where there are reasonable grounds to believe that the National Health Service is not receiving value for money."

Lord Warner (CB): My Lords, this amendment creates a trigger mechanism before the Secretary of State can require companies to submit to the new information requirements set out in this Bill. In effect, the Secretary of State has to be satisfied that a particular health service product has significantly increased in price and has reasonable grounds to believe that the NHS is not receiving value for money. In those circumstances, he can require the information falling within Clause 6(4)(d), on page 5 of the Bill.

It is possible of course, as the noble Lord, Lord Hunt, has mentioned to me, that I have been a shade too lenient with the Secretary of State and should have required this trigger to be applied to a wider range of products. I suspect that he may want to probe that area a little later on. However, I will explain the reasoning behind my amendment, which follows serious concerns expressed to me—strongly and convincingly—by the ABPI. From the concerns that were expressed, it is clear that the association supports the department's intention to bring all information requirements under a statutory footing to ensure that the reimbursement system is run effectively. There is no dispute over that. However, it is very concerned, as has already been expressed in Committee, that the Bill will require information from all pharmaceutical companies, which is beyond what is required to fulfil this aim.

UK pharmaceutical companies already provide comprehensive information to the Government on profits they make at company level. The Bill would require companies to allocate profit figures to individual products. The sector believes that this approach is totally disproportionate compared to what is needed to fulfil the Government's policy intention, for a number of reasons. First, the information requirements would extend to a company's global business. Secondly, information on distribution costs of individual products is not currently recorded by pharmaceutical companies at product level. Thirdly, it would be extremely difficult for companies to share information at this level, with any information obtained likely to be estimated. Fourthly, such costs typically bear no relation to the cost of medicines to the NHS or reimbursement schemes. The Government have signally failed to convince the sector that what they are doing is both proportionate and necessary for their aims. I found the sector's claims extremely convincing, which is why I have suggested a trigger mechanism of the kind set out in Amendment 33.

The Minister and the department have not got right the information provisions in the Bill and have signally failed to convince the industry that they have done so. Therefore, not only are the information provisions regulatory gold-plating, as has been suggested by the noble Lord, Lord Hunt, but they could be said to be rather ineffective and cheap gold-plating at that. The industry strongly supports a provision of this kind and I think it is perfectly prepared to sit round the table and discuss alternatives. Others may also want to apply this trigger to other parts of the Bill. I am certainly not a proud author, and if noble Lords want to try that, they can by all means go ahead.

I do not think that the Minister can get away with the argument that I suspect he may use, which is that the details of these arrangements can be sorted out in regulations and guidance. The truth is that the Bill gives the Secretary of State wide powers to require information, and it is the sweeping nature of those powers that I and others are challenging. It is also worth mentioning that one could regard the Government's proposals as a recipe for gaming the system. If you make this stuff so complicated that it is very difficult to assure things, or you accidentally provide incentives to game the system, that is where you end up. I am not saying that on behalf of the ABPI, but I have been around in government a long time and have seen well-intended actions leading to very unexpected and unsatisfactory consequences. I am sure that most people will not do this, but if the Government choose to proceed with a disproportionate system of information collection, they should not be surprised if it happens.

The Minister mentioned in his response to the amendment in the name of the noble Lord, Lord Lansley, that the Government can give a range of assurances on how they will and will not use this information. I have to say to the Minister that we have been round this track on many pieces of legislation in this House. The warm words that one set of Ministers give about safeguards too easily get forgotten when they move on to other things and it suits a government department a little later in history to use the powers that are there. We have already seen with the Bill how the Government have found some inadvertent powers that no one can explain and which have been knocking around since 1977 with which to build an edifice in the Bill on information collection. Therefore it is not foolish to consider the possibility that the Minister's assurances, which are not in the Bill, could still lead to abuse of this system later.

I still cannot see that the Government have made the case for this potentially massive increase in information requirements Bill that the Secretary of State can impose on the sector in the Bill. That is why we need to curb the Department of Health's enthusiasm for this kind of collection of information, which could lead to fishing expeditions, no matter how the Minister tries to assure us in Committee. I beg to move.

4.15 pm

Baroness Finlay of Llandaff (CB): My Lords, I have some sympathy with the amendment of the noble Lord, Lord Warner. It strikes me that the information being asked for in the Bill requires a degree of detail that probably is not going to reflect reality. This is very often a global industry, so defining a "UK producer" will be quite difficult. If we make the information requirements too difficult, I see a risk of some of the larger companies deciding to produce more offshore rather than here.

The other difficulty with the pricing of any medical treatment that comes to market is that it has often had a very long lead time—over years. So the true cost of that particular item becomes almost impossible to disaggregate from all the other costs. Then, once it is produced and packaged, there are distribution costs, the mark-up at wholesale level and so on. I can see how a producer, in wanting to keep a cost high, could potentially move around its budgeting line to protect itself. But the problem is that if you do not have a trigger, you may get so much data that you cannot actually extract the true knowledge and the important information from them. I understand why you would want to have a lot of data to be able to move the cost and map it efficiently, but there is only any point in mapping it if it has accuracy attached to it.

I have a question for the Minister. In all these information requirements, how will a "UK producer" be defined, as distinct from an international producer from elsewhere? I may have missed it, but I could not find it defined in the Bill; I can see only products defined.

It will become almost impossible to know where the true cost is, but if a cost is going up, that becomes counterintuitive. Generally, for medication that is out there on the market, the cost should fall. Usually, production costs drop, because, for example, antibiotic production used to be incredibly expensive and is now very much cheaper because of efficiencies and the way that the science has moved forward. So you would expect, with bulk sales and technological advances, that the cost should come down. I therefore have a question for the noble Lord, Lord Warner, on the trigger mechanism. Is his price absolute—in pounds—or is it also considered relative to other products in that field that may be on the market? For example, we have seen some major discrepancies with ophthalmic products. Eye drops for glaucoma have been incredibly expensive compared to exactly the same substance that is being used in oncology and has been priced at a much lower rate. The question has to come up as to whether the price is being held and maintained inappropriately, rather than having gone up.

Lord Warner: In response to the noble Baroness's point, I would not claim to have actually considered the detail of what level of pricing we will use. My point in this amendment is to try to establish the principle of a trigger mechanism, and I am happy to be advised on ways of improving it.

Baroness Walmsley (LD): My Lords, the noble Lord, Lord Warner, is right that we need to have a trigger mechanism. This is gold-plating, and not very effective gold-plating. As the noble Baroness, Lady Finlay, just said, it will produce an absolute mass of information. The question is how to find, among that mass of information, situations where there is malpractice, abuse or unwarranted price rises. It is the same sort of argument as we had when the police wanted to collect everybody's internet information. Really, it is like looking for a needle in a haystack. It is much better to have it targeted, where there is a reason to believe that there is something going on.

How will the department identify from this mass of information those situations that it needs to investigate further? Will it apply some sort of algorithm to the information at any point along the production or distribution line when there is an increase of more than a certain percentage or a certain percentage related to the average—or what? How is it going to be done? These companies have quite enough to tackle with Brexit coming along the track and do not need a further burden such as this.

Lord Young of Norwood Green (Lab): I am not an expert in this area, but I am puzzled. If it is that difficult to identify, how come the *Times* managed it in its expose? It did not seem very difficult or complex. The *Times* found drugs that had come out of patent and were available on a generic basis and for which the company that bought the patent increased the cost by staggering amounts. You do not have to be Sherlock Holmes to alight upon that. I do not know which way to go on this debate. My noble friend worries about fishing expeditions, and he is right, but I am even more worried about the NHS being ripped off for inordinate amounts of money by people whose corporate responsibility polices omit the word "ethics". I asked once before why none of the current audit processes inside the health service exposed this until the *Times* brought it to public attention. There may be a mass of information, but I would have thought that these things could quite easily be identified. I may be wrong because, as I said, I am not an expert in this very complex area, but those points need to be answered. The problem was identified. We have this Bill because we know that the current system is not working. Even though people in the various systems in the NHS were reporting their concerns, no action was taken for quite a long time. It certainly justifies the legislation. The Delegated Powers Committee expressed its concerns about whether the legislation is right, and I do not profess to be qualified to rule on that, but my major concern is about the ability of some companies to rip off the NHS.

Lord Hunt of Kings Heath: My Lords, my noble friend is right because he goes to the heart of the argument about this Bill. I think we have all said that we support the core aim, which is to deal with branded products becoming generics and the issues that were identified.

[Lord Hunt of Kings Heath]
The question is whether the Bill is a proportionate response to that and what impact it will have on future investment in this country.

I have been wracking my brains to puzzle out why this was first legislated for in 1977. My noble friend will remember that that was the time of the prices and incomes policy. Lady Williams of Crosby and my esteemed noble friend Lord Hattersley were Secretaries of State for Prices and Consumer Protection. I would not be at all surprised if it had something to do with that. I have to say that it was not altogether successful as a policy, and I am not sure that it is a great precedent for the Minister to rely on now. Certainly, in 1979 the electorate did not think that it was a very successful policy, that is for sure.

The only point I want to put to the Minister is this: I think there is a consensus in the Committee that there needs to be some trigger mechanism. We have had elements of that. The noble Lord, Lord Lansley, proposed an amendment that included appeals. He suggested what would trigger action, which was very helpful. In his amendment, my noble friend suggested another approach. The Delegated Powers Committee is concerned about the general terms of this clause. It said:

"We consider the general power to be inappropriate unless the Minister is able to explain why it is not feasible to specify the further bodies to whom information may be disclosed on the face of the Bill, and why it is not feasible to limit the kinds of bodies to whom disclosure may be made".

That picks up the point raised by the noble Lord, Lord Lansley, and I agree with him about NHS bodies,

The question is this. The only satisfactory safeguards will be in the Bill. This House has no influence on regulations. The Minister will know that only six or seven statutory instruments have ever been defeated, so regulations in themselves provide very little safeguard. This is our only opportunity to provide safeguards in the Bill. Essentially, the choice for us is to press on with amendments at Report or to come to some agreement with the Government about what is appropriate. That we need something in the Bill is not in doubt.

Lord O'Shaughnessy: I thank noble Lords for that very good debate, which has again got to the heart of why we are all here. While we are reflecting on the 1970s, we have an industrial strategy again, so who knows? The wheel turns.

I am grateful to the noble Lord, Lord Warner, for his amendment and understand that he seeks to minimise the burden on businesses; we agree with him on that aim. However, the amendment would have serious unintended consequences. I will set out why I believe that to be the case and in doing so, I hope to respond to other noble Lords' questions.

The amendment would restrict the circumstances under which the Government could ask for information on revenues or profits accrued in connection with the manufacturing, distribution or supply of UK health service products. We have been clear throughout that the information that we seek for routine data collection does not go beyond that which would be required for tax purposes. That is the reassurance that we provide on the overall burden and how it would affect businesses. I appreciate that there is a separate question about non-routine data collection, which I will come to, but the overall intention is not to create any additional burden.

The amendment would restrict the information-gathering powers to where a specific health service product has significantly increased in price and where there are reasonable grounds to believe that the NHS is not receiving value for money. However, it would prevent us operating our cost and price control schemes. The reason for that is that the Government collect information on revenues from companies as part of the various cost and price control schemes to be able to determine the sales of those companies to the health service. This enables us to identify the savings achieved through price cuts and which, in our reformed statutory scheme, would be a prerequisite for calculating the payments due from individual companies.

The Government require this information at product level to satisfy ourselves that the terms of the scheme are being applied correctly. As noble Lords know, this model has been in operation through the PPRS for many years, and we have not heard concerns from industry about the burden that it places upon it. Indeed, it is precisely this mechanism which demonstrated to both the Government and the ABPI that the current PPRS was not operating as expected during 2016—something to which the noble Lord, Lord Hunt, referred during our previous sitting.

We had constructive discussions with the ABPI during 2016 about why the spend measured by the PPRS and used to calculate payments under the scheme had fallen, compared to the real growth in NHS spending on branded medicines, which continues to rise. Joint analysis of company data by the ABPI and the Department of Health shows that the NHS is spending more than ever on branded medicines, with spend growth in 2016 likely to be around 5.3% of the budget.

It became clear that the cap mechanism was not capturing significant areas of branded medicines spend—in particular, parallel imports. Also, some companies left to join the statutory scheme, or divested individual products from the voluntary to the statutory scheme, but this growth was not captured by the PPRS methodology. Without action, this would have led to a significant drop in income from the scheme while branded medicines spend continued to rise, which is obviously against the spirit of the agreement. After a short period of very constructive negotiation just before Christmas, we agreed a new deal with the ABPI to cover the last two years of the scheme, details of which I set out in a Written Ministerial Statement published last week, I think—it has been only three and a half weeks, but it feels longer. This shows how well industry and the Government can work together to develop and maintain voluntary arrangements, but we can do so only with the right information available.

We have provided illustrative versions of both the information regulations and the statutory scheme regulations. I emphasise that these regulations show that the Government have no intention of routinely collecting information on profits. They do, however, set out the circumstances in which the Government might want to collect information about profits.

First, the illustrative regulations set out that we would be able to ask for information related to products where a company asks for a price increase under the statutory scheme regulations. To agree such an increase, the Government require assurance that the product is no longer profitable at its current price. Information on profitability is therefore crucial to determine this.

4.30 pm

Secondly, we would be able to ask for information related to profits when we have concerns about unwarranted prices for unbranded generic medicines. I think we are all agreed on the need to have that power. The information regulations demonstrate that we would ask for the cost of manufacture, the costs of R&D and non-recurring operational costs related to the product. This would help us determine whether the price is based on the actual cost or has been unduly inflated. On that point, I thank the noble Lord, Lord Young, for his support for the Bill in relation to stopping the NHS being ripped off; it is precisely the powers in this Bill that will enable us to do that for the kind of medicines he is describing.

In response to the issue about the *Times* investigation, the department was already aware of the practice and had been working on it with the Competition and Markets Authority. High-price generics were also the subject of the consultation on the statutory scheme that was published in December 2015. I want to dwell briefly on the point about the CMA investigation and the questions about UK or global. Technically, what is meant by a UK producer is any organisation that manufactures, supplies or distributes products required for the purposes of the UK health services—it is not necessarily about where it is domiciled, but its operational purpose. Clearly, it must be possible to ascertain information; otherwise, the CMA would not be able to carry out the investigations that it does. Through the Bill, we are aiming to have a set of powers that enable us to intervene before the CMA process is reached, which may produce fines quite a long time down the line, as happened with Flynn, which has now lost its appeal. We are trying to stop that happening upstream and stop that kind of behaviour.

It is possible to carry out such analysis. Whether there is a big data solution, I do not know. Because we are talking about the non-routine collection of data, they would not be producing masses of information. The mass of information would be the routine collections that are going on in order to carry out the main purposes of the Bill, which we have discussed and I will not go over again.

I hope that I have been able to explain under what circumstances we intend to ask for additional information relating to revenues and profits, as set out in the regulations and the Bill. I hope that I have reassured the noble Lord, Lord Warner, and other noble Lords that we are not seeking powers that will allow us to interfere unduly in the operation of businesses serving the health sector in the normal way. The amendment as it stands would make it impossible for us to run the current cost and price control schemes. On that basis, I ask the noble Lord to withdraw it.

Lord Warner: I am grateful to the Minister for his detailed explanation, although I am not totally convinced. The intention was to apply my amendment to the new information requirements, not the existing routine collection. That is a drafting issue rather than an issue of principle. If I got the drafting wrong, we can sort it out.

I still think we need some kind of trigger safeguard in the Bill. I am not particularly wedded to this provision. I am quite attracted to a trigger mechanism, linked to the information notice and appeal idea suggested by the noble Lord, Lord Lansley. I am certainly very happy to discuss with the Minister and other colleagues on the Committee how we might improve this.

The Minister cited the example of abuse of the PPRS system, but if there were such abuse and the Government or the department were aware of it, nothing in my amendment would stop them intervening. Those would be the reasonable grounds for expecting abuse which this trigger mechanism provides. Therefore, it would not be that the Government's hands would be tied behind their back when they had some reasonable grounds for thinking that the NHS was being abused. The trigger mechanism does not stop intervention when there is evidence; it just requires the Secretary of State to have some prima facie evidence that some kind of abuse is going on that requires the collection of more information. That is where the ideas of the noble Lord, Lord Lansley, fit in rather well. You would then specify exactly what you need to deal with the abuse you suspect is going on, but which you do not have enough information to prove. That would enable you to act way before a case came to the CMA. You would need only some reasonable grounds for issuing the kind of information notice that the noble Lord, Lord Lansley, wanted to see what was going on.

The Minister mentioned the consultations with the ABPI, but if those were such a success, why does the ABPI come to people like me and say that it is highly dissatisfied with the system that now appears in the Bill? The messages must have got lost in the night somewhere along the way, because the Minister certainly did not convince it to be comfortable with what is proposed in the Bill.

We need some kinds of safeguard, whether it is this trigger mechanism or a blend of that and the idea of the noble Lord, Lord Lansley—

Lord Hunt of Kings Heath: It seems from this debate that you could put together into an amendment the appeal mechanisms suggested by the noble Lord, Lord Lansley, the general thrust of the amendment in the name of the noble Lord, Lord Warner, and the three examples the Minister gave of what would trigger the investigation. The Minister clearly has "resist" on every briefing for every amendment. However, this is the House of Lords and basically, we are either going to put an amendment through ourselves, which will win on Report, or the Minister will sit down with us to try to agree something. If the Minister is not able to give way on anything, frankly, it is pretty hopeless and departs from what your Lordships' House is about. That is what I find frustrating. It is quite clear that there is a broad consensus that we need to see a trigger mechanism of some sort in the Bill. We would like to work with the Government, otherwise we are left with no option but to construct something ourselves.

Lord O'Shaughnessy: On that point, two separate issues are in play here. One is about the information required to be routinely collected for the purposes particularly of community reimbursement, but also for the operation of the schemes. It is welcome that that information will be put on a statutory basis and there is clarity about the kind of information that might be required. In doing so, it will provide for better information and better pricing. Then, there is the separate discussion that the noble Lords, Lord Hunt, Lord Warner, and other noble Lords have alighted on: the collection of non-routine data. Effectively, the question is, what are the circumstances under which that kind of non-routine collection would be justified? Assuming I have interpreted that correctly, I would be happy to talk to noble Lords about how we do that, as I committed to doing during the last sitting. My desire throughout is to make sure that, despite the fears of the noble Lord, Lord Hunt, the Bill is proportionate in its efforts to achieve our aims.

Lord Warner: Those interventions from the noble Lord, Lord Hunt, and the Minister were helpful. It certainly should not be difficult or beyond the wit of man for the department and the industry to have an agreed set of routine information collections. What goes on top is the issue, as the Minister rightly said. I would be very happy to participate—as far as I can, because I shall be away on holiday tomorrow, although I am sure my representatives on earth will be able to cover this very satisfactorily. If we can make progress on this issue, it would avoid our having to table amendments on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

Amendment 34 not moved.

Amendments 35 to 48 not moved.

Amendment 49

Moved by ***Baroness Walmsley***

49: Clause 6, page 7, leave out line 9

Baroness Walmsley: My Lords, the next two groups of amendments relate to the concerns expressed by the Delegated Powers and Regulatory Reform Committee in its 12th report of the 2016-17 Session. Amendments 49 and 51 refer to Clause 6, which inserts a series of new sections into the NHS Act 2006 authorising the Secretary of State to disclose information provided by suppliers of health service products. New Section 264B(1) lists the bodies to which information may be disclosed. It also allows the Secretary of State to prescribe in regulations further persons to whom information may be disclosed. We have already heard from the noble Lord, Lord Hunt, about Parliament's inability to have much effect on that.

There are two powers: a specific power to prescribe bodies which appear to represent manufacturers, distributers and suppliers of health service products and a general power to prescribe any other person. In his Amendment 50 the noble Lord, Lord Hunt of Kings Heath, has attempted to place in the Bill the specific organisations that represent UK producers. This is reasonable enough, although I know that Ministers hate having lists in Bills. However, it is the general power that the Delegated Powers Committee objects to. As the noble Lord, Lord Lansley, said a few minutes ago when talking about Amendment 32, disclosure under new Section 264B may involve confidential and commercially sensitive information, even though the purposes for the disclosure are limited by subsections (2) and (3). The committee felt the general power to be inappropriate. No explanation of the need for this power was provided to the committee in the memorandum.

Amendment 49 therefore seeks to delete the general power in subsection (1)(l) of new Section 264B to enable the Minister to justify why the Secretary of State would need such a broad and wide-ranging power. Amendment 51 is consequential. Can the Minister say why it is not feasible to specify in the Bill the further bodies to which information may be disclosed, or even the groups of people or organisations? After all, in subsection (1)(k)—in lines 7 and 8—the Government specify representative bodies of producers. Why not specify other groups at the end of the subsection? This appears to me to represent a power too far, and the committee feels the same. What is this power for and how is it to be used? I beg to move.

Lord Hunt of Kings Heath: My Lords, I have a little list, which is a bit bigger than the Minister's list.

Lord O'Shaughnessy: Have you seen it?

Lord Hunt of Kings Heath: Indeed so. In following the remarks of the noble Baroness, Lady Walmsley, this is really a probing question. Lists are generally avoided in primary legislation for the obvious reason that you need flexibility. I can see why a list of bodies has been put into paragraph (11) of the draft regulations. At this stage, I am just puzzled to know why those organisations which are in the list have been chosen and why others have not.

First, I see that the BMA is in the list. I assume that is because it represents dispensing pharmacists, but I would be grateful to have clarification. I think that may have been clarified. For instance, why is the British Healthcare Trades Association not in the list? Clearly, its membership, although sometimes the same, is rather different from the ABHI. There are other organisations that I have put down to probe how the department has come to that list. When we know that, we can then come back to the general principles that the noble Baroness has so rightly raised.

4.45 pm

Lord O'Shaughnessy: I thank the noble Baroness, Lady Walmsley, and the noble Lord, Lord Hunt, for these amendments. As both have set out, it is clear that they have been tabled in response to the report of the Delegated Powers and Regulatory Reform Committee. I am very grateful to the committee for its consideration of the Bill and for providing its report. The committee has concluded that the general power in new Section 264B(1)(l) to describe in regulations any other persons to whom information may be supplied is too

wide and not justified at present. I assure noble Lords that I am considering these comments very carefully, and the views expressed by the noble Baroness, Lady Walmsley, and the noble Lord, Lord Hunt, have been helpful in explaining the issues.

The amendment in the name of the noble Lord, Lord Hunt, would put in the Bill the industry representative bodies to which the Secretary of State can disclose information. The Government would prefer to prescribe these bodies in regulations and have done so in the illustrative regulations—albeit the current version includes only a limited number of such bodies and they are given purely as examples rather than as an attempt to be exhaustive. By prescribing a large number of representative bodies in primary legislation we would, as I think the noble Lord, Lord Hunt, admits, lose the flexibility to be able to add new representative bodies, if needed, in regulations.

In its report, the DPRRC was satisfied with the way the Bill was drafted in this area, and it considered the power to prescribe bodies that appear to the Secretary of State to represent manufacturers, distributers or suppliers to be a specific power. The committee thought, however, that the general power to prescribe any other person was too general and suggested that the Government limit the kinds of bodies to which disclosure may be made, as is done with the power to prescribe representative bodies. Like the DPRRC, I believe that the power to prescribe representative bodies is sufficiently specific, while still allowing some flexibility. However, we are giving serious consideration to the general power.

As noble Lords are aware, there is a balance to be struck between ensuring clarity in primary legislation and, at the same time, giving sufficient flexibility to enable arrangements to change in response to external changes to ensure that, in the future, we have flexibility to work with the right stakeholders without requiring primary legislation to do so. I once again reassure the Committee that I am considering these recommendations very carefully and will respond to the DPRRC shortly. I expect, subject to the appropriate procedures, to bring forward proposals on Report. On that basis, I ask the noble Baroness to withdraw her amendment.

Baroness Walmsley: My Lords, I am most grateful to the Minister, and I look forward to, I hope, being copied in to his reply to the committee. I certainly understand what he said about the representative bodies being in regulations and that it is just an illustrative list that we have before us. If the list is in regulations, it is much easier to add a new representative body. It is reasonable to assume that, some day, perhaps one or more new bodies may be set up. However, the general power is another animal altogether. I look forward to hearing from the Minister after he has considered the matter. I beg leave to withdraw the amendment.

Amendment 49 withdrawn.

Amendments 50 and 51 not moved.

Clause 6 agreed.

Clause 7: Provision of information to Welsh Ministers and disclosure

Amendments 52 to 57 not moved.

Amendment 58

Moved by ***Baroness Walmsley***

58: Clause 7, page 9, line 18, at end insert—

"(5A) Any penalty provided for under subsection (5) may be—

(a) a single penalty not exceeding £100,000, or

(b) a daily penalty not exceeding £10,000 for every day on which the contravention occurs.

(5B) Welsh Ministers may by regulations increase (or further increase) either of the sums mentioned in subsection (5A)."

Baroness Walmsley: My Lords, I will speak to Amendment 58 and to the other amendments in the group. This group also reflects concerns expressed by the DPRRC in relation to Clause 7, which deals with information to Welsh Ministers. The substantive amendments are 58, 61 and 66; the others in the group are consequential.

New Section 201A of the NHS Wales Act 2006 will enable Welsh Ministers to require information from producers of health service products to be used in Wales. Subsection (5) of the new section allows regulations to be made for the payment of a penalty if a person contravenes these regulations. Noble Lords may have noticed that there are no equivalent provisions in Clause 6, which inserts new sections into the NHS Act 2006. There is no need, because the original Act already enables regulations to provide for the payment of penalties. However, if we look back at these provisions in the NHS Act 2006, we notice that there are some differences between the penalty sections there and those in the Bill. Specifically, under the NHS Act 2006, there is a limit on the penalty that can be imposed—I think that that is what we have been given in the illustrative regulations. Secondly, any increase in the penalty must be done by affirmative order. In Wales, we have no limit and no affirmative order.

Amendment 58 puts limits on the penalties in this Bill in line with those in the NHS Act 2006, and Amendment 66 changes the relevant bit of the NHS (Wales) Act 2006 so that regulations under new subsection 5B in Amendment 58 would have to be made by the affirmative order procedure. This provides us with consistency, because the provisions in the two pieces of legislation would be similar. I am not wedded to the actual penalty limits that I have laid down, but they are the same as those specified in Section 265 of the NHS Act 2006, so they would be consistent. However, as in this case they would apply to a narrower range of people, it may be appropriate to have a different limit. The main point is that there should be a limit.

Amendment 61 deals with a different issue but reflects what I was trying to do in Clause 6 with my Amendment 49 in the last group. It relates to new Section 201B of the NHS (Wales) Act 2006 on disclosure of information. As with Clause 6, the bodies to whom information can be disclosed are not specified in the Bill. Instead, these can be prescribed by Welsh Ministers. Since there has been no information as to why it is not feasible to specify these further bodies to whom confidential, commercially sensitive information can

[Baroness Walmsley]
be disclosed, can the Minister explain why not? Surely it should be possible at least to limit the kinds of bodies to whom disclosure may be made. It seems to me to be a flexibility too far and beyond what is really necessary to ensure the purposes of the Bill. The Delegated Powers Committee regards it as "inappropriate". Can the Minister convince us of the need for this very broad power?

Lord O'Shaughnessy: My Lords, I am grateful to the noble Baroness, Lady Walmsley, for her sharp eyes and even sharper suggestions with regard to these amendments, which are again in response to the report of the Delegated Powers and Regulatory Reform Committee. The committee concluded that the power in Clause 7, which enables Welsh Ministers to make regulations that make provision for payment of a penalty if a provider of pharmaceutical or primary medical services contravenes regulations requiring them to record and provide information about health service products that are required for the health service in Wales, should be consistent with similar provisions in the 2006 Act.

In particular, the committee recommends that the maximum penalty that may be imposed under what would be Section 201 of the NHS (Wales) Act 2006 should be set out in the Bill and that there should be a power to increase this maximum by regulations made subject to the affirmative procedure, as the noble Baroness set out. I assure noble Lords that, as with the previous set of amendments, I am considering these comments very carefully; the views expressed by the noble Baroness have been very helpful in highlighting the issue, for which I am grateful.

Noble Lords will understand that these provisions relate to the powers of the Welsh Ministers, and it is therefore necessary for me to seek the views of Ministers in Wales on this matter. However, I acknowledge the concern that, as drafted, the Bill does not impose a limit on the penalty which may be imposed by Welsh Ministers. Noble Lords will appreciate that, in the case of penalties, the powers in relation to Wales are different from those in relation to the UK as a whole, in so far as Welsh Ministers will be able to impose penalties only on providers of pharmaceutical and primary medical services. In contrast, the 2006 Act allows for penalties to be imposed on manufacturers and distributers, and the size of any penalty should reflect this. It would therefore be disproportionate if the level of maximum fine allowed for in the 2006 Act were to be replicated in the NHS (Wales) Act. I accept, however, that the framework governing the maximum size of any penalty and increasing that maximum should be the same.

Turning to the amendment which would remove the provisions allowing Welsh Ministers to disclose information to persons prescribed in regulations, this is a matter which I understand Welsh Ministers are content to reconsider in light of the DPRRC's recommendations. I reassure the Committee that I accept the recommendations of the DPRRC regarding limits being placed on the penalties that can be imposed by Welsh Ministers and the need to specify in the Bill the further bodies to which Welsh Ministers may disclose information. I will respond to the DPRRC in due course with proposals once I have discussed them with Ministers in Wales. I intend, subject to the appropriate procedures, to bring forward proposals on Report.

As these will be my final remarks in Committee, I thank all noble Lords for a constructive and informative debate. It has been important to be able to draw on the wisdom of so many former Ministers in making sure that the Bill is properly scrutinised and best equipped to carry out the purposes we have set for it. I have committed to consider many of the issues raised before Report on 7 February, not that far away, and I will be holding as many meetings as I can in the short time available to aid that process. My officials and I are available to noble Lords should they have any other questions or concerns about the Bill, and I look forward to bringing forward any necessary proposals on Report. To conclude on this group, I ask the noble Baroness to withdraw her amendment.

Baroness Walmsley: My Lords, I am most grateful to the Minister for his assurance that these matters will be considered before Report. I look forward to hearing the result of his considerations. I am very happy to beg leave to withdraw the amendment.

Amendment 58 withdrawn.

Amendments 59 to 66 not moved.

Clause 7 agreed.

Clauses 8 to 11 agreed.

Bill reported with amendments.

Committee adjourned at 4.57 pm.