Vol. 779
No. 120

Wednesday
8 March 2017

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

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House of Lords

Wednesday 8 March 2017

3 pm

Prayers—read by the Lord Bishop of Oxford.

Male Abusive Behaviour

Question

3.06 pm

Tabled by ***Baroness Verma***

To ask Her Majesty's Government what steps they are taking to help men who seek support in addressing their abusive behaviour.

Baroness Jenkin of Kennington (Con): My Lords, on behalf of my noble friend Lady Verma and at her request, I beg leave to ask the Question standing in her name on the Order Paper.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government's Ending Violence Against Women and Girls strategy sets out our ambition both to support victims and to improve early intervention measures to prevent reoffending and to stop these crimes happening in the first place. The Government are funding a number of new approaches to manage perpetrators of domestic abuse, including the Drive project, which helps perpetrators change their behaviour. We also fund the national Respect helpline, which offers perpetrators advice and support.

Baroness Jenkin of Kennington: My Lords, I know all noble Lords will welcome the additional funding for the prevention of domestic violence announced in today's Budget. Does my noble friend the Minister agree that to address what are often intergenerational cycles of violence by men towards their wives and partners, it is important to work with those perpetrators, as she mentioned, by offering training programmes such as the Domestic Violence Intervention Project?

Baroness Williams of Trafford: My noble friend is absolutely right. Intergenerational domestic violence is not only meted out on generations of women but those behaviours are passed on to the children. It is breaking those cycles through education and working with perpetrators in those programmes that we hope will break the mould.

Baroness Barker (LD): My Lords, since it costs about £50,000 per annum to keep a child in care, and roughly the same amount to keep a person in jail, can the Minister tell the House what efforts are made to ensure that police, local authorities and schools work together to identify perpetrators and get them into prevention programmes?

Baroness Williams of Trafford: The noble Baroness raises a very important issue about those agencies that she talks about working together. When I was at DCLG the troubled families programme unearthed an awful lot of instances of domestic violence. Health professionals have a role to play in identifying, for example, a bruise as a result of violence. There are so many things that our professionals can do in identifying and reporting those issues. The police are now better trained not only to take domestic violence seriously but to issue domestic violence protection orders to give the woman—usually—in the relationship some time away from the perpetrator of violence.

Baroness Corston (Lab): My Lords, the Minister will be aware that much of the work that is being done now in relation to domestic abuse is being done by my former honourable friend Dame Vera Baird, who is the lead for police and crime commissioners. No doubt she will accept that 92% of victims of domestic violence are women and many seek help in women's refuges. Is she aware that Women's Aid has said that the current funding model proposed by the Government will lead to the destruction of the women's refuge programme? What are the Government going to do about it?

Baroness Williams of Trafford: I pay tribute to Vera Baird because I know she does an awful lot of work in this area. The first thing I looked at when I was at DCLG was the whole area of domestic violence—the refuges and the prevention models. The noble Baroness is absolutely right: it is important to keep these refuges open so that no woman is turned away. In fact, there was a significant announcement in the Budget today about underpinning our VAWG strategy, but those interventions to stop domestic violence happening in the first place are also very important.

Baroness Butler-Sloss (CB): My Lords, is it not important that violence against women that is shown on the net should be dealt with?

Baroness Williams of Trafford: The noble and learned Baroness makes a very good point. It is what children see—their experiences of what is normal—that will shape the behaviour of young boys and young girls. Young girls may lose the value in themselves and young boys may not value girls as they grow up. The noble and learned Baroness is absolutely right, and work has been done in this sphere over the course of this Government and the previous Government.

The Lord Bishop of Leeds: My Lords, does the Minister agree that there are certain problems in the wording of this Question? Most men who engage in abusive behaviour do not recognise it as abusive and do not seek support, so there has to be a very important balance between preventive and restorative measures.

Baroness Williams of Trafford: The right reverend Prelate hits on a sad point: not only do some men not recognise what they are doing as violence or coercive control but, unfortunately, some women do not realise that they are the victims of violence and coercive control. That is a very sad thing in today's society, so I thank him for raising it.

Baroness Tonge (Non-Afl): My Lords—

Earl Cathcart (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Conservative Benches.

Earl Cathcart: My Lords, I was very surprised to learn that as many as one in three victims of domestic violence are male. I have no doubt that male victims feel ashamed and embarrassed, and that they just will not be believed. Do male victims of abuse receive the same help, support and refuge facilities as women and if not, why not?

Baroness Williams of Trafford: My noble friend is right to point out that there are male victims of domestic violence but I do not think the number is as high as one in three. I think something like 7% or 8% of victims are men. He raises a very important point, however: for men, shame is a terrible thing, which often prevents their coming forward and seeking help. Advice lines for men are available—for example, the Men's Advice Line. I am not undermining the suffering that men go through.

Baroness Armstrong of Hill Top (Lab): My Lords, I declare my interests in Changing Lives and the Lloyds Bank Foundation. We are doing a lot of work with perpetrators, but also in making sure that commissioners know and understand what is needed in this area. May I remind the Minister that it is becoming increasingly clear that virtually 100% of those women who end up on the wrong side of the criminal justice system or homeless have suffered abuse as children and then again as adults? This is a real crisis in our society and we have to take hold of it. When I first got involved in one of the first refuges in the country 40-odd years ago, we simply had no idea of the extent of the problem. Women are not here to be abused. We must have equality; that is the basic thing that needs to be taken through schools and every other way.

Baroness Williams of Trafford: If I have time to answer the noble Baroness, I completely concur with her point: not only are these women victims of homelessness, sometimes, but of drug abuse or depression, which may have arisen from it or be a result of it. The problems arising from domestic violence are massive and the cost to society is too.

Local Government: Women in Leadership Roles

Question

3.15 pm

Asked by ***Baroness Scott of Bybrook***

To ask Her Majesty's Government what support they are giving to local government to increase the number of women in leadership roles to be more in line with those in central government and the private sector.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, on International Women's Day, I will open with congratulations to my noble friend; she has been a leader in local government for well over a decade now. As she knows, the Government are fully committed to equality for all. We continue to provide support to the local government sector to achieve this—for example, through our support of the Local Government Association's work. Effective, representative leadership is at the heart of our democracy. As independent bodies, local authorities have a responsibility to ensure that this is the case for local government in the workforce, in political life and beyond.

Baroness Scott of Bybrook (Con): My Lords, only 14.7% of local authorities are led by women. I do not think that is enough. We can compare that with the Government, where we have our second woman Conservative Prime Minister, whose Cabinet is 35% women. How can Her Majesty's Government support local government with initiatives to increase the number of women in senior roles in local government, particularly with lessons learned not only by central government but by the private sector?

Lord Bourne of Aberystwyth: My Lords, my noble friend is certainly right with those statistics. The £20 million annual budget to deliver a range of programmes offering support and assistance to local government through the LGA includes specific measures accentuating opportunities for women. For example, in October 2016, a "Be a Councillor" event was geared particularly towards women and as a result we now have more women councillors.

Baroness Pinnock (LD): My Lords, the theme of this year's International Women's Day is "Be bold for change". I would welcome the Minister's commitment to be bold for change, not just by giving some money to the LGA to encourage more women to become councillors but by being proactive in encouraging more women to be council leaders. Until 50% of councils are led by women, we should not be satisfied. Does he agree?

Lord Bourne of Aberystwyth: My Lords, across the range I agree. All political parties have a part to play in this. If we look at representation in Parliament, the noble Baroness will be aware that in the general election the Liberal Democrats did not elect a single woman MP. That has now improved: they have one. We all have a part to play; certainly the Government do. Political parties have a part to play, as do private industries. All of us together need to improve the position in public life and private life.

Baroness Gale (Lab): My Lords, having more women in local government is essential. It is often a precursor to office in other fields, such as becoming a Member of Parliament. Does the Minister agree that women want to serve but there must be a responsibility, as he said, on all political parties to ensure that women are treated equally? Does he therefore agree that the Government should adopt the recommendation from the Women and Equalities Committee in another place that, to achieve parity among candidates, we need legislation that involves financial penalties for underperformance, and that this measure would increase the number of women councillors and women in all walks of elected positions? This happens in other countries. Will he comment on that and do his best to make sure it happens?

Lord Bourne of Aberystwyth: My Lords, I know the noble Baroness has done considerable work in Wales in relation to the National Assembly. She will

be aware that there was a mandatory position on all-women shortlists, or twinning at one stage, although that has since been dropped. There are many ways that we can achieve success, and part of it is through action by political parties and part through action by government. She will perhaps be aware that today the Prime Minister and the Chancellor have announced £5 million to assist women returning to work. This is the sort of thing we need to look at. Action needs to be taken perhaps on indirect discrimination which has affected women and on the gender pay gap we have, but there are many different matters that can be addressed, and I do not think there is a silver bullet.

Baroness Eaton (Con): My Lords, what support are Her Majesty's Government giving to encourage a greater proportion of women in leadership positions in central government?

Lord Bourne of Aberystwyth: My Lords, the position in central government has been improving steadily. In local government, 25% of chief executives are women, while in my own department more than 50% of the workforce are women. The Permanent Secretary, Melanie Dawes, is the champion for women across government and has been doing things today for International Women's Day and on a regular basis. Central government can set an example that we hope will be picked up in the private sector, although it has to be said that the private sector has improved significantly over the last five years.

Baroness Hollis of Heigham (Lab): My Lords, I am sure the whole House wants to see the proper and appropriate representation of women in local government, in central government and in the professions. But would the Minister accept that with the increasing drive to larger and larger local government units, pushed by the Treasury, the proportion of women drops off? Women are more highly represented in the smaller authorities than in the larger ones, let alone LEPs and combined authorities. That is because of the cost, particularly in rural areas, of transport, childcare and so on, which falls in practice disproportionately on women and makes them unable to stand. The Minister has talked about indirect discrimination, but could he also look at institutional discrimination, in which the structures bear down more heavily and inappropriately on women?

Lord Bourne of Aberystwyth: My Lords, I take issue with the noble Baroness in relation to some of that. I do not think there is anything inevitable about women not being encouraged or able to lead larger organisations. For example, we are looking in government at the FTSE 350 companies, where there has been considerable improvement on leadership over the last five years. I accept what she says about the challenges, which we have to address, but I do not think there is anything inevitable about women not leading larger organisations—although she perhaps did not mean to imply that. The Government need to look at some of the indirect measures that we can take.

FTSE Companies: Gender Balance

Question

3.22 pm

Asked by ***Baroness Finn***

To ask Her Majesty's Government what progress has been made by the Hampton-Alexander review on increasing the gender balance in FTSE companies.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, since 2010, the number of women on FTSE 350 boards has more than doubled, and there are now only 11 all-male boards. Last November, the government-commissioned, business-led Hampton-Alexander review published its first report, focused on senior executive positions in FTSE companies. The Government support the challenging targets for 33% of senior leadership positions in the FTSE 100 and 33% of FTSE 350 board directors to be women by 2020.

Baroness Finn (Con): Does my noble friend agree that the private sector has much to learn from the pioneering work we led in the Cabinet Office in the coalition Government, when the proportion of women newly appointed to the boards of public bodies rose from 36% to over 48% by 2015? The key barrier that we broke down was an excessive insistence on previous track record and experience in similar roles, which meant the same people being constantly recycled from one public body to another. I am told the same constraints often operate in the private sector. Will my noble friend explore whether replacing the requirement to show a lengthy track record with an insistence on talent and capability could achieve the same breakthrough in the private sector?

Baroness Williams of Trafford: My noble friend makes a very valid point, and I congratulate her on her extensive work on modernising and increasing diversity in the public appointments system. During the Davies review, the Government launched a code of conduct for executive search firms, which required signatories to ensure that significant weight is given to relevant skills, competencies and personal capabilities, rather than just a narrow focus on career experience. The Hampton-Alexander review continues a focus on recruitment: the fifth recommendation in its first report is for search firms to redouble their efforts and consider extending the code of conduct to include recruitment to senior executive roles.

Baroness Burt of Solihull (LD): My Lords, on this International Women's Day, I am wearing this purple scarf in support of the thousands of women demonstrating outside this place for pensions justice. I raise the issue of women on sporting boards, whose numbers are actually declining. The Women in Sport survey found that almost half of Britain's sporting bodies are failing to meet the 30% target set for them. Will the Minister use this opportunity to reinforce to them the serious threat that they are under of losing their funding unless this injustice is rectified?

Baroness Williams of Trafford: I certainly concur with the noble Baroness that women's representation on sporting boards is woeful. In fact, I had a very

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interesting conversation with the noble Baroness, Lady Grey-Thompson, about the generally male attitude in sport. What I said to my noble friend absolutely applies to sport: women on boards enhance the professions and sports that they represent, rather than the other way round.

Lord Foulkes of Cumnock (Lab): My Lords, without taking attention in any way from the lack of representation of women on boards, will the Minister agree to take up the lack of representation of black and ethnic minority people on boards? It really is a scandal.

Baroness Williams of Trafford: The noble Lord raises a very good point. In fact, my noble friend—I cannot remember her name; I can see her—Lady McGregor-Smith has done extensive work on this. On the back of that, the Government are setting up a Business Diversity and Inclusion Group chaired by the Business Minister, Margot James. It will bring together business leaders and organisations to co-ordinate action to remove barriers in the workplace and monitor employers' progress. The noble Lord is absolutely right.

Baroness Fookes (Con): My Lords, if we are looking to gender balance, I suggest that we look closer to home. The three excellent clerks before us are all men.

Baroness Williams of Trafford: My Lords, they are very good men. Of course, we have a female Leader, a female Leader of the Opposition and I am sure that there is a female clerk who comes in here sometimes, so I hope we are balanced out in that sense.

Lord Selkirk of Douglas (Con): My Lords, does the Minister agree that this is a particularly appropriate time to have these Questions, because Marie Curie has just been honoured as a shining example of courage in driving back the frontiers of the unknown in supporting radiotherapy, although it cost her her life?

Baroness Williams of Trafford: I totally agree with my noble friend. As you discover when you read the story and hear about her life, she indeed sacrificed her life in the name of science, and what dividends it has paid society ever since.

Lord Clark of Windermere (Lab): My Lords, although I look forward to the day when there are women on every FTSE board, there are those of us who believe that other boards, executive boards, often have much more power than company boards, where the number of women is at present even lower. I hope the Minister will agree that it is so important that we encourage women to break through the glass ceiling and get on to those executive boards in industry.

Baroness Williams of Trafford: The noble Lord is absolutely right. If we look around this House, there are many examples of such women on executive boards. It is not just the non-exec boards, and it is not just who is on the board now; it is about looking at the pipeline of who is coming through, because it is from the pipeline that you will get your executive and non-executive members of the future.

Fly-tipping

Question

3.29 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what further action they are taking to deal with the recent rises in fly-tipping.

The Lord Bishop of St Albans: My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In so doing, I express my regret that I could not find a suitable topic for International Women's Day.

The Earl of Courtown (Con): My Lords, fly-tipping blights communities and poses a risk to human health and the environment. Tackling this issue is a priority for the Government. As set out in our manifesto, we have given councils the power to issue fixed penalty notices for small-scale fly-tipping. This builds on previous action, including giving authorities the power to seize and crush vehicles involved, strengthening sentencing guidelines for environmental offences and publishing a revised Waste Duty of Care Code of Practice.

The Lord Bishop of St Albans: I thank the Minister for his reply, but clearly the existing powers are simply not working. Figures issued by Defra just last week show that the incidence of reported fly-tipping increased by 4% last year, while the amount that Her Majesty's Government spent on both prevention and prosecution fell by 4%. Given that many people consider that high levels of landfill taxation are a contributory factor to the increase in fly-tipping, will Her Majesty's Government consider the possibility of increasing the level of money for enforcement action against waste crime funded from this tax?

The Earl of Courtown: My Lords, I thank the right reverend Prelate for that question. I should point out that the statistics of increases of 4% in the incidence of fly-tipping have to be looked at very carefully, because different local authorities gather these statistics in different ways. It would be useful to examine how these figures look this time next year because the power for local authorities to issue fixed penalty notices came in only in May 2016, so we would like to think there will be some effect on this issue next year. The right reverend Prelate also mentioned landfill tax. I will take careful note of what he said, but as he is aware, this goes into central government.

Lord Scriven (LD): My Lords, I declare my interest as a member of Sheffield City Council, where last year there were 12,000 incidences of fly-tipping. That equates to 33 a day, which is replicated in most local authorities across the country. In light of that and of the LGA predicted funding gap of £5.8 billion in three years' time for local government, will the Government introduce

a compulsory bring-back scheme by producers of bulky items, such as mattresses and sofas, to contribute to dealing with the issue of fly-tipping?

The Earl of Courtown: My Lords, the noble Lord raises an interesting point on a bring-back scheme. That happens with some white goods, such as fridges or washing machines, when the company agrees to take back the old ones. The House must be aware that there have been 494,000 enforcement actions over the last year against fly-tipping. Also, we must not forget that, with regard to larger-scale fly-tipping, in the 2015 spending review a further £20 million was made available to fight waste crime.

Baroness Jones of Whitchurch (Lab): My Lords, does the Minister understand the anger felt by farmers that, because fly-tipping occurs on their private land, they are expected to pay their own clean-up costs, which can often total thousands of pounds? The NFU reports that dumping is happening on an industrial scale, with two-thirds of farmers affected, so can the noble Lord give some comfort to those farmers that meaningful action will be taken to address the problem of dumping on private land?

The Earl of Courtown: The noble Baroness brings our attention to the problem in rural areas, which is a real blight on our landscape. In many cases, it is more obvious in rural areas than in urban areas. The local authorities will provide advice and guidance on how to prevent further fly-tipping, or may investigate if there is sufficient evidence. The noble Baroness will also be aware of the National Fly-tipping Prevention Group, which is chaired by the Government and includes representatives from central and local government, enforcement authorities, the waste industry and private landowners. Under its framework, it is outlining the best practice for prevention, reporting, investigation and clearance of fly-tipping.

The Duke of Somerset (CB): My Lords, as we have just heard, the present law is that the cost and responsibility for removing fly-tipped rubbish occurs to the landowner. Is that fair? I declare an interest, in that this has happened to me on a number of occasions.

The Earl of Courtown: The noble Duke will be aware also that on public land it is the responsibility of local authorities to remove the rubbish. It is unacceptable wherever it happens. He referred to fly-tipping on his own land, and therefore he should be aware that the National Fly-tipping Prevention Group, as part of its representation, has members of the NFU and landowners who are looking at this problem. However, the noble Duke is quite correct that, for dumping on private land, it is the responsibility of the landowner. Of course, when enforcement takes place through the Environment Agency for large-scale dumping, it will make every effort to track down the person who has dumped the rubbish and prosecute them.

Baroness Sharples (Con): Would not more cameras help in these instances?

The Earl of Courtown: My noble friend makes a very good point. Where they are available, particularly in urban areas, cameras will of course be made use of to try to track down offenders.

Lord Palmer of Childs Hill (LD): My Lords, the Minister has given us a lot of statistics. But if in my local borough it costs more than £50 to the local authority or a rubbish removal company to remove a divan and base, perhaps it is not surprising that many people who are not as observant of the law as myself will dump these. Surely the way of stopping that is to stop these usurious charges by local authorities.

The Earl of Courtown: I will have to write to the noble Lord on those issues relating to local authorities. However, when householders wish to have rubbish removed from their gardens, they must ensure that the person or company they hire carries a waste carrier licence, so that the householder fulfils their duty of care for the rubbish to be removed correctly.

Surrey County Council: Financial Issues

Private Notice Question

3.37 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, in light of today's Budget announcement, what discussions have taken place and what help have they agreed to provide to Surrey County Council to deal with their financial issues.

Lord Kennedy of Southwark (Lab): My Lords, I beg leave to ask a Question of which I have given private notice. In doing so, I refer the House to my registered interests: I am an elected councillor and a vice-president of the Local Government Association.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, as the Government have repeatedly made clear, there is no special deal for Surrey County Council—there never has been and there never will be. The final local government finance settlement was laid in Parliament on 20 February. It is clear that the Government have not provided any additional funding to Surrey and have not promised to do so. Surrey informed the Government that it wanted to become a pilot for the 100% business rate retention scheme. DCLG made it clear that this was not possible for 2017-18 but that it could apply for 2018-19 when it will be more widely available.

Lord Kennedy of Southwark: So we have Councillor David Hodge CBE speaking to the Secretary of State for Communities and Local Government while he is sitting in his car at Downing Street; the Secretary of State then scuttling in to see the Chancellor; and a special adviser ringing Councillor Hodge back—a man we have heard is not the sort who gives up—to tell Councillor Hodge what he can and cannot say and to make reference to a Surrey MP who has been outstanding. Will the Minister tell us what are the issues decided upon, what is the sweetheart deal and what is the

[Lord Kennedy of Southwark]
gentlemen's agreement that has been reached between the Government and Surrey County Council? Are the Government being straight with us or did Councillor David Hodge dream up these events? Will the Minister tell us which he thinks it is?

Lord Bourne of Aberystwyth: My Lords, I have already indicated to the noble Lord that the Government have been totally honest on this throughout. Surrey County Council asked whether it could be part of the business rate retention scheme for 2017-18. That applies to devolution deals, and has been taken advantage of by Greater Manchester, the city of Liverpool, the West Midlands and London. It is not open to other authorities. We have indicated that they can apply, like other authorities—and we discussed this with other authorities before we discussed it with Surrey—for 2018-19, when it is open to all local authorities, and they will then be eligible for that assistance.

Lord Grocott (Lab): My Lords, the Minister says that the scheme was available to anyone who felt like applying—

Baroness Pinnock (LD): My Lords—

Lord Grocott: Oh, I am sorry—I thought the noble Baroness was still in the coalition.

Noble Lords: Yesterday!

Baroness Pinnock: Well, what a fine mess somebody has got us into. Here we are, as has been described, with phone calls from a car to the Secretary of State—not even a meeting. Whatever the Minister believes, certainly the leader of Surrey County Council believes, as I have seen and listened to today on YouTube, that there was a gentlemen's agreement—on International Women's Day. Does the Minister agree that subterfuge of this sort undermines the essential prerequisite of trust and confidence that has to exist between local government and central government? Will he ensure that the Secretary of State comes clean on this gentlemen's agreement and reveals all the other secret deals done with Conservative-run councils?

Lord Bourne of Aberystwyth: My Lords, let me restate—indeed, this was confirmed by Councillor Hodge yesterday—that there is no deal. There was never any question of special arrangements for Surrey; it is subject to the same rules as every other local authority. It can apply for consideration for the business rates retention scheme for 2018-19; it may wish to do that or not—I do not know—but it is open to that authority as it is to all authorities, whatever their political complexion. That is the position.

Baroness Armstrong of Hill Top (Lab): My Lords, I wonder if the Minister understands that there is real concern that Surrey had less need of the additional money for social care than any other authority in the country because it has the lowest proportion of population with entitlement to publicly funded social care. I know that the Minister is coming to the north-east soon, and I hope that before he does so he will put pressure on the Chancellor to ensure that the additional money for social care is allocated on the basis of need. In the north-east, there is not a single authority where less than 65% of those eligible for social care require publicly funded social care, as against 1% in Surrey. Again, the tax base in the north-east is much lower because of the lower property base and ability to raise council tax. This is an issue of need around the country, and there should not be any special deals for Surrey without addressing the needs of places such as the north-east.

Lord Bourne of Aberystwyth: My Lords, I am very much looking forward to my visit to the north-east, which the noble Baroness kindly mentioned, which as she knows includes a visit to domestic abuse services. On the finance settlement, the Government's and therefore the department's position is very much that we wanted Surrey to come to the agreement that more than 97% of councils came to. It chose not to do so and therefore is outside of that agreement. When I am in the north-east I shall be in listening mode, but I hope that the noble Baroness is not exaggerating my powers to persuade councillors.

Lord Foulkes of Cumnock (Lab): This is a Private Notice Question, of which the Minister had previous notice. Can he now try, instead of reading from a prearranged brief, to answer the specific questions put by my noble friend Lord Kennedy of Southwark? His questions were absolutely clear but they were not answered. I am sure that if he needs him to, my noble friend will repeat them.

Lord Bourne of Aberystwyth: My Lords, I was absolutely clear. I am not reading from a prepared brief. The position is absolutely clear, and we have made a Written Ministerial Statement on it. I hope that the noble Lord is not seeking to make mischief—it would be unusual if he were not. There is no sweetheart deal with Surrey. There was never a prospect of a sweetheart deal with Surrey. Surrey is in the same position as every other local authority except that, as I indicated, regrettably it did not sign up to the financial deal. I do not accept the proposition the noble Lord seeks to put—that the position Surrey is putting forward is the correct position. I am sorry, but he wishes me to say something I do not want to say and am not going to say. The Government's position is absolutely clear—there is no special deal. I make that absolutely clear.

Lord Richard (Lab): I wonder whether the Minister can help me. Something caused Surrey to change its mind. What does he think it was?

Lord Bourne of Aberystwyth: My Lords, I have no idea. That is a question for Surrey to answer. However, we have had a freedom of information request, which I believe the noble Lord opposite knows about. We are very keen to respond to that and will do so. All the relevant documents, which I am sure will set out this matter very clearly, will be disclosed.

Lord Scriven (LD): My Lords, the Tory leader of Surrey County Council said that there was a gentlemen's agreement. The Minister says that there is not. Which one is telling the truth and which one is not?

Lord Bourne of Aberystwyth: My Lords, as I have just indicated, I have set out the Government's position very clearly: that there is no gentlemen's agreement. There is no written agreement, as I think was suggested. As I have just said, there is a Freedom of Information Act request to which we are responding by disclosing the relevant documents. I am sure that will illustrate the point I am making—that there is no special deal at all for Surrey.

Lord Low of Dalston (CB): My Lords, does that mean that the leader of Surrey County Council is not telling the truth?

Lord Bourne of Aberystwyth: My Lords, I am not here to fling accusations about. That is a matter for him to deal with. I am willing to take questions that are put to me but I cannot take questions that are properly a matter for Surrey County Council and its leader to deal with.

Lord Harris of Haringey (Lab): My Lords, the question has to be answered. Either the leader of Surrey County Council was lying or he completely misunderstood his conversations with the Secretary of State and all those others to whom he spoke. Therefore, the Government are suggesting either one or the other. I am sure that the Minister will decline to comment on either of those but can he tell us categorically whether anyone in No. 10 was involved in the discussions with Surrey County Council?

Lord Bourne of Aberystwyth: My Lords, the discussions with Surrey County Council were conducted quite properly by officials in the department and by the Secretary of State, as you would expect with local authorities and local authority leaders. We are having discussions across the board with Norfolk, Hampshire, Lincolnshire—I think—and Suffolk. They are not unique to the position of Surrey. I want to make that absolutely clear. There is nothing special about a single local authority leader having discussions with the Department for Communities and Local Government or with the Secretary of State. That is absolutely right and we would be criticised if that did not happen.

Higher Education and Research Bill

Report (2nd Day)

3.47 pm

Clause 26: Rating the quality of, and the standards applied to, higher education

Amendment 62

Moved by ***The Duke of Wellington***

62: Clause 26, page 16, line 10, leave out "give ratings" and insert "assess"

The Duke of Wellington (Con): My Lords, I realise that this does not have quite the interest of yesterday's debate on the withdrawal from the European Union. I declare, as always, my interest as a former chairman of King's College London.

Clause 26 deals with the quality of teaching in our universities. All universities—and, I am sure, all noble Lords—accept the objective of wishing to continue to raise the standard of teaching in our universities, but the question is whether the metrics or the rating system will achieve that. The purpose of this amendment is simply to delete from the Bill the word "rating". The teaching excellence framework is under way and will classify each university as gold, silver or bronze.

Times Higher Education recently published a table of universities with the highest international reputation in the world, and in the top 20 are 10 British universities: Imperial College London, Oxford, Cambridge, University College London, the London School of Economics, King's College London, Edinburgh, Warwick, Glasgow and Manchester. The irony is that, when the ill-named Office for Students publishes its new classifications and some of these very same universities, as expected, are graded silver or bronze—in other words, graded as second or third-class universities—this will be despite their well-deserved reputation in this country and abroad.

The teaching excellence framework, as currently designed, will use ratings and, because Clause 26 requires the use of ratings, it will be legally necessary to continue with them until the next higher education Bill in 20 or 30 years' time. However, if we change "rating" to "assessment", a future Minister or "Office for Higher Education", which I believe would be a better name, will have the option not to use a ratings system. Many noble Lords have voiced concerns and doubts about the gold, silver and bronze grades—as have many involved in, or interested in, higher education.

Ministers argue—indeed, on Monday my noble friend Lord Younger proudly announced—that 299 providers have joined the teaching excellence framework and that it has near-unanimous support. But in fact these providers had no choice. On the website of the University of Warwick, with which I have no connection, the vice-chancellor says that,

"we agree with the fundamental proposition that universities should provide high quality teaching, we don't believe that TEF will measure that".

He goes on to say that,

"the Government has us over a barrel. It has linked TEF to fees and potentially our ability to recruit international students. The risks are too high".

So the Government must understand that there are grave concerns about the teaching excellence framework, about the metrics and about the gold, silver and bronze scheme. My amendment would allow, in the future, a different system of assessing teaching, and I very much hope that the Government will accept it. It is designed to be helpful. I beg to move.

Lord Blunkett (Lab): My Lords, I declare my interests as set out in the register. I shall speak to Amendment 72 in my name and in the names of the noble Baronesses, Lady Garden and Lady Wolf. I thank them for their support and for the work that they have done on the Bill. This is the first time in my life that I have been wedged between a duke and a viscount, and it is appropriate to know my place as a baron in your Lordships' House.

[LORD BLUNKETT]

My interest in the Bill is both as someone who benefited greatly from higher education as a mature student and as someone who has taught and still teaches in higher education and has had a long-standing interest in quality as Secretary of State and beyond. I put on the record that I think that all of us in this House agree that it is right that we drive forward and drive up the quality of teaching and learning in our university sector. It has long been neglected, and the driving force of the research excellence framework has to be matched so that the experience in the classroom, in the lecture theatre and in tutorials can be properly evaluated and given the rating that it really deserves. That brings me to the nub of the Bill.

As the noble Duke, the Duke of Wellington, said, there are real issues about the nature of the metrics being used. The teaching excellence framework could well be undermined by a simple lack of confidence on the part of those who are crucially involved in it, both in teaching and as students receiving that teaching.

I have not spent as much time on this Bill in your Lordships' House as I would have liked, although I have spoken on a number of occasions. However, I pay tribute to those who have spent and will continue to spend an enormous amount of time on it. I give credit to the Government for the way in which they have listened, reflected on and responded to suggestions so far, which has made a great difference to the quality of the Bill. My noble friend Lord Stevenson and other colleagues have spent hours not only in the Chamber but outside working on the Bill, and liaising and negotiating with the Government and colleagues. That has made a tremendous contribution and I hope that, whatever the irritations of the moment about the capacity of the House of Lords to bring about change in legislation, the Government will continue to want to listen and learn, in particular in relation to the metrics of the TEF.

I have a great deal of time for Chris Husbands, the vice-chancellor of Sheffield Hallam University. He is reviewing the trial of TEF 2, as I understand it is now called, and no doubt he will bring forward positive proposals for change. But if there is no proper way of taking forward that change, what guarantees does anyone have that the process will have a satisfactory outcome? Changing the nature of the way in which the TEF is being taken forward by the Government at the moment, and dealing with concerns about the narrowness of the metrics and about the process of how future change will be dealt with, explains why the amendment includes references to the role of Ministers and of this House and the House of Commons through statutory instruments. Providing for proper transparency and accountability is important; that is why we should have a continuing interest in and concern about what is taking place.

The nub of the amendment is that change must take place in the lecture theatre and through the process of learning, not from outside. It has to be driven by, and created and expanded from, what is taking place, and from spreading best practice in higher education generally. There is a great deal of good practice as well as some extremely shoddy and unacceptable teaching. As the noble Baroness, Lady Wolf, said in our debate on Monday, it is based on the presumption that this is about students. If it is about students, you would expect student bodies to be in favour of the proposals—but they are not. You would expect universities to be universally in favour of them—but they are not.

I just want to refer to the Faustian deal that Universities UK and the old HE body appear to have made with the Government. I have no idea how it came about. Much of what is in the letter sent out last week is highly commendable, but the timing and its presumption that the deal has been done are unworthy of those with the highest academic standards at their fingertips and the best interests of the sector at heart. So let us presume that we have made great progress, although a great deal can still be done. Let us hope that Ministers have the confidence to continue listening and reflecting so that they can bring to bear the wisdom that has been evident both in this House and beyond, and will be prepared to adjust and to deliver something that we all want to see: considerable improvement not only now but in the future so that we can provide the kind of support for teaching that has been evident for research for so long.

4 pm

I shall finish on a crucial note. The reputation of our universities is of course affected by the investment in and the outcome of research—but, in the end, universities and higher education were created from and have built on the most fundamental element of all: scholarship. It has been about building a theory of knowledge and the ability to impart it—and to do so well— with clear communication and with engagement in all forms of learning, including new distance learning, the use of information technology and the ability to move forward effectively.

The amendment seeks to generate further progress and to be a driving force for doing just that. Yes, we are in favour of considerable improvement; yes, the TEF could be a mechanism, if properly improved, to do that; and no, it cannot be seen to be doing it if it is too narrow.

I will draw attention to the ranking positions, which were mentioned by the noble Duke, the Duke of Wellington. There was a bit of a giveaway in the debate on Monday when the noble Viscount on the Front Bench mentioned the vice-chancellor of Nottingham Trent University. I declare an interest because one of my stepdaughters got a first-class degree from Nottingham Trent three years ago and I have a great deal of time for the university. The giveaway was in what was quoted from the vice-chancellor, who clearly believes that the kind of relative appraisals and rankings proposed will lead to people adjusting their view of reality about the holistic overview quality of universities in this country.

We on this side of the House know all about people who believe that they can set aside reality and that people will go with them—but you cannot. So the relative judgments to help students know what type of university they are going to and what they are going to get are fine, but relative outcomes are not suitable in terms of a judgment of the ranking of universities across the board in this country. What is, is—and

universities should be judged holistically on what they offer and the outcome measures they provide, not on what the comparator is with another institution of a particular type. Therefore, we need to be clear that in future we will want to lift the quality in every aspect of higher education, whatever the background and historic resonance of the university. In the end, we want people to know that quality means quality.

Baroness Garden of Frognal (LD): My Lords, I support the amendments proposed by the noble Duke, the Duke of Wellington. I have added my name to Amendment 72 in the name of the noble Lord, Lord Blunkett, and I entirely endorse all that he has said. I pay tribute to him for all that he has done for education in this country. His amendment is supported by the noble Baroness, Lady Wolf, and myself, and I shall speak briefly to Amendment 73, which stands in my name and that of my noble friend Lord Storey.

Amendment 72 sets out a scheme to evaluate teaching and encourage best practice based on systems already in place in universities. In Committee, my noble friend Lord Storey said:

"Teaching is not just about knowledge but also about how you relate to young people. The most knowledgeable and gifted professor may be unable to relate to a young person, and therefore cannot teach the subject".—[*Official Report*, 18/1/17; col. 272.]

That is why I come back to my call for all those required to teach in universities to be offered training in the skill of teaching. Having a higher education teaching qualification would be ideal, but it is very unlikely to meet the favour of the Government or, indeed, of universities. It is important that training in how to teach should be available to all those who are expected to teach in universities. That would do more to raise standards than the threats of the TEF metrics. I repeat the call to end zero-hours contracts for academic staff, to which we will refer later today. Constant employment insecurity is not conducive to commitment to high standards of teaching.

The amendment in the name of the noble Lord, Lord Blunkett, offers a productive way forward. It calls for assessment of meeting or not meeting expectations and would certainly minimise the damaging league tables or single composite rankings, which do much more to disincentivise those working hard in challenging situations than they do to encourage those who regularly feature at the top of such rankings.

I also pick up the noble Duke's point. It may be that universities that support the TEF do so not just to raise teaching standards but because the Government are coercing them with fee rises. It would be interesting to see, if fee rises were uncoupled, how many would be so wholehearted in this untried and untested set of metrics.

Our Amendment 73 has already been addressed in earlier debates. It would prevent the TEF being used to determine eligibility for a visa for students to attend universities. I shall not speak more on that because we covered this issue pretty comprehensively. I certainly support all the amendments in this group.

Lord Lipsey (Lab): My Lords, I shall speak to Amendment 69 on the National Student Survey and Amendment 67 on postponing by a year the ability of TEF rankings to affect the fees universities can charge. Noble Lords will be relieved to hear that I will not repeat the longish and geekish speech I made in Committee on the National Student Survey. I look forward to hearing from the noble Lord, Lord Bew—a man whose expertise in this field no one in the House will doubt—putting the main arguments forward. However, the House ought to be updated on two recent developments that bear on the validity of the NSS.

First, there is the letter of 23 February from Ed Humpherson, the director-general for regulation at the UK Statistics Authority, to the DfE, responding to concerns raised with that authority on the NSS. It is a letter that needs a little reading between the lines, but in summary it refers approvingly to what Ministers have done to downgrade the NSS in the TEF. I will come back to that in a minute. It tells the department it must address the recommendations in the ONS report of June 2016 on the NSS and of the Royal Statistical Society in July 2016. Why do I draw attention to those two documents? They are the fundamental and official documents on which the critics of the NSS rest their case. They also take reading between the lines, but when this is done they are excoriating critiques.

Secondly, there is the question of benchmarking. Those reports and everyone who has addressed this subject agree that you cannot use the TEF for direct comparison between institutions. You simply cannot use it to compare the Royal College of Music and Trinity Laban—the two conservatoires that my noble friend Lord Winston and I have the honour of chairing—with Kingston University or any other I could mention. Instead, we are supposed to use benchmarking, which means comparing similar institutions.

Benchmarking raises its own set of statistical questions, which I will spare the House, so the Government decided that they needed an independent report on benchmarking and its statistical difficulties. What does that report say? It says nothing. Why does it say nothing? It is because it does not exist. Why does it not exist? It is because the Higher Education Statistics Agency, which admits this perfectly freely, has failed to commission it. It has been very difficult to get anyone to take it on. The pillar that bears the NSS in the TEF may be of solid oak, or it may be completely rotten. Without that study we have no idea.

The amendment I am speaking to calls for an inquiry into the NSS. I am delighted by all the concessions that the Government have made on the NSS in the TEF—although I should not call them "concessions"; they have given way to reason on these subjects—including its official downgrading to the least important metric, the admission of its shortcomings for small institutions, the one-year postponement of the subject TEF and the lessons-learned exercise. All those are sensible and welcome concessions from the Government. However, they mandate one further concession. It would be a self-inflicted blunder by the Government now to go ahead and let the TEF stop some universities' raising fees on the original timetable until and unless that lessons-learned exercise has been completed and, indeed, the study that was supposed to have been commissioned by the Higher Education Statistics Agency has been commissioned.

[LORD LIPSEY]

We have been jumping in the dark into a pit whose depth we do not know. I want, and most noble Lords want, the TEF to work, but a rushed TEF, littered with statistical errors, will not work. If Ministers want the TEF to last—they do, and I do—they need a measured timetable for its introduction. They need to give it time to bed down. Otherwise, the flaws that I and others have been pointing to in this debate will turn from glints in the eyes of the geeks to real-world inadequacies and perhaps in some cases will even threaten the existence of the institutions that lose out as a result of those flaws. That would undermine the legitimacy of the whole scheme.

I beg the Minister, who has made so much progress with this Bill, not to concede, at the last minute, an own goal which may mean that what could have been a reasonable victory turns into a dreadful loss.

Lord Lucas (Con): My Lords, I shall speak to my Amendment 68 in this group. I support very much what my noble friend the Duke of Wellington has said. I think he has an elegant approach in his amendment. Mine is different but we have the same concern. I am sure there are exceptions, but by and large this House wants the TEF to succeed. We want students to have more and better information on the quality and style of teaching than they have at the moment. We want universities and other higher education institutions to be motivated to improve the quality of their teaching.

We have some severe worries about the present quality of information, but let us set out and see what we can do over the next few years to improve it. After all, universities are supposed to be good at that sort of thing and, as we said, we have Chris Husbands in charge of the process. That gives me a good deal of hope and confidence. However, we cannot, on the basis of an unreformed, much criticised, hardly understood set of measures, leap into giving universities gold, silver and bronze metrics. If we give a university a bronze measure, the likelihood is that it will be struck off the list in those countries where students are centrally funded, such as the Gulf states. We will cause severe problems to students in countries where face is important, such as those in the Far East, who will have to say to their friends, "I am going to a bronze-rated university". Bronze will be seen as failing because these universities will be marked out as the bottom 20%.

This is just not necessary. We have succeeded, in our research rankings, in producing a measure of sufficient detail and sophistication for people to read it in detail. It produces quite marked differences between institutions, but nobody reads it as a mark of a failing institution. It is information, not ranking, which is why I come back to my noble friend's amendment as being a useful way of approaching this.

4.15 pm

However much we may allow the Government or a Minister to learn by making mistakes, we cannot allow them to make this mistake, because it will do so much damage to universities in their international recruitment. I suggest that we allow the Minister to rank universities as gold, give them praise where praise is due and leave the other 80% unmarked. I think that that would go down okay: to give praise to a relatively limited number—just because an actor has an Oscar does not mean that you do not think any other actor is good. It sort of works. Let us do it like that until we get to the point where we really know that those in the bottom 20% deserve to be there.

To come back to something said by the noble Lord, Lord Lipsey, if we are doing this on the benchmarking scheme, a lot of those who will be awarded bronze do not deserve to be. They are good, but they are just not quite as good as their peers. It appears weird to set out a national system of quality and to say to the world at large, "These are rubbish universities" just because they are not quite as good as their peers. I hope the Government will step back from this.

Baroness Butler-Sloss (CB): My Lords, I wonder whether I could tell your Lordships' House a story, which follows on entirely from what the noble Lord, Lord Lucas, has said. I was chancellor of the University of the West of England and took a group of professors to China. We went to prestigious universities and to some that were less so. I met the deputy Minister of Education. Everybody in China was with us; we were about to do all sorts of work. However, an assessment came out that showed that, according to the *Times*, we were below the 50 number. China said that it would not work with any of us and so we retreated. That is exactly what the noble Lord, Lord Lucas, has said in relation to those who might be bronze. It really will not do. We had already been working with China in the various universities, including the University of Peking and the University of Tsinghua in Beijing, but because of our rating, which came out after we left, we no longer did business with them.

Lord Winston (Lab): I, too, support this group of amendments. Rather bizarrely, just as this debate started—it is not because he knew that I was sitting in the Chamber or would be talking about higher education—I had an email from Professor Colin Lawson of the Royal College of Music to tell me that the Royal College of Music has just been rated second in the world for music education. He says, "Notwithstanding my disdain for these rankings, this is something I am very pleased with".

There is a real issue here. To follow up on what the noble Lord, Lord Lipsey, said, it is utterly ridiculous to suggest that you can assess arts teaching by this kind of approach of rankings. Music is interpreted in all sorts of ways. Just as art colleges are rather similar—I believe that drama colleges are as well—all sorts of endeavours such as this cannot be rated in the way that the Government propose. This is extremely dangerous, particularly for the conservatoire, which attracts a large proportion of its students from Asia and depends very much on them.

Perhaps I may briefly declare an interest. I am professor of science and society at Imperial College. The reason I was not involved so much in Committee is that I had been teaching in schools on behalf of the university in Lancashire, Yorkshire, Derbyshire, Lincoln and Avon in the same week as the Committee stage and trying to get back to London in time on the train

service, which is rather difficult. We teach practical science in the reach-out lab and have had PhD students coming through assessing the teaching. It is very clear that it is one thing to be able to assess learning, but teaching assessment is extremely complex. None of the ways in which we are doing this at the moment is nearly adequate. It is a major problem, because if we get it wrong the risk of damage in these cases is massive.

I shall give just one example, because I recognise that this is the Report stage. Some years ago, on two occasions, I ran a free communications course for students at Imperial College. The courses lasted for one and two days, students signed up on a first come, first served basis, and they were massively oversubscribed because undergraduates wanted to learn how they could communicate their science better. What was really interesting—I do not say this in my favour—was that the British and EU students almost universally gave us a rating of nine or 10 on the assessment of the course afterwards. The Chinese and other Asian students were not giving us anything like that rating: they gave us four, five or six, averaging about five. The reason for this, when we did a questionnaire with them, was that, unlike the British students, they said, "This is not going to get me a job anywhere; this is not going to be of any value to me commercially". Yet, of course, in terms of the education of a student, it is vital.

I beg the Government to think about this rating system extremely carefully. If we get this wrong, we will damage not only the very top universities but other universities that are coming up at present. That would be a disaster for the United Kingdom and for our education.

Lord Smith of Finsbury (Non-Afl): My Lords, I support the amendments moved by the noble Duke and spoken to by the noble Lord. I declare my interest as Master of Pembroke College in Cambridge. I want to make three very quick points.

First, everyone on all sides of the House agrees on the importance of promoting the excellence of teaching in universities. The emphasis that the creation of the teaching excellence framework places on teaching to sit alongside research as the benchmarks of what universities should be all about is something that we all want to welcome, but the practicalities of how the Government are going about it leave, to my mind, something to be desired.

Secondly, there is going to be an inevitable crudity about the metrics that are used. The metrics that the Government are suggesting now are somewhat better than those that originally appeared in the Government's Green Paper, but none the less they are still going to be a very crude measurement of how well a university is doing its teaching. The process of assessing research quality at universities, as the noble Lord, Lord Lucas, has said, is detailed, analytical, nuanced and looks in a very serious way at the quality of research that a university does. The teaching excellence metrics that are proposed are totally different and they are crude.

Thirdly, there will be an inevitable crudity of perception about the ratings given. The noble and learned Baroness gave a very clear example of this. I use a very obvious analogy: the curse of star ratings in theatre reviews. When we look at the top of the theatre review, we look at whether it has one star, two stars, three stars, four stars or five stars and that is, in most cases, all we look at. We do not then look down and read the analysis of how good the play really was. Exactly the same is going to happen with universities. Are they gold, silver or bronze? If they are bronze, we are not going to look at them. This is, to my mind, an impossibly crude way of assessing, as we ought to assess, genuinely, what quality of teaching is being offered by our universities. I really urge the Government to think again about this imposition of ratings, which will have a perverse effect.

Baroness Blackstone (Lab): My Lords, I want to add a few words to what has already been said. I very much agree with most of the amendments in this group, and especially with what the noble Duke, the Duke of Wellington, and other speakers said about gold, silver and bronze. I also support my noble friend Lord Blunkett's amendment, which is a very thoughtful way of trying to approach an exceedingly difficult subject.

I will repeat what I have said on numerous occasions. It is vital that teaching is given the kind of support and effort that goes into research. One thing that we have perhaps got wrong in our universities is that we have been inclined to reward research much more than good teaching. One reason for that is that it is rather easier to measure. We have publications and all the metrics that go with looking at citations and so on, which do not exist for teaching. But if we are going to go down this route, we have to get it right, because if we fail we will abandon any kind of effort to improve teaching, and that would be a tragedy.

One thing that is wrong with the approach that the Government have taken is that it feeds what is, in my view, an insatiable need for grades and ratings. There is much too much of this, and it fails to look at the very important nuances of what constitutes good seminar teaching, good lectures, a good learning environment—whether it is laboratories or libraries—and good assessment and appraisal of students. That will get lost in these sorts of gradings.

There are a couple of things that have not been said, I think, by anybody in this debate. What is the impact of this on students? What happens to the students in a university who are suddenly told, "We are very sorry, but your university has been rated bronze"? This is not like going to Which? or a consumer advice organisation and deciding that you have made a mistake in the vacuum cleaner you have bought. You can go out and buy another vacuum cleaner, but these students are stuck in the same institution, which may or may not improve. Actually, I suspect that many of them will not improve because it does not motivate academic staff to be labelled in this way. People get better in response to praise, not this sort of rather crude criticism. I am rather taken by what the noble Lord, Lord Lucas, said, about it being fine to indicate those institutions or departments within them that have done extraordinarily well, because that is giving praise and those institutions should be asked to be role models and support some of their neighbouring institutions that are not doing quite so well.

[Baroness Blackstone]

It is a bad system that is being created for academic staff and students, let alone for universities in their international recruitment. Everything that has been said about that is absolutely right. People trying to decide where to study who live in a small Indian provincial city do not have all the information that might be available to potential students living in this country so these sorts of labels will have a very big impact, and they will last for a long time. Even if an institution gets better, it will be stuck with this label for a long time before it can escape from it.

Finally, this sort of crude denomination, labelling and grading will also affect employers, who, again, do not have all the information they might need to make the rather subtle decisions about the students they want to recruit and where they have come from. They will use this and decide that a student coming from a bronze institution is not going to be as good a recruit as a student from a gold institution. That, again, seems a very undesirable situation and will damage the students not only during their time at the institution but in terms of where they are going to go in their initial and early careers.

Baroness Eccles of Moulton (Con): My Lords, I want to say a few words about the teaching excellence framework, but before I do that, I want to add my comments to those already made about the huge amount of effort that has been put into the Bill already. It is very obvious that the department has been listening. Some wise words have been said today already about improving the teaching excellence framework, and I am sure they will be listened to as well. I have just a bit to add, which is more by way of explanation than of questions to the Government and suggestions for improvement. Several suggestions have been made already, which I am sure will be listened to.

4.30 pm

A lot of concern has been expressed about how the TEF is dominated by metrics, which implies a mechanistic approach that largely disregards the human element. I want to try to expand on that. To start with, it is not an automated process. It involves a central element of human judgment at its core. All TEF judgments are made not by some algorithm of metrics but by TEF assessors. These assessors will consider a provider submission—a personalised, unique document written by the providers themselves and addressed to the panel to make their case for excellence. They can use this document to explain their metrics or set out other unique aspects of their teaching practices. That all comes from the universities themselves. The assessors themselves are highly qualified and have been chosen from more than a thousand applications submitted to HEFCE. They weigh up the evidence in the metrics and the universities' submissions, and use both to reach a holistic judgment. One source of evidence does not overrule the other; both are considered in the round to reach a final judgment. This is to emphasise that there is a lot of human output with real, personal judgments being used. It is not entirely dominated by the metrics.

I have one quick word on gold, silver and bronze. It is my understanding that although this system is being used in the first pilot, which I think will be completed in April, it will not necessarily stick. Although the Government are convinced that there must be some sort of distinction between the very best, the not-so-good and the really not too good at all, I think there will be a much subtler way of going about it. With any luck, it will not be restricted to just three categories. I hope that, as this system of analysis—the teaching excellence framework—becomes more familiar, it will be welcomed by the sector and by most of us.

Lord Bew (CB): My Lords, I support Amendment 69, which is in my name and that of the noble Lord, Lord Lipsey. I have to declare my interest as an elderly pedagogue—as a visiting professor at King's College London, where the college itself has just produced a statement with its students union. As it happens, and totally coincidentally, this is broadly in line with the arguments that I am about to advance.

I am well aware of the concessions made in this area and grateful to the Government for them. They have gone a considerable way but I am still not convinced that the Government are fully aware of the dangers implicit in a survey of the NSS sort. These dangers are very real, given the Government's other stated objectives in higher education. For example, at an earlier stage of the debate the Minister praised the Athena SWAN scheme, which is designed to promote the role of women in higher education. But it should be noted that Erasmus University has carried out a survey in similar style to that of the NSS scheme, which demonstrates a clear in-built bias in student reporting against women. The bias was about 11% against women lecturers. There is therefore a real problem.

Anybody involved in this who has looked at these student survey reports, as I did during my 25 years as a professor in the university in Belfast, knows that there are real dangers of bias—and that is one of them. In one case, I have seen the outstanding scholar in the field—in the world—referred to in the most dismissive terms because a scholar is essentially eccentric, and there is not the toleration among young people today of eccentricity that there was a generation ago. It is as simple as that and it is worth making that point.

Secondly, there is the problem of racism. Again, I am absolutely certain that the Government's approach in this respect is sound and good. In fact, the Minister in the other place, Jo Johnson, has identified himself very much with the race equality charter in higher education, in which the noble Baroness, Lady Lawrence, has played a significant role. There is no question of where the Government stand on this matter. None the less, I hope that attention will be paid to a paper on this problem produced at the University of Reading by Adrian Bell and Chris Brooks. It shows, in a very calm and not overstated way, from a review of the literature that there is potentially a racist bias. There is certainly something that looks like a bias in favour of white professors in this sort of exercise. There are problems of racism and sexism. There was a very good discussion of this in an article by Chris Havergal in the *Times Educational Supplement* on 14 August 2016.

Finally, as I have said before, I am an elderly pedagogue, and I have some experience of looking at student assessment forms. We are in this position for two principal reasons. I absolutely accept that across the House we want to see the TEF succeed. One reason is that, once one moves to fees, I am afraid that something like this is absolutely inevitable. The other reason is that the research assessment exercise, which began in a very low-key, relatively amateur way in our universities, became much more specialised. Its format had to be improved. It was not just that scholars and universities had their attention directed towards doing research because that is how your career is made, but because vast amounts of ordinary university time was spent in gaming the exercise. Everybody involved in this knows that this is the case. In other words, we were seeking a spurious scientific metric: "Is a quarter of an article in this journal equal to a third of an article in another journal?". So it went on. Noble Lords will be amazed, but everybody who works in universities knows that what I am saying is true. The amount of time spent by academics in meetings on this!

I have a vision of how this Bill began in the mind's eye of a Government. About 10 years ago, there was a story in the *Daily Mail* in which students went to their professor's door and found a note saying, "Sorry I can't be here to teach you this afternoon as I have to go to London for a meeting of the research assessment panel". That professor would know that his vice-chancellor would never say that that was inappropriate. If we have already made a mistake in doubling down on a pseudo-scientific, over-elaborate metric without realising its dangers, we should not repeat it when it comes to teaching.

Baroness O'Neill of Bengarve (CB): My Lords, I believe we can get this right. I declare, or confess, a life spent in higher education. We saw a great wave of—let us say—enthusiastic assumptions that we could get rankings, and then sobriety struck. I was very pleased to see this morning on the BBC education news that Singapore, which was a hotbed of ranking, has decided that it is not the way in which to assess children's learning, and I do not think it is the way to assess undergraduate or postgraduate learning. It is important that we should be looking not for rankings but for excellence. The reason we should not be looking for rankings is fundamentally that we are looking for excellence, as far as it can be achieved. If you merely rank, you do not know who is excellent. It could be the case that the top-ranked were nevertheless not excellent or that, very fortunately, there was a great deal of excellence even in the middle of the rankings, so let us get rid of rankings and look for excellence.

Baroness Cohen of Pimlico (Lab): My Lords, I support the amendments. In allowing the simple-minded rankings of bronze, silver or gold, we would be substituting for all other measurements or assessments a fairly crude system of three measures. Nobody is going to read beyond "bronze", which probably does not give enough credit. It is a very unsubtle method of ranking. I would like to see the test used for assessments and not for rankings, and I speak as one whose university would expect to be highly ranked. The system is too crude, and we would very possibly lose the "bottom 20%" fairly sharply, which would not be a good idea at all.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I too very strongly support this group of amendments. I share the very great concern expressed around the House, particularly at the thought of blackening the names of a number of our universities, on which we depend so very much for all sorts of reasons. The criticisms made around the House are compelling as to the obvious deficiencies of the present scheme.

One hopes that this is not the case, but if at the end of this debate the Government remain disinclined to change the approach of using gold and silver stars, ratings and that sort of thing, I urge that universities at least—there are a group of clauses in the Bill which specify what an institution has to do to justify that title—should be spared from the nonsense involved in the scheme as presently envisaged. They should not have to do this. They are already assessed through more sophisticated, nuanced approaches, and they should not have to be ranked in the way that this absurd scheme proposes.

Lord Storey (LD): My Lords, first, I thank the Minister for listening and in some respects changing some of the issues. I was pleased to receive the briefing pack before coming into the Chamber, which was emailed to me as well. I want to talk about two issues: teaching and information.

I do not really get it. Quite simply, if you want to improve the quality of teaching, you do that not through ranking but through the individual who is teaching. We certainly expect a lecturer, professor or other member of staff at a university to have the academic ability and qualifications, or the renown, but we also expect them to be able to teach the subject. How do you do that? Presumably, it is not beyond the wit of universities to perhaps devise their own crash course in teaching. It was considered for FE—City & Guilds—so why could it not happen in universities? Why are we suggesting that a TEF will make an individual lecturer or professor a good teacher? It will not. Teaching skills, and the ability to teach, are not the same as having academic capabilities. This has to be about both, and if we want to improve teaching—which we need to do in our universities—then it will be through some form of teaching qualification.

Of course information should be available: the more information, the better, because in this day and age, particularly with social media, students look at the information to decide which university they go to. They also visit those universities, often with their parents, to decide which is the place for them. Your Lordships would be surprised by some of the considerations that they decide on—I have to say that whether the accommodation has en-suite facilities ranks very highly. I guess that it is increasingly through social media that students tell other prospective students what the place is like: whether the lectures are suddenly cancelled; whether assignments and dissertations are handed in on time and marked correctly; the numbers in lectures; the numbers in tutorials; and how competent and supportive personal tutors are.

[LORD STOREY]

Then we come to the issue of ranking. I like the analogy the noble Lord, Lord Smith, made with theatre and cinema stars. The difference is that there are different stars in different publications: one might give it three stars and one might give it one star. We cannot do that with these rankings: once you are a bronze, you are a bronze. I want the Government to understand why we oppose this. It is for a number of reasons. University teachers—lecturers—will want to teach at gold universities. That is human nature. They will not want to say, "I am at a bronze university". It will affect social mobility. Students do not want to say, "My university was a bronze university". I think it was the noble Baroness, Lady Blackstone, who said that praise is far better than wielding a stick.

4.45 pm

I was really impressed by the briefing of the president of King's College, Ben Hunt, who said it so well:

"The labelling of many successful and international institutions as bronze in TEF rankings will have negative consequences internationally. The methodology behind TEF is not reflective of the teaching quality of students, but will lead UK universities to be perceived nationally and internationally as below standard".

How right that is. Driving up standards is not about labelling; it is about providing information, being supportive and ensuring the quality of the teachers in those organisations.

I agree with the noble Lord, Lord Bew. I know that the student survey will be a very small part of the TEF, but research has shown that where student surveys are used, they often discriminate against women and BME lecturers. If we are to use student surveys, I hope that they will be a very small part of the methodology.

I do not want our great universities being labelled gold, silver and bronze. As I said at Second Reading, I do not foresee many universities putting a banner outside their premises saying, "This is a bronze university". They just will not do that.

Lord Judd (Lab): My Lords, I agree with those who have expressed deep anxiety about the impact of this gold, silver and bronze scheme. When I first read about it, I thought it was a further trivialisation of the whole concept of education and scholarship. It seemed to me to be the language and preoccupations of the market—marketing creeping in and distorting still further that ideal. I have said before that I wish that we could get back to the concept of universities as a community of scholars—I would hope, an international one. Students are not clients or customers: they belong to the university and they should be contributors to it. Student surveys encourage the concept of "the university and us"; whereas they should be encouraged to contribute to thinking about how the university is functioning and how it could improve its provision.

I also agree with those who have expressed another anxiety. If we are really concerned about the quality of higher education, how on earth will it help to start having oversimplified measures of this kind? When I was much younger, I held HMIs in very high esteem because of the contribution they were making to education in schools in Britain. Several inspectors were good family friends, one of whom was a godmother of one of our children. They were not going around failing schools; they were assessing their strengths and weaknesses and finding out how to help overcome any weaknesses. It should be the same for universities. There is a great deal of room for helpful assessment.

Another issue is that it is a crude measurement. I do not believe that scientific objectivity can be established. This system is inevitably a very subjective process, based on the experience and values of the people who concoct it. It is too crude, in another sense. In a university, you may have areas in which the teaching is weak and for which a great deal could be done to enhance it. That may apply to some of our older universities as well as our newer ones It is not uniform. There may be areas within the university where there is amazing excellence in teaching.

We need a much more sensitive approach that looks at the university as a living entity and reports convincingly—of course we need the information—on its different dimensions and patterns of success and failure, such as, what is strong and what is weaker. Surely, too, we should not be discouraging teachers with innovative approaches to teaching that may not lend themselves easily to crude metrics of this kind. I hope the Government have listened to the debate and will say that they understand that this may not be the right approach, and will go away, think about it and come back with something better.

Baroness Wolf of Dulwich (CB): My Lords, I rise to speak to Amendments 62 to 66, 88 and 93, tabled by the noble Duke, the Duke of Wellington, and Amendment 72, tabled by the noble Lord, Lord Blunkett, to all of which I have added my name. I declare my usual interest as a full-time professor at King's College London, but also note that I am a founding editor and editorial board member of *Assessment in Education*, a leading international academic journal in the field.

I have listened with interest to all the remarks made by other noble Lords and have agreed with the overwhelming majority of them. I just want to comment on an issue that is at the heart of the amendments to which I have added my name. It concerns the profound difference between using a single composite measure and having a wide variety of measures that are reported separately.

One of the prime rules of assessment—indeed, of measurement—is that you do not throw away information if you can avoid it. The Government have, rightly and repeatedly, emphasised their commitment to transparency and to giving students better information about teaching quality and other aspects of the higher education courses to which they might or do subscribe. But the trouble is that a composite measure is the opposite of transparent. It is also a problem that it is seductively simple: three stars, four stars—how can one resist it? We believe it is somehow objective because that is how we respond to a single number. In modern societies, we love rankings. But if we add up measures of different things and produce a single number, we are not being transparent and we are not being objective. What we are presenting to people, first, throws away large amounts of information and, secondly, imposes our value judgment on those different measures. When we use different indicators, add them up and create a single rank or

score, we are denying other people the chance to see how it was done. It is irrelevant whether you gave equal weight to each measure or decided to do all sorts of clever things and weighted one thing at threefold and another at a half; the point is that by doing that, you have imposed your judgment. The students for whom these are designed—the students we want to help—may have different interests from you, as the noble Lord, Lord Storey, has pointed out.

That is why I support the proposal from the noble Lord, Lord Blunkett, that a scheme to assess quality must report individual measures individually. It is also why I completely agree with the noble Duke, the Duke of Wellington, that the last thing we want to do is impose on Governments, quite possibly for the next 30 years, the obligation to create rankings.

In this case, we are not even adding apples and oranges, which at least are both pieces of fruit. We are adding up things that are completely different. If the numbers are measuring or representing different things—and doing so with varying degrees of error, as is always the case—adding them up will compound the error. Obviously it would be nice to have a wonderful single measure, but the fact that we would all like one does not mean that it is better to have an unreliable one, rather than not have one at all. On the contrary, it is worse.

We know why most universities have signed up to this. On Monday, the Minister pointed out that if they do not agree to link TEF scores to fees they will,

"lose £16 billion over the course of the next 10 years".—[*Official Report*, 6/3/17; col. 1140.]

Universities are in a corner and over a barrel—as we have heard, that is exactly how you would feel if you were the vice-chancellor of Warwick.

It seems to me that this is all quite unnecessary. The Conservative manifesto did not commit to rankings, to a single measure or to labelling people as gold, silver or bronze. It said that students would be informed of where there is high-quality teaching. That is something to which everybody in this House would sign up. I very much hope that the Government will continue to listen and will move away from a current commitment that can only be harmful, for all the reasons that people in this House have talked about so eloquently this afternoon.

Lord Watson of Invergowrie (Lab): My Lords, this has been a passionate debate, which reflects accurately that this is the most contentious part of the Bill—certainly the email traffic that all of us have experienced would bear that out.

As we have heard from many noble Lords, the metrics proposed for the TEF are flawed, and confidence in their effectiveness remains extremely low among academic staff, students and more than a few vice-chancellors. The noble Duke, the Duke of Wellington, referred to the University of Warwick. I have to say that that is more reflective of the general view than that sent out in the rather unconvincing letter from Universities UK and GuildHE a few days ago.

We on these Benches have consistently said that we are of course in favour of a mechanism that enhances the quality of teaching and of the general student experience. But, due to the differentiation of tuition fee levels, the TEF as it stands—even with the improvements made thus far—is not fit for purpose. In view of these uncertainties, and because the reputation of UK higher education institutions needs to be handled with particular care in the context of the upheaval that will result from our impending departure from the EU, it would be inadvisable to base any form of material judgment on TEF outcomes until the system has bedded down.

That is why Amendments 67 and 68 in the names of my noble friend Lord Lipsey and the noble Lord, Lord Lucas, calling for delays in the implementation of the TEF and the linkage of any fee increases to it, are sensible. As we on these Benches have argued consistently, we do not believe that there should be such linkage. In many ways, using student feedback as part of a framework that leads to fee increases, while at the same time purporting to represent and embody the interests of students, is contradictory. My noble friend Lord Blunkett has outlined why it is appropriate for the Secretary of State and not the Office for Students to bring forward a scheme to assess the quality of teaching.

In Committee, we tabled an amendment which sought to ensure that any rating scheme had only two categories: "meets expectations" and "fails to meet expectations". So we welcome the fact that that principle is incorporated in my noble friend's amendment. The amendment has the benefit of being straightforward without a confusing system of three categories, all of which would be deemed by the OfS to have met expectations—to different extents, of course. However, as many noble Lords have said, that is not how it would appear either to potential students, to those awarding research grants or to the world at large.

Amendment 72 also highlights the need for consistent and reliable information about the quality of education and teaching at institutions. The fact that what is proposed in the Bill would guarantee neither is a major reason why so many have opposed the TEF in its current form. The requirement to have the data and metrics on which the TEF is based subject to evaluation by the Office for National Statistics was advocated in Committee, but it merits reconsideration today. Without a firm base on which to establish the TEF, it is unlikely to gain the confidence not just of institutions but of staff and students, on whose futures it will have great bearing.

The future standing of higher education in the UK will depend on the Government rethinking their approach to these issues. It has to be said that not one noble Lord in the debate this afternoon has spoken in favour of the TEF as proposed. I ask the Minister and his colleague Minister Johnson to give that fact due weight of consideration.

5 pm

Lord Oxburgh (CB): I apologise for not being faster to my feet to intervene slightly earlier before the last speaker, but there are a couple of points that still need making. I declare an interest as an honorary professor at the University of Cambridge and before that as rector of Imperial College. Probably more relevantly,

[LORD OXBURGH]
over the past 15 years or so I have been much involved in the assessment of universities in Hong Kong and Singapore.

I have two main points to make. First, the assessment as proposed at present by government is simply not useful to students. It may satisfy administrators or others, but it is not useful for students in so far as it does not have sufficient granularity. Within a university there may be departments that are outstanding in their teaching and others which are not, and that is the information that is of value to students—not some blanket assessment of the university as a whole.

Secondly, there is an implicit assumption in all this that, if a university is not teaching well or if a department is not teaching well, it is because it is not trying hard enough. That might or might not be the case, but it may also be that there is insufficient resource in that university to do better. Indeed, the proposal to link the level of support or the ability to increase fees may initiate a vicious downward spiral of despair, discouragement and pessimism in those institutions which are given the lowest ranking.

Viscount Younger of Leckie (Con): My Lords, it is clear from today's debate and those that preceded it that many noble Lords feel passionately about the teaching excellence framework, or TEF. Many noble Lords agree with the need for a renewed emphasis on improving teaching quality. Many noble Lords have also said that they agree that students need clear information to make well-informed decisions. These concerns are important motivational factors behind why the Government have chosen to introduce the teaching excellence framework and why it featured in the Conservative manifesto in 2015.

I understand that some noble Lords may feel that we have not listened to their concerns. I assure them that we have listened closely, considered carefully and responded thoroughly. I thank the noble Lord, Lord Blunkett, for his words and the general spirit in which this Bill has been handled across the Chamber so far.

Noble Lords expressed concern that the speed of implementation was too fast. In response, the Minister Jo Johnson committed to further piloting subject-level TEF for an additional year. Two full years of piloting is in line with the best practice demonstrated in the development of the REF. As with the REF pilots, these will be genuine pilots, involving a small number of volunteer institutions, with no public release of individual results and no impact on fees or reputation. Noble Lords expressed concerns, too, about the metrics and ratings and whether both would be interpreted appropriately. I shall return to this point later in my speech but, just briefly, the Minister has responded by committing to a comprehensive lessons-learned exercise, following the trial year that is already under way, to explicitly consider all those points.

I say again that we have listened and we have responded—but we must keep sight of the intended purpose of this policy. On that note, I turn to Amendments 62 to 66, 88 and 93 from my noble friend the Duke of Wellington. I reflected carefully on the point that my noble friend made about the use of the word "assessment" instead of "rating" in the drafting of the Bill. However, while these amendments are well intentioned, an assessment without an outcome will neither help to better inform students nor provide the incentives needed to elevate the status of teaching in our system.

I note that my noble friend raised the issue of the sector, specifically Warwick, buying into the TEF only because of the link to fees. However, I can cite contrasting views. I will quote no less an institution than Cambridge University as an example of the type of comments sent to us by the sector. We need to establish a balance here. Cambridge University states:

> "Cambridge welcomes the Government's desire to recognise teaching excellence, and supports the continued emphasis on a higher education system that embeds principles of diversity, choice and quality".

I will expand on those points by turning to Amendment 72, which also features in this group and was tabled by the noble Lord, Lord Blunkett. Amendment 72 goes even further than the amendments suggested by my noble friend the Duke of Wellington and would turn the TEF into a pass or fail system. This amendment overlooks the fact that we already have a system that determines whether or not providers have or have not met baseline minimum expectations: it is run by HEFCE and the QAA and is called the quality assessment regime. It plays a critical role in maintaining standards and we do not need another system to do the same thing.

What the TEF offers is differentiation. In order to be eligible for a TEF rating of any kind, a provider must be meeting the baseline standards expected of a UK higher education provider. Therefore, a provider must at least "meet expectations" before they can receive a bronze award. Let me be clear that receiving a bronze award is not a badge of failure, as has been suggested by noble Lords today and during recent debates, including in Committee. I strongly reassure noble Lords that we are working closely with the British Council, Universities UK International and others to ensure that a provider that attains a bronze is recognised globally for its achievement. However, the Government are not complacent about the worries and concerns that—

Lord Smith of Finsbury: I am very grateful to the noble Viscount for giving way. I am trying very hard to understand his argument. It seems to me that it may not be the intention of the Government or of the Office for Students that a bronze rating will be seen as a badge of failure. However, it is the perception of everyone else who looks at it that is the problem.

Viscount Younger of Leckie: I take note of what the noble Lord has said. I will be saying more about this in a moment. I understand the concerns on this issue. I say again that the Government are not complacent about the concerns that the noble Lord, Lord Smith, and others have. We have explicitly committed to consider the ratings and their international impact as part of the lessons learned exercise. Not all providers will be able to get a bronze award. The Government have listened to the concerns raised by this House and noble Lords and I am pleased to announce that the Office for Students will label providers without a quality assessment as, "ineligible for a teaching excellence award" on both the register and in key information for

students. Let me be quite clear that this indicates to students, parents and employers that there is a level that sits below bronze.

In contrast, the implication of this amendment is that the vast majority of the sector will end up being labelled wrongly as "meets expectations"—unless the intention is that much of the sector will actually be termed a failure, as in pass or fail. Without clear differentiation it is impossible to tell students where the best teaching can be found. GuildHE and Universities UK wrote to noble Lords last week expressing their support for the Government's approach. Steve Smith, vice-chancellor of Exeter University, said:

"Some of the most controversial aspects of the TEF are … essential to its success. Genuine, clear differentiation is critical if we are truly to incentivise teaching".

Lord Bilimoria (CB): I thank the Minister for giving way. Will he confirm that when the Government carried out the consultation on the teaching excellence framework, one of the questions asked was: do you agree with the descriptions of the different TEF ratings proposed? Will he also confirm that an overwhelming 55% said no? On the basis of that, the Government came up with the gold, silver and bronze. Now the Minister is hearing unanimously from noble Lords and university leaders that this will not work for universities, will damage the sector and will create the wrong perception. So surely the Government should listen again. If they have listened before, they can listen now.

Viscount Younger of Leckie: We continue to listen, and I have said that we are beefing up our lessons-learned exercise. To come back to the point that the noble Lord raised, it is true that we consulted everybody, and a number of ideas were put forward, including pass and fail and the one to 10 rating. It is not true to say that everyone was against the gold, silver and bronze system. We have come to this decision and think that it is right to go ahead on this basis. It is not just the higher education providers who believe that differentiated assessment is the right methodology. Alex Neill, director of policy and campaigns at Which?, said:

"Our research has shown that students struggle to obtain the information they need to make informed decisions about university choices. We welcome measures to give students more insight into student experience, teaching standards and value for money. These proposals could not only drive up standards, but could also empower students ahead of one of the biggest financial decisions of their lives".

I know that the noble Lord, Lord Blunkett, raised student opposition to the TEF—I think that he may have indicated that no students were in favour—but students are not opposed to the principle of differentiation and ratings, which, as he knows, rests at the heart of the TEF. For example, in a survey for *Times Higher Education*, 84% of university applicants said that a good score in the TEF would definitely make them consider choosing a particular institution. So there is another side to this argument.

Furthermore, without differentiation, there will be no incentive for the vast majority of higher education providers to improve. Retesting whether providers "meet expectations" does nothing to encourage excellence beyond this—

Lord Lucas: But is it not true that in the Government's proposed system 20% of universities will always be in the bottom ranking? This is not a situation where the system can improve performance; it is a system that will always punish 20% of universities.

Viscount Younger of Leckie: I think that my noble friend is making an assumption that 20% represents bronze. The gold, silver and bronze system is a good thing and we should look at it positively. For example, if a new provider opens its doors, as it were, after three years and is already at the bronze level, with the opportunity to go up to silver and gold, surely that has to be a positive thing, and it is also something that students from here and abroad can look at.

Lord Willis of Knaresborough (LD): Does the Minister accept that he is missing one of the key points of this debate? A university is made up of a whole host of different departments that contribute to teaching. There may be one lecturer who is excellent but in the next department there may be a lecturer who is pretty poor. You cannot classify all the staff in an institution simply on the basis of a gold, silver or bronze rating. Students apply for courses within those institutions and, unless a course has some badge of honour in terms of its teaching, we will be missing the point altogether. This is about people; it is not simply about institutions.

Viscount Younger of Leckie: I respect the noble Lord's experience. We have had discussions outside the Chamber about the data aspect and I will be coming on to speak about the data and about how the assessments are made. I would argue that this is not just looking at the high levels—the gold, silver and bronze—

Baroness Deech (CB): My Lords—

Baroness O'Neill of Bengarve: My Lords—

Viscount Younger of Leckie: Perhaps I may complete my sentence. It is not just looking at the gold, silver and bronze ratings. Yes, they are the high-level ratings but every student has the opportunity to look at the levels below those to find out what they mean and what the detail and data are within those assessment levels.

Baroness O'Neill of Bengarve: My Lords, the Minister quoted the University of Cambridge. In its most recent briefing, dated 3 March, recommendation 4 reads:

"The Bill should place an obligation upon the OfS to undertake a consultation to determine the most suitable quality assessment body, which should be separate from the OfS. The OfS should not be permitted to act unilaterally with regard to assessing quality".

Viscount Younger of Leckie: Perhaps I may make some progress, but I would like to say again that the lessons-learned exercise is one that we take seriously, having listened to noble Lords both today and in Committee. I hope that the House will respect the fact that we will be looking at this a great deal over the next two years.

Baroness Deech: My Lords, I might have misunderstood him, but would the Minister kindly clarify that he is now proposing a fourth category so that we will have

[Baroness Deech]
gold, silver, bronze and ineligible? That is a bit like a gentleman's fourth at Oxford years ago, which was a badge of shame. Is that the case?

5.15 pm

Viscount Younger of Leckie: There is no badge of shame. It is simply that we want to clarify that gold, silver and bronze occupy a particular platform of award level. Most international students would respect the fact that bronze is an award, not a badge of failure. But I want to clarify that there is a level below it, which is in effect a sort of non-level. I hope that that clarifies the position.

Let me move on. I appreciate that noble Lords want to ensure that whatever format the assessment takes, it is carried out rigorously and is based on reliable sources of evidence. I can assure noble Lords that the Government feel just the same. For example, we have already commissioned an independent evaluation of the metrics, which was carried out last year by the Office for National Statistics. Given that this evaluation has already taken place, repeating it, as proposed in Amendments 69 and 72, is unnecessary. The report proposed minor amendments to the metrics being used for the TEF, and the Government are already working with HESA and HEFCE on addressing those concerns for future TEF assessments. All of the metrics used for the TEF are credible, well established and well used by the sector.

Baroness Wolf of Dulwich: My Lords, I feel as though I must have read a different ONS report from the one given to the Minister. You can clearly identify the outliers in the NSS data, those at the bottom and those at the top, but the rankings in the middle are so uncertain that you cannot discriminate or put in order the vast bulk of English higher education institutions. So, to say that minor amendments were called for uses the word "minor" in a way that I personally would not.

Viscount Younger of Leckie: Perhaps I may move on to the NSS, in particular to the amendments spoken to by the noble Lords, Lord Bew and Lord Lipsey. I would like to reassure the House on some of the specific concerns that they have raised about the TEF in today's debate, and I shall start with the NSS. While we recognise its imperfections—I did listen carefully to the speech of the noble Lord, Lord Lipsey—we consulted with the sector, which echoed the types of remarks made jointly by Professor Anthony Forster, vice-chancellor of the University of Essex, and Professor David Richardson, vice-chancellor of the University of East Anglia, who said:

"The National Student Survey (NSS) provides the most robust and comprehensive basis for capturing students' views about the quality of their education and student experience".

As I say, we recognise its drawbacks and we have put in place appropriate safeguards. For example, we use specific questions from the NSS that are directly relevant to teaching, not the overall satisfaction question, about which concern has rightly been raised.

I would also like to use this opportunity to do some further myth-busting about the TEF. First, the TEF is not just about metrics. Providers can give additional qualitative and quantitative evidence to the TEF assessors through their provider submission. My noble friend Lady Eccles alluded to the human element of the TEF, and she was right to do so. Secondly, the metrics are not worth more than the provider submission. The TEF assessors will consider both the metrics and the provider-submission evidence holistically before making a judgment. Thirdly, all assessors get contextual information about the providers they are assessing, including maps reflecting employment in the region and the make-up of the students studying at that provider. Fourthly, although I have made the important point that the metrics are not perfect, they are robust datasets which have been used by the sector for more than 10 years. This means that a TEF rating is not a box-ticking exercise and it is not an equation. It is a rigorous and holistic assessment process that is overseen by one of the sector's most respected figures, Chris Husbands, vice-chancellor of Sheffield Hallam University. I know that he has been given fulsome praise by many in the House today, including the noble Lord, Lord Blunkett, and my noble friend Lord Lucas.

Highly qualified assessors, vice-chancellors, pro vice-chancellors and other experts in teaching and learning, as well as student and employer representatives, weigh up and test the evidence they receive before reaching a final judgment, which again reflects the human element. The noble Baroness, Lady Wolf, suggested that we should not throw away information. We are not throwing away information. The OfS will publish all the underlying metrics and provider submissions. However, composite measures have value. Why else would the vast majority of universities represented by noble Lords today award their students a specific degree class? We have to think about that.

I remind noble Lords that the Government listened carefully in Committee and made a number of important changes to the TEF in light of the suggestions made by noble Lords. We have slowed the implementation timetable and we have committed to revisit key concerns raised by the House in the lessons-learned exercise. I reiterate that the lessons-learned exercise will consider the following: the way in which the metrics have been used by the TEF assessors; the balance of evidence between core metrics and additional evidence; whether commendations should be introduced for the next round of TEF assessments; and the number and names of the different ratings and their initial impact internationally.

The lessons-learned exercise will survey all participating providers. The Department for Education will also collect feedback from panellists and assessors and involve further desk-based research. I am sure your Lordships will agree that the department has responded to the concerns raised by planning a thorough exercise.

Where we have not made changes we have done so with good reason. Following the Committee stage, we considered carefully the suggestion made by the noble Baroness, Lady Garden, that all those in universities must have a teaching qualification. However, such a requirement would fly in the face of the points that noble Lords have made about institutional autonomy. Indeed, the amendment agreed by noble Lords on

Monday covers the freedom of English higher education providers to determine the selection and appointment of academic staff.

The amendments in this group challenge the fundamental nature of the TEF. The words in the manifesto were carefully chosen to echo the way that the REF is described. It said that the Conservative Government would,

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

A framework that allows only for a pass or fail assessment offers no gradients. A framework that offers no opportunity to recognise the highest teaching quality simply does not meet the Conservative commitment. I do not want noble Lords to misinterpret these amendments as offering constructive tweaks. They strike at the very foundations of what we want to achieve.

However, I reassure noble Lords that the Government remain committed to developing the TEF iteratively and working with noble Lords to do so. Developing the framework to date has involved two formal consultations and thousands of hours of discussions with the sector and with students, and we have only just begun. Universities UK has offered to engage with any noble Lord who wishes to provide input into its feedback to the department as part of this lessons-learned activity.

Many of the concerns we have heard throughout the course of the Bill were made in the early days of the research excellence framework introduced by a Conservative Government more than 30 years ago. We are still iterating that framework now. The noble Lord, Lord Bew, suggested that the REF was bureaucratic and encouraged gaming. We have designed something substantially less bureaucratic than the REF and have put in a number of safeguards at every stage to prevent gaming. I am sure the noble Lord has read the fact sheets, which I hope help him with his view on that.

The TEF has already started to change sector behaviour for the better and, given the same opportunities as the REF, will propel the quality of higher education teaching to new heights. I hope that this House will be able to look back 30 years from now with pride at what the TEF has achieved. I ask that the amendment be withdrawn.

The Duke of Wellington: My Lords, I am grateful to all noble Lords who have participated in this debate about various amendments. Every noble Lord who has spoken has criticised the gold, silver and bronze proposal. The Minister said that it will be reviewed after a year. However, Clause 26 requires a system of rating, and the spirit of my amendment was to delete the word "rating" and put in "assessment". If the Government had been prepared to accept my amendment—I regret that they did not—it would have drawn the teeth of much of the opposition in this House to Clause 26. Other amendments go much further than mine. Therefore, sadly, I hereby beg leave to withdraw Amendment 62.

Amendment 62 withdrawn.

Amendments 63 to 69 not moved.

Amendments 70 and 71

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

70: Clause 26, page 16, line 43, leave out subsection (5)

71: Clause 26, page 16, line 44, leave out subsection (6)

Amendments 70 and 71 agreed.

Amendment 72

Moved by ***Lord Blunkett***

72: Clause 26, leave out Clause 26 and insert the following new Clause—

"Scheme to provide information about the quality of higher education and higher education teaching

(1) The Secretary of State must by order bring forward a scheme to assess and provide consistent and reliable information about the quality of education and teaching at English higher education providers and at higher education providers in Wales, Scotland or Northern Ireland which apply to participate in such a scheme.

(2) The scheme must be wholly or mainly based on the systems in place in higher education providers which ensure that the courses offered are taught to a high standard.

(3) The Secretary of State, or that body designated by the Secretary of State to develop such a scheme, must, before such a scheme is introduced, and on a regular basis thereafter, obtain independent evaluations, including an evaluation from the Office for National Statistics, of the validity of any data or metrics included in such a scheme.

(4) Any scheme introduced must evaluate and report on whether an institution meets expectations or fails to meet expectations on quality measures, but must not be used to create a single composite ranking of English higher education providers.

(5) The Secretary of State's power to make an order under subsection (1) is exercisable by statutory instrument, a draft of which must be laid before, and approved by, a resolution of each House of Parliament."

Lord Blunkett: In light of the Minister's response and, with respect, the fact that things have got worse rather than better with the words "ineligible for a teaching excellence award", it would be wise to test the view of the House and give the Government time to think again.

5.26 pm

Division on Amendment 72

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Amendment 72 agreed.

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5.41 pm

Amendment 73 not moved.

Clause 27: Performance of assessment functions by a designated body

Amendment 74

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

74: Clause 27, page 17, line 14, after "are" insert "—
(a) "

Viscount Younger of Leckie: My Lords, I beg to move Amendment 74 and I shall speak to our government amendments first, before we can all turn to Amendment 116A. These amendments respond directly to concerns raised in Committee about the need for expert advice for any decisions relating to degree-awarding powers. They will ensure that only institutions that can demonstrate evidence of high-quality provision, or the clear potential to do so, should be granted such powers.

We have been clear that we will create a level playing field for new providers, with the option of a direct route to entry into the sector—one that does not depend on the need for validation by incumbent providers. We recognise that, for many providers, validation agreements can work well and are the preferred way to develop a track record. This will continue to be the case under the new regulatory framework, particularly for providers that are not yet able to demonstrate the potential to award their own degrees. For these providers it is important that the validation services on offer are comprehensive and accessible to them. Unfortunately, this is not always the case, which is why I will be resisting Amendment 119 when we come to debate it later.

We also want to create an alternative, direct route to entry for those providers committed to the higher education sector for the long term who can clearly demonstrate the potential to award their own degrees. Therefore, our proposals deliberately provide for two routes to DAPs. The first is via validation, although we propose to reduce the track record requirement for DAPs to three years. The second is via an additional test and close supervision for the first three years. This approach has been endorsed by Independent Higher Education. Alex Proudfoot, writing today on our proposals for degree-awarding powers and validation said:

"The Office for Students must be empowered to press ahead with regulation which better supports validation … And where validation is not the most appropriate route, the OfS also needs the power to identify this and provide an alternative route for these providers".

We listened closely in Committee and considered carefully the amendment which the noble Baroness, Lady Wolf, tabled and to which Universities UK gave strong support. The amendments I am tabling today directly address these key concerns and I am pleased to see that they have the support of the noble Lord, Lord Stevenson, and the noble Baroness, Lady Wolf. We agree with Universities UK and the noble Baroness on the importance of a high quality threshold for new providers. We will absolutely not risk the reputation of the sector as a whole and the livelihoods of students

[Viscount Younger of Leckie]
by permitting poor-quality providers to have degree-awarding powers. We also recognise the value and importance of diverse and informed perspectives in determining whether a provider is competent to award its own degrees. This is why we have tabled these amendments that ensure that the OfS must seek and have regard to expert advice from the designated quality body or, where no designation has been made, a committee of the OfS, before awarding degree-awarding powers to any provider. It must also request such advice in relation to a variation or revocation of such powers. In both cases, the advice in question should be informed by the expertise of persons who are not part of the OfS. We expect this to include strong representation from persons who have experience of awarding degrees, as well as representatives of challenger institutions, further education providers, students and employers—as set out in the amendments. In cases of research degree-awarding powers, the advice must be informed by the views of UKRI.

5.45 pm

The OfS must have regard to this advice before deciding whether to make an order to authorise, vary or revoke any kind of degree-awarding powers. This is a very robust process. It will ensure that only the best providers can access degree-awarding powers and, as recognised by Universities UK and GuildHE in welcoming and supporting these amendments, that independent expert scrutiny is built into the system. I therefore do not believe that any further changes beyond the government amendments are needed to ensure a robust process that protects students and the reputation of the sector. I invite other noble Lords, should they so wish, to address their amendments in this group before I respond to their concerns.

Baroness Wolf of Dulwich: My Lords, I reiterate my support for the government amendment to which I have put my name because this is actually a big move forward in clarifying in the Bill what is needed to ensure that, as the sector grows, we have really high quality. However, something more is needed. The Bill sets forth the whole environment for the sector, possibly for decades to come. Over the years we have moved to a situation where most people do not understand what is going on. I know that this sounds very strange but it is true. People do not understand—and I include myself in this much of the time—how degree-awarding powers can be given, where powers lie, and what can and cannot be varied.

My Amendment 116A is intended to complement and add to the improvements that the Government are proposing by modifying somewhat and clarifying the process by which new institutions may receive degree-awarding powers, ensuring that these are clearly understood—because they are in the Bill—and to further reduce, to a very low level indeed, any remaining risk that students may end up with degrees from institutions that failed early in their existence and are therefore effectively devalued in the labour market. I do not think that a degree awarded by the Office for Students is likely to be understood or valued, and we should be thinking about two clear alternatives, which are set out in my amendment. These are that,

"the provider has been established for a minimum of four years with satisfactory validation arrangements in place, or … the Quality Assessment Committee is assured that the provider is fully able to maintain"—

from day one—

"the required standard expected for the granting of a United Kingdom degree … and may therefore be authorised to grant taught awards or research awards … and has reported to the Secretary of State".

I will come back to why I think that is important. The OfS should also be assured,

"that the provider operated in the public interest and in the interest of students".

There are a few points that I want to underline. First, thinking in terms of four years is really quite important. I would like to see that in the Bill for institutions that come through the validating requirements. The reason for that is, as the Government have frequently said, we want to know whether or not an institution works and is deserving of degree-awarding powers. That means that it needs to have gone through the process of educating people and giving them degrees and those people need to go out into the labour market. We need to see whether their degrees are robust and still stand up and bring them labour market recognition and labour market power. My sense is that four years is actually a pretty good number and that is why we have had it up to now. We should recognise that it is a number that has worked and put it in the legislation and have done with it. One thing I have discovered is that there is an extraordinary ability to vary things through guidance, and my sense is that the four-year figure really matters.

The other change is in giving degree-awarding powers without a validation period. There are cases where this is clear and important, but it should involve the Secretary of State. The reason is that, again, having degree-awarding powers is a really valuable thing. That is why private companies buy and sell universities; they think that they can do very well out of them. If you move to being able to do this straightaway, then you need to be quite secure that it can be done. I would not argue that everybody should have to have a validation process. That is not the case in the statute at the moment and certainly was not the case when many of our best younger universities moved straight to being universities, as many people including the noble Lord, Lord Willetts, pointed out in Committee.

One of the more informal questions that often comes up is: supposing that MIT wanted to set up here? I do not think that MIT probably would want to, but one day, if my dreams come true, the Government might want to create the equivalent of Caltech here—something really new, exciting and very different, which could become a university straightaway. If we were asked whether we wanted to validate anybody like that who came along, there would be a competitive, fighting queue around the block. If future Governments realise that their higher education policy needs to be more active and in some ways more interventionist about meeting the needs of the future, as the noble and learned Lord, Lord Mackay, pointed out on Monday, then they will need to be able to do that.

Why do I also suggest that the Secretary of State has to come into this? As I said, creating something which can go straight out and give degrees to students

is a big thing. The Secretary of State is the accountable one. A regulator is not accountable, or the same thing as an elected politician. If you made sure that this was happening, most of the time it will be fine—of course it will—but the reality is that, a few years from now, the caravan will have moved on and people will not be looking at things with the same clarity. If there is this possibility, any new institution coming about in this way must be of very high quality. We need to be absolutely sure of that, and it seems not unreasonable to suggest that the elected, accountable Secretary of State should be involved in some way in that decision.

I have added my amendment to the government amendments, which are excellent, as I said, because this is an opportunity to have a clear set of rules and possibilities for the next few decades, and we still need to tidy some of this up. I also consider that the deletion of Clause 48, which suggests that the OfS can put itself on the register and award degrees, is consequential to this amendment. I would be grateful if the Minister could confirm whether this is the case.

Lord Storey: My Lords, I too thank the Government for their amendments, which are much needed and beneficial. I have put my name to Amendment 116A because the four-year period is absolutely right. As the noble Baroness, Lady Wolf, has said, it would enable students to go through a cycle of university education and into the labour market. There would then be feedback and we could see clearly whether any issues needed ironing out before that awarding status is given. Feedback should also include things such as facilities: for example, the quality of the library and, dare I say it, perhaps the quality of teaching as well.

I apologise for just throwing this out—it may be that I have missed it—but perhaps I may take the liberty of asking the Minister this. If a private provider gets degree-awarding status and, goodness forbid, that provider goes into liquidation, what happens to the student loans that have been taken out? Will the Government guarantee that they can get those loans back, so that they can pay for the course somewhere else?

Lord Willetts (Con): My Lords, I briefly intervene in this debate to welcome the proposals that the Government have now brought before us. There is, as we recognised in debates at earlier stages, always a balance to be struck. On the one hand is protecting the interests of students, which must be paramount, and the reputation of British higher education as a whole. On the other hand, the fact is that most of the innovation and advances in higher education in England have occurred as a result of new providers coming in and doing things differently. The history of the growth in, and success of, higher education in our country has been that doing things differently from the start is easier than changing an existing body. The arrangements in the new clause today get that balance right.

If anything, the process will now be more rigorous and defined than the kind of process that we had when decisions on degree-awarding powers and university title were taken by, among other bodies, the Privy Council on advice. This is superior to what went before. I feel a bit wary of referring to the 1960s now that the noble Baroness, Lady Wolf, has referred to them. But the fact is that one of the most exciting experiments in the growth of higher education in this country in the 1960s was when universities got their title and degree-awarding powers from the very beginning. We should not be far more restrictive than we were then.

Lord Stevenson of Balmacara (Lab): My Lords, it is worth reflecting that we had quite a long discussion of this issue in Committee, when opinions were more sharply divided than they are now. Amendment 116A, which has been spoken to and which we have put our name to, was originally drafted in slightly different terms. The balancing point between the end of the first part and the second part was that the new provider would have to be established for a minimum of four years with validation arrangements and that the QAC had to be assured that the provider could meet the required standards for the long term. We are listening and reflecting on what the Government say as much, I am sure, as they listen and reflect on what we say. We have decided to change our position on this and now align ourselves with the noble Baroness, Lady Wolf, who has spoken on this amendment. We are prepared to accept that it is a good balance. I agree with the noble Lord, Lord Willetts, that we now have it about right. There is a route through which new institutions can come forward and receive degree-awarding powers: one of partnership and which has a minimum of four years. We would like to see that maintained because it has a value, but there is also the opportunity to be assessed and assured directly, without having to have a waiting period.

I am glad that, in all this debate, we have now lost the idea that there will in any sense be a probationary period; there will be no such thing as probationary degrees. We are talking about getting something up and started, which will have external value and be recognised by everyone in this country and abroad as a new institution that is of the standard required in UK higher education. We can therefore support this, which is why we are happy to sign up to the proposals in government Amendment 116. We acknowledge, although we did not sign up to them, that the new arrangements set out in the government amendments introduced by the Minister will be an effective and efficient way of carrying this forward. We support them but hope to amend the amendments that have been tabled.

The narrow point is about whether the Government's proposals mean that new, innovative providers can come forward without what the Government allege has been a problem with trying to find validation, and the cost of that. Given that the information from the Minister's department was that there were of the order of more than 400 new providers, of which just over 100 have degree-awarding powers already, there does not seem to be much of a problem here. We should not be too shaken into worrying about the status to which the higher education system in the UK might have fallen by having this new charge for innovation. I am a bit sceptical about that; it can be overstated. Nevertheless, I accept the general principles proposed here and we are therefore able to accept them. But the measures that are in place would be of value if the specific words in Amendment 116A, in the name of the noble

[Lord Stevenson of Balmacara]
Baroness, Lady Wolf, were in place. I hope very much that, when it comes to it, she will invite the House to have an opinion on that.

Baroness O'Neill of Bengarve: My Lords, I have nothing against new providers coming in. I should declare that I taught for 14 years at the University of Essex, which was a new provider and which I think achieved very high standards. It was of course believed not to have done so until the first research assessment exercise, which revealed that it was doing very well.

However, the deep difference that we have not yet explored in this debate is that we used to assume that new providers, like old providers, would have a system of governance of a sort that we recognise in this country. We have talked quite cosily about the governing bodies of institutions, but it is not clear to me that that is an apt way of speaking about the full range of possible providers that might come forward under this more open scheme. In effect, the burden is being transferred from governing bodies to a regulator. A regulator may say that there are certain standards of governance that it thinks are important or even that it believes that university councils should undergo some sort of fit and proper person test. That would be a reasonable thought, but that is not in the Bill at present, so when we think about new providers, we must open our minds to the full range of possibilities, and we may wish to set some restrictions on the sorts of institutions that would be appropriate. I use the euphemism deliberately.

6 pm

Viscount Younger of Leckie: My Lords, I thank the noble Baroness, Lady Wolf, and all noble Lords for their comments on our amendments. Let me assure the noble Baroness and the House that we are in agreement that we must assure the quality of degree-awarding powers and that the OfS must request expert advice before granting degree-awarding powers. The amendments that I have tabled and have already explained achieve this.

However, I do not believe that the Secretary of State should have a role in this process. The OfS, as the independent regulator, is best placed to make such decisions, taking them independently of government. It is also important that we streamline the currently bureaucratic degree-awarding power processes while ensuring that the focus is on quality. In addition, I question the value the Secretary of State would add, given the robust checks and balances in place in awarding and revoking degrees, in particular with the addition of our amendments. They require the OfS to seek independent, expert advice in making any decisions regarding degree-awarding powers. A role for the Secretary of State runs counter to the desire of the sector to have such decisions taken by an independent body, as distant from government as HEFCE is today, and not to politicise the process.

We are all in agreement on the importance of setting a high quality bar for new providers, and I thank noble Lords for their challenge in this area. I reassure noble Lords that protections for quality are provided for under our planned reforms. All providers would need to meet rigorous quality tests similar to those set out in the UK quality code. They would also need to meet robust tests for financial sustainability, management and governance that demonstrate their ongoing commitment to their students and to higher education. To award, degree providers would have either a track record or meet additional quality tests. Independent, expert advice must be sought on all DAPs awards and for their variation and revocation where that is on the ground of quality. Finally, there is an ability in Clause 15 to set a public interest governance condition.

The noble Baroness, Lady Wolf, asked whether the deletion of Clause 48 is consequential. There are two routes into the sector: validation or direct entry. I therefore do not agree with the noble Baroness that the proposed deletion of Clause 48 is consequential to Amendment 116A. She also questioned the Secretary of State's role. She said it is needed because it is a big thing—I think that was the expression she used. As I said earlier, we believe that the regulator is best placed to make the decision on degree-awarding powers, but the Secretary of State is able to issue guidance and, where necessary, to give directions. We therefore feel that the power she has suggested is too great.

The noble Lord, Lord Storey, asked what happens if a provider goes into liquidation. All providers that are registered in the approved or approved fee cap categories are expected to have student protection plans in place to ensure that students can complete their courses and obtain their degrees, even if their provider has to exit the market. That takes account of their loans, which was the gist of his question.

Amendment 74 agreed.

Amendments 75 to 78

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

75: Clause 27, page 17, line 14, at end insert ", and

(b) the functions of the relevant body under section (Grant, variation or revocation of authorisation: advice on quality etc)(advice on quality etc to the OfS when granting degree awarding powers etc)."

76: Clause 27, page 17, line 16, after second "functions" insert "under section 24 "

77: Clause 27, page 17, line 16, leave out "do not cease to be exercisable by the OfS" and insert "—

(a) so far as they relate to the assessment of the standards applied to higher education provided by a provider, cease to be exercisable by the OfS, and

(b) otherwise do not cease to be exercisable by the OfS."

78: Clause 27, page 17, line 19, after second "of" insert "any of"

Amendments 75 to 78 agreed.

Schedule 4: Assessing higher education: designated body

Amendments 79 to 82

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

79: Schedule 4, page 86, line 32, at end insert—

"( ) the Secretary of State is satisfied that the designated body is failing to perform in an effective manner its functions under section (Grant, variation or revocation of authorisation: advice on quality etc), or"

80: Schedule 4, page 88, line 13, after "protect" insert "—

(a) "

81: Schedule 4, page 88, line 14, at end insert ", and

(b) the designated body's ability to make, or make arrangements for, an impartial assessment of the quality of, and the standards applied to, higher education provided by a provider."

82: Schedule 4, page 88, leave out line 37

Amendments 79 to 82 agreed.

Clause 28: Power of designated body to charge fees

Amendments 83 to 86

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

83: Clause 28, page 17, line 34, leave out from "body" to "may" in line 35

84: Clause 28, page 17, line 38, after "standards)" insert ", or section (Grant, variation or revocation of authorisation: advice on quality etc)(advice on quality etc to the OfS when granting degree awarding powers etc),"

85: Clause 28, page 18, line 8, after "24(1)" insert "or (Grant, variation or revocation of authorisation: advice on quality etc)"

86: Clause 28, page 18, line 12, leave out "section 24(1)" and insert "sections 24(1) and (Grant, variation or revocation of authorisation: advice on quality etc)"

Amendments 83 to 86 agreed.

Clause 29: Power to approve an access and participation plan

Amendment 87 not moved.

Clause 31: Content of a plan: fees

Amendment 88 not moved.

Amendments 89 to 92

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

89: Clause 31, page 19, line 26, leave out "applicable"

90: Clause 31, page 19, line 28, leave out "applicable"

91: Clause 31, page 19, line 28, leave out "in relation to an institution"

92: Clause 31, page 19, line 30, leave out "applicable to that institution"

Amendments 89 to 92 agreed.

Amendment 93 not moved.

Clause 32: Content of a plan: equality of opportunity

Amendments 94 to 96 not moved.

Amendment 97 not moved.

Clause 35: Advice on good practice

Amendment 98 not moved.

Clause 36: Duty to protect academic freedom

Amendment 99

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

99: Clause 36, page 21, line 32, at end insert—

"( ) In performing those functions, subsection (1) applies instead of section 3(1)(za) (duty of OfS to have regard to the need to protect institutional autonomy) in relation to the freedoms mentioned in subsection (7)(b) and (c) of that section."

Amendment 99 agreed.

Amendment 100

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

100: After Clause 37, insert the following new Clause—

"Duty to monitor etc the provision of arrangements for student transfers

(1) The OfS—

(a) must monitor the availability of schemes or other arrangements provided by registered higher education providers for student transfers and the extent to which those arrangements are utilised by students generally or students of a particular description,

(b) must include in its annual report a summary of conclusions drawn by it, for the financial year to which the report relates, from its monitoring under paragraph (a), and

(c) may facilitate, encourage, or promote awareness of, the provision of arrangements by registered higher education providers for student transfers.

(2) For the purposes of this section, "a student transfer" is where—

(a) a student transfers from a higher education course ("course X") provided by a UK higher education provider ("the transferring provider") to a different higher education course ("course Y") provided by the same or a different UK higher education provider ("the receiving provider"),

(b) the receiving provider recognises, or takes account of, the study undertaken, or a level of achievement attained, by the student—

(i) on course X, or

(ii) on another higher education course provided by the transferring provider,

when the receiving provider is determining the study to be undertaken, or the level of achievement attained, by the student on course Y, and

(c) either the transferring provider or the receiving provider is a registered higher education provider, or both are registered higher education providers.

(3) For the purposes of subsection (2), there may be an interval between the student ceasing to undertake course X and starting to undertake course Y.

(4) The duty under subsection (1)(a) may be discharged by the OfS monitoring as described in that provision—

(a) arrangements for student transfers provided by all registered higher education providers or a particular description of such provider;

(b) all such arrangements for student transfers or a particular description of such arrangement or student transfer.

(5) In this section—

"annual report" means the annual report under paragraph 13 of Schedule 1;

"financial year" has the same meaning as in that Schedule (see paragraph 12(6));

"higher education course"—

(a) in the case of a provider in England or Wales, has the meaning given in section 79 (1);

(b) in the case of a provider in Scotland, means a course falling within section 38 of the Further and Higher Education (Scotland) Act 1992;

(c) in the case of a provider in Northern Ireland, means a course of any description mentioned in Schedule 1 to the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15));

"UK higher education provider" means an English higher education provider or a higher education provider in Wales, Scotland or Northern Ireland.

(6) For the purposes of applying the definition of "higher education provider" in section 79 (1) to the reference in the definition of "UK higher education provider" in subsection (5) to a higher education provider in Wales, Scotland or Northern Ireland, the reference to "higher education" in the definition of "higher education provider" in section 79 (1)—

(a) in the case of an institution in Wales, has the meaning given in section 79 (1);

(b) in the case of an institution in Scotland, has the same meaning as in section 38 of the Further and Higher Education (Scotland) Act 1992;

(c) in the case of an institution in Northern Ireland, has the same meaning as in Article 2(2) of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).".

Viscount Younger of Leckie: I beg to move.

Amendment 100A (to Amendment 100)

Moved by ***Lord Willis of Knaresborough***

100A: After Clause 37, in subsection (1)(c), leave out "may" and insert "must"

Lord Willis of Knaresborough: I thank the Minister for Amendment 100. We had a quick gloss over this the other day, and I sought a device to bring Amendment 100 back because in our heady and heavy discussions, sometimes we have lost sight of the other side of higher education and, in particular, of students who are working part-time and the significant number of students who drop out of higher education. Every year, approximately 8% of students drop out of their courses; for some courses the figure is as high as 30%. I am doing some work on nursing degrees, and research is showing that as many as 35% of students start a degree but do not finish it. That is a huge waste of talent. Some of those people—albeit very few of them—come back to complete their degrees, but the whole system in the UK is very much geared against that. If you fail, you fail: that is the maxim throughout our education system. It applies at GCSE and A-levels and certainly at university.

The Government are to be hugely congratulated on Amendment 100 which, for the very first time, accepts that this is a real issue. One of the problems is that if students are on the wrong course, how do they transfer to another one, particularly one at another university? Students often enter vocational degrees later in life, and there are changes in their lives. A student marries, or their partner needs to move for their career, so the student needs to go to another institution to complete their studies, and there is a host of problems in doing that. Very few institutions have a robust, well-advertised, student-friendly system whereby students can leave and come back, or leave and go to another university.

The trouble is that we have a higher education system that prizes its autonomy above everything else. It is one of the great strengths of our education system. In the short time I have been in your Lordships' House and the time I was in the other place, I have seen nothing excite people more, be they MPs or Peers, than attacks on the higher education system. Everyone comes out, as your Lordships have seen this afternoon.

I want to make sure that we do something about it when students, for whatever reason—sometimes it is for personal reasons; sometimes it is because they are just not coping with the course—drop out of the system. The first step is to make sure you have a robust system whereby students know they can transfer somewhere else if they are not succeeding, or if they drop out, they can either return or transfer somewhere else if they need to. Amendment 100 deals with a lot of those issues, but the Government have slightly let us down here—I say "slightly" because I very much support what they are trying to do. New subsection (1)(a) says that the Office for Students "must monitor the availability", while new subsection (1)(b) says that it,

"must include in its annual report a summary of conclusions drawn … for the financial year".

But when it comes to the vital part—ensuring that universities have robust systems in place to enable students to arrange transfers—the amendment brings in the word "may". New subsection (1)(c) says that the OfS,

"may facilitate, encourage, or promote awareness".

Your Lordships know full well what "may" means—it basically means you do not have to do it. That is the problem with this.

The previous Labour Government, in 2009, brought in some similar regulations, which were advisory. The current Government, to their credit, did a piece of research in summer last year on what was happening with student transfer in various universities. I read the results, which were published in December, and they were hugely disappointing. It is not this Government's fault, the previous Government's fault or the previous Labour Government's fault. The reality is that this is not taken seriously by most universities. I have the most enormous regard for the noble Baroness, Lady Wolf, but we had a slight spat in Committee when I said that the Russell group universities were the worst offenders. I stick by that, although in actual fact I do not know. She took me to task, but the reality is that she does not know either, as they do not publish anything to back up the case.

Through Amendment 100A, I want to change the word "may" to "must", so that the Office for Students must facilitate, must encourage and must promote awareness of the provision of arrangements. Universities would then have to have a system, because that system would be reported back to the OfS and would appear in the annual report. It is a very simple change. I am sure that the Minister, in his wisdom and in his love

and affection for all that is happening in the higher education system, will agree to this very small amendment, which would make a huge difference to the very significant number of students who, for whatever reason, drop out. We want them back.

Baroness Garden of Frognal: My Lords, I support my noble friend's amendment for all the good reasons that he has given. In addition, given that the Government are making provision for some providers to fail, it is important that measures are in place for students to have records of the credits they have accumulated from their studies, so that they are best placed to find an alternative provider without going back to the start and can get credit for partial awards they have achieved. I know that even in the days of the polytechnics, with their single validator, the CNAA, it was not always straightforward for students to take their credits from one polytechnic to the other; with different and varied providers, it will be even less straightforward. It is a time-consuming process, as providers need to be able to match the credits from an organisation to bring them across into their own systems. But it is still well worth doing, and the Bill could help by making it mandatory for institutions to set up systems to,

"facilitate, encourage, or promote awareness of … arrangements … for student transfers".

Changing this one word, "may" to "must", should enable that to happen.

6.15 pm

Lord Mackay of Clashfern (Con): My Lords, I understand the reason for this amendment but am not sure that it is appropriate, because it is the Office for Students that would do the "musting"—if I can call it that—but the arrangements have to come from the higher education providers, which are dealt with by new paragraphs (a) and (b). The OfS finds out exactly what is going on and reports it. That may put pressure on individual providers to get along with arrangements. You cannot facilitate an arrangement unless the people wanting to make it are willing. There is also the problem with time when it comes to facilitating, encouraging or promoting awareness. In due course, the thing will become known, but the amendment is saying it must be done all the time—it is a continuing obligation. In the circumstances of this clause, "may" is the better word for this part of the arrangement.

Baroness O'Neill of Bengarve: My Lords, this is quite a complicated matter for higher education providers—as I have learned to call them—as the reasons why students come to a halt on their journey are very varied. Sometimes, they are not really committed to continuing, sometimes they are not really able to continue on the course, and sometimes there is another course with slightly different requirements to which they would be very well suited. It has to be a very hands-on process, and does not always go successfully, but nor would it even with this amendment.

One has to be very careful. In my experience, academic staff and the student counselling services have a great deal to do when an individual student hits one of these vicissitudes, and the process is not always successful. But we should also remember that in countries where they ostensibly have more of a credit transfer system than we have ever managed to achieve here, you cannot say, "Oh, I am not really enjoying my course here; I would prefer to be on that course there". The process will be extremely difficult and very expensive for the institutions. On balance, "must" facilitate may not, for those additional reasons, be quite the verb that we want here.

Viscount Younger of Leckie: My Lords, the Government take the views of the noble Lord, Lord Willis, on student transfer very seriously, and I have appreciated the short discussions I have had with him. This is why, as we discussed on Monday, we have proposed Amendments 100, 139 and 141. I appreciate the warm words expressed on our amendments by the noble Lord, albeit they were perhaps rather lukewarm on Amendment 100.

The new clause will place a duty on the OfS to monitor arrangements put in place by registered higher education providers to enable students to transfer within or between providers and monitor the take-up of those arrangements. Furthermore, the OfS will have a duty to report annually on its findings. As my noble and learned friend Lord Mackay said, the government amendment will also enable the OfS to facilitate, encourage or promote awareness of arrangements for student transfer, so that the OfS can help ensure students understand the options for changing course or institution and so that best practice is promoted among higher education providers.

I thank the noble Lord, Lord Willis, for his Amendment 100A, which reflects the importance he attaches to this issue. It is well intentioned, and we have genuinely considered it. However, given the Government's assessment of the evidence of barriers to student transfer, it is not desirable to adopt the amendment, some of the reasons for which were put rather eloquently by the noble Baroness, Lady O'Neill. Such an approach would reduce the flexibility available to the OfS as it develops its understanding, particularly through its monitoring, and could be overprescriptive, burdensome and interfere with institutions' autonomy.

The government amendment will achieve our shared aims without interfering with or overly mandating how the OfS responds to its findings on student transfer, so, with respect, I ask the noble Lord to withdraw his amendment.

Lord Willis of Knaresborough: My Lords, I thank noble Lords who have spoken in this brief debate. It was certainly worth raising the issue. In particular, I thank my noble friend Lady Garden for her support. I never like to disagree with the noble and learned Lord, Lord Mackay, because he is usually right on this matter. The reason I wanted a "must" is that otherwise, this issue will go into the long grass. I hope I am wrong and that the Office for Students, when it reports, will be able to keep a close eye on what is happening. That will be the real test.

I listened with interest to the comments of the noble Baroness, Lady O'Neill. Again, I was disappointed, because I value her comments enormously. It saddens me that we are unable in this country to adopt what we see working incredibly well in the States, particularly with community colleges, where with sufficient credits

[Lord Willis of Knaresborough]
students can move to Ivy League universities where they show real talent. We seem to have a silo-based higher education system, and this was an attempt to move away from that and ensure that all learning gained in higher education systems can be accredited and used as a credit for further learning. With those few comments, I thank the House for listening, and I beg leave to withdraw the amendment.

Amendment 100A (to Amendment 100) withdrawn.

Amendment 100 agreed.

Clause 38: Financial support for registered higher education providers

Amendment 101

Moved by ***Lord Young of Cookham***

101: Clause 38, page 22, line 11, leave out "or by another eligible higher education provider"

Lord Young of Cookham (Con): My Lords, these minor and technical amendments simply clarify the drafting of the Bill; they ensure that it is consistent across the board and refine the consequential amendments relating to HEFCE ceasing to exist. Essentially, they tidy up the Bill. I would be happy to explain any of them, should noble Lords so require. I beg to move.

Amendment 101 agreed.

Amendment 102

Moved by ***Lord Young of Cookham***

102: Clause 38, page 22, line 14, leave out "or by another eligible higher education provider,"

Amendment 102 agreed.

Amendment 103 had been withdrawn from the Marshalled List.

Clause 41: Authorisation to grant degrees etc

Amendment 104

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

104: Clause 41, page 24, line 11, leave out paragraph (a)

Baroness Wolf of Dulwich: My Lords, this is a very small amendment and I rather hope that it is a tidying-up amendment that the Government will go away and decide to agree. At the moment, as part of the general rethinking of the sector, it is possible for institutions to apply for just bachelor-level degree-awarding powers, bachelor's and master's or bachelor's and research, but one group is regrettably shrinking in size: foundation degrees. That is important because, in another part of the woods, we are trying to rethink and redevelop tertiary education, and foundation degrees are a sub-degree level to which there is a lot of business and employer input.

By what is to me is a strange quirk, although the Minister may be able to explain it, the only people who can have foundation degree-only powers are FE colleges. I cannot see why other institutions should not also in certain circumstances have those powers. My amendment would simply delete that restrictive clause and leave it to the OfS to give foundation degree-only awarding powers to any institution where that seems appropriate. I beg to move.

Lord Young of Cookham: My Lords, I am grateful to the noble Baroness for her explanation. She tried to link it with the amendments I just moved and put it in the same category as tidying up. Hers is a more substantial proposition than those that I just put to the House. I agree with the noble Baroness that foundation degrees are important and can be—indeed, are—awarded by a wide range of institutions, which includes but is not limited to the FE sector.

Under the Bill, subject to meeting registration conditions, institutions that provide higher education will be able to apply for TDAPs—taught degree-awarding powers. That is a broad suite of powers that includes the ability to grant foundation degrees. The ability to apply for the powers to award only a foundation degree was always intended as specifically relevant to the FE sector, and it has never been the Government's intention to change this position under the Bill. The sector is defined by reference to Section 91(3) of the Further and Higher Education Act 1992 and includes further education corporations and sixth-form colleges.

We are mindful of the fact that the landscape has changed since foundation degree-awarding powers were first introduced almost a decade ago—in particular, with the introduction of providers such as institutes of technology or national colleges. On institutes of technology, it is envisaged that existing FE colleges or higher education providers will be part of the consortium that is the IoT, and they will be involved in the provision of higher education. Given that involvement, we do not envisage any impediment towards the ability of such providers to deliver courses leading to foundation degrees, should they wish so to do. Against that background, I hope that the noble Baroness will be minded to withdraw her amendment.

Baroness Wolf of Dulwich: I have to say that I do not find the answer satisfactory, because I still do not see why, in that case, one still has a foundation degree-only awarding power in the mix at all. I continue to feel that it is odd to bar the possibility of something which might be useful in this changing landscape. Nothing here says that you have to do it.

However, I accept that the Government are not minded to do this, at least on this occasion. I very much hope that they might think about it some more. On that basis, I beg leave to withdraw the amendment.

Amendment 104 withdrawn.

Amendment 105

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

105: Clause 41, page 25, line 2, at end insert—

"( ) See sections 42, 43 and (Grant, variation or revocation of authorisation: advice on quality etc) which make further provision about orders under subsection (1)."

Amendment 105 agreed.

Amendment 106 had been withdrawn from the Marshalled List.

Clause 43: Variation or revocation of section 41 authorisation

Amendment 107

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

107: Clause 43, page 25, line 30, at end insert—

"( ) The OfS may make such an order revoking an authorisation given to a provider only if condition A, B or C is satisfied."

Viscount Younger of Leckie: My Lords, we have always been clear that the OfS's powers to revoke degree-awarding powers or university title would be used only as a last resort. However, we heard concerns both in this Chamber and from the Delegated Powers Committee that the Bill is not clear enough in limiting the OfS's powers in this area. The concern was that it would leave it wholly to the discretion of the OfS when and in what circumstances the powers should be exercised. We have listened to these concerns and responded. We are introducing further, strong safeguards, setting out in precisely which circumstances the OfS can revoke degree-awarding powers or university title.

I will keep my remarks relatively brief, and I am pleased to see that the amendments have support from the noble Lord, Lord Stevenson. Put simply, the amendments carry forward the position that DAPs and university title holders should normally be registered, and allow for DAPs to be revoked where there are serious quality concerns, and for university title to be revoked where all DAPs, other than the ability to grant foundation degrees, have been lost. As we discussed earlier, if the OfS wants to revoke DAPs on grounds of quality, it would need to seek advice from the designated quality body.

Additionally, condition C in Clauses 43, 44 and 54 relates to changes in circumstances, which covers sales, mergers or similar structural changes. This reflects current policy, where eligibility for DAPs and university title is reviewed following such changes.

Currently, providers need to demonstrate that they continue to be the same institution that was granted DAPs originally—and are therefore competent to continue to award degrees—and that they can still meet all university title criteria. If providers fall short of such requirements, so that there are serious concerns around quality, the OfS will be able to revoke DAPs. University title could also be lost.

I turn to government Amendments 195, 196 and 199, and the subject of royal charters. Let me briefly address our amendments, which are closely related to revocation. We have always said that the power of the Secretary of State to make consequential changes to a royal charter under Clause 112 is not intended to be used to revoke an entire charter. Our amendments now make this clear in legislation, which I hope will provide further reassurance that we do not seek to unduly interfere with the autonomy of institutions. I now invite other noble Lords to speak should they wish.

6.30 pm

The Lord Bishop of Oxford: My Lords, my right reverend friend the Bishop of Winchester is unable to be in his place this evening, but I bring before your Lordships his Amendment 119A. I am grateful to the Minister for the constructive discussions we have had with him and his officials, and for co-sponsoring this amendment.

One of the features of the rich diversity of higher education provision is the power exercised by the Archbishop of Canterbury to confer degrees under the Ecclesiastical Licences Act 1533. It may help your Lordships to briefly recapitulate the background to this power. Lambeth degrees, as they are often colloquially termed, are now issued in one of two distinct ways.

The first of these is following examination or thesis under the direction of the Archbishop's Examination in Theology, usually referred to as the AET. Since 2007, the AET has been offered as an MPhil research degree with the opportunity to extend to a PhD. This provision is already registered with HEFCE, and students following these programmes have access to the Office of the Independent Adjudicator, while the standards which apply are those which accord with the requirements of the QAA.

Archbishop Justin, the most reverend Primate the Archbishop of Canterbury, places great emphasis on the rigour of the AET, and he is not alone in his belief that the course makes a valuable contribution to theological research. It enables those who may not otherwise be able to study for an English degree in any other way to do so. In particular, it opens up such opportunities to students across the Anglican Communion and makes a significant contribution to the development of further and higher education when those students return home.

The second route is the awarding of higher degrees—they are not always doctorates—in a range of disciplines to those who have served the Church in a particularly distinguished way and for whom an academic award would be particularly appropriate. Indeed, Members of your Lordships' House have received such degrees, among them the noble Lord, Lord Sacks.

Although this is perhaps a less familiar part of the higher education landscape than some your Lordships have been considering, it is by no means merely a historical curiosity. These powers have been in active use ever since the passage of the 1533 Act and were recognised following the Education Reform Act 1988, by means of the inclusion of the Archbishop of Canterbury in the list of approved degree-awarding bodies in the relevant statutory instrument. Should your Lordships be eager for the reference, it is the Education (Recognised Bodies) Order 1988, No. 2036. These powers were left unaltered by the Further and Higher Education Act 1992.

The amendment ensures two things. First, it ensures that the Archbishop's degree-awarding powers are appropriately safeguarded, both for those degrees conferred as a result of the submission of a thesis or the successful sitting of an examination or other form of academic assessment, and for degrees conferred on those who warrant an academic award for their scholarly

[The Lord Bishop of Oxford]
or intellectual contribution to the work of the Church or to the place of faith in society. Secondly, the amendment properly brings within the new regulatory framework those awards—via the AET—which will now fall under the oversight of the Office for Students.

Lord Stevenson of Balmacara: My Lords, I briefly express our support, as shown by the fact that we have signed up to those amendments on revoking degree-awarding powers, introduced by the Minister. We had a good discussion of this in Committee, and it was an area of concern to many noble Lords. We had thought of tabling an amendment to try to pick up on a couple of areas that seemed unresolved. However, after discussion and reflection with both the Bill team and the Minister we were able to sign up to the group and we are therefore happy with what is now before us.

We are also pleased that the amendment in the name of the right reverend Prelate the Bishop of Winchester has been accepted by the Government. We have all had trouble when we have had to address right reverend Prelates in their place, and the idea that we also have to stumble over the words "holder of degree-awarding powers" when referring to the most reverend Primate the Archbishop of Canterbury is another thought that will make it even more difficult to engage with them in future. We are very pleased that the Archbishop has these powers and, since 1533, an unbroken record of awards of degrees that we will recognise in future through this legislative process.

There is only one question left in my mind. The Government have been very good in bringing forward Amendment 196, which records in the Act that no provision of the Bill may be used to revoke an institution's royal charter—with the rather weasel words—"in its entirety". It does not mean to say that the Government will not revoke parts of the royal charter. I do not expect a response today, but perhaps the Minister might write to us with some examples of how that power might be used in future. I ask the slightly deeper question: since we are now fully aware of the powers of the Privy Council—which seem to include the ability to go and get from Her Majesty the Queen in Council changes to any royal charter, including that of the BBC, without much publicity ever occurring—why on earth have the Government decided to put this forward in the Bill at all? I would be very interested to receive that answer. With that slight aside, I am happy to support the amendments.

Viscount Younger of Leckie: My Lords, first, I will be happy to write a letter to the noble Lord, Lord Stevenson, which I hope on this occasion will be a short one, to clarify some aspects of our Amendment 196.

I want to make some very brief remarks on Amendment 119A, tabled by the right reverend Prelate the Bishop of Winchester, and spoken to by the right reverend Prelate the Bishop of Oxford, which we fully support. We fully recognise the unique position that the most reverend Primate the Archbishop of Canterbury is in when he awards degrees to those who have served the Church. We agree that the Archbishop's ability to award such degrees, which do not require a course of study, supervised research or assessment, should be left untouched by the OfS. This amendment achieves this, while being clear that any taught or research degrees awarded in the usual manner—for example, following a course of study as part of the Archbishop's Examination in Theology—will remain covered by the Bill.

I am pleased with the progress we have made on these matters. With these amendments added, it leaves the Bill in very good shape by giving the OfS the powers it needs while being crystal clear that these are underpinned by strong safeguards. It strikes the right balance between institutional autonomy and protecting students, and the quality and reputation of our HE sector.

Amendment 107 agreed.

Amendments 108 to 110

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

108: Clause 43, page 25, line 31, leave out from beginning to "if" and insert "Condition A is satisfied"

109: Clause 43, page 25, line 32, at end insert—

"(4) Condition B is satisfied if—

(a) the OfS has concerns regarding the quality of, or the standards applied to, higher education which has been or is being provided by the provider, and

(b) it appears to the OfS that those concerns are so serious that—

(i) its powers by a further order under section 41(1) to vary the authorisation are insufficient to deal with the concerns (whether or not they have been exercised in relation to the provider), and

(ii) it is appropriate to revoke the authorisation.

(5) Condition C is satisfied if—

(a) due to a change in circumstances since the authorisation was given, the OfS has concerns regarding the quality of, or the standards applied to, higher education which will be provided by the provider, and

(b) it appears to the OfS that those concerns are so serious that—

(i) its powers by a further order under section 41(1) to vary the authorisation are insufficient to deal with the concerns (whether or not they have been exercised in relation to the provider), and

(ii) it is appropriate to revoke the authorisation.

(6) Where there are one or more sector-recognised standards, for the purposes of subsections (4)(a) and (5)(a)—

(a) the OfS's concerns regarding the standards applied must be concerns regarding the standards applied in respect of matters for which there are sector-recognised standards, and

(b) those concerns must be regarding those standards as assessed against sector-recognised standards."

110: Clause 43, page 25, line 32, at end insert—

"( ) See sections (Grant, variation or revocation of authorisation: advice on quality etc) and 45 which make further provision about further orders under section 41 (1)."

Amendments 108 to 110 agreed.

Clause 44: Variation or revocation of other authorisations to grant degrees etc

Amendments 111 to 115

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

111: Clause 44, page 25, line 35, leave out "or an English further education provider"

112: Clause 44, page 26, line 8, at end insert—

"( ) The OfS may make an order under subsection (1) revoking an authorisation given to a provider only if condition A, B or C is satisfied."

113: Clause 44, page 26, line 9, leave out from beginning to "if" in line 10 and insert "Condition A is satisfied"

114: Clause 44, page 26, line 10, at end insert—

"(5A) Condition B is satisfied if—

(a) the OfS has concerns regarding the quality of, or the standards applied to, higher education which has been or is being provided by the provider, and

(b) it appears to the OfS that those concerns are so serious that—

(i) its powers by an order under subsection (1) to vary the authorisation are insufficient to deal with the concerns (whether or not they have been exercised in relation to the provider), and

(ii) it is appropriate to revoke the authorisation.

(5B) Condition C is satisfied if—

(a) due to a change in circumstances since the authorisation was given, the OfS has concerns regarding the quality of, or the standards applied to, higher education which will be provided by the provider, and

(b) it appears to the OfS that those concerns are so serious that—

(i) its powers by an order under subsection (1) to vary the authorisation are insufficient to deal with the concerns (whether or not they have been exercised in relation to the provider), and

(ii) it is appropriate to revoke the authorisation.

(5C) Where there are one or more sector-recognised standards, for the purposes of subsections (5A)(a) and (5B)(a)—

(a) the OfS's concerns regarding the standards applied must be concerns regarding the standards applied in respect of matters for which there are sector-recognised standards, and

(b) those concerns must be regarding those standards as assessed against sector-recognised standards."

115: Clause 44, page 26, line 18, at end insert—

"( ) See sections (Grant, variation or revocation of authorisation: advice on quality etc) and 45 which make further provision about orders under subsection (1)."

Amendments 111 to 115 agreed.

Amendment 116

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

116: After Clause 44, insert the following new Clause—

"Grant, variation or revocation of authorisation: advice on quality etc

(1) The OfS must request advice from the relevant body regarding the quality of, or the standards applied to, higher education provided by a provider before making—

(a) an order under section 41(1) authorising the provider to grant taught awards or research awards,

(b) a further order under section 41(1)—

(i) varying an authorisation given to the provider by a previous order under section 41(1), or

(ii) revoking such an authorisation on the ground that condition B in section 43(4) is satisfied, or

(c) an order under section 44(1)—

(i) varying an authorisation given to the provider, as described in that provision, to grant taught awards or research awards, or

(ii) revoking such an authorisation on the ground that condition B in section 44(5A) is satisfied.

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

(a) the designated assessment body, or

(b) if there is no such body, a committee which the OfS must establish under paragraph 8 of Schedule 1 for the purpose of performing the functions of the relevant body under this section.

(3) Where the OfS requests advice under subsection (1), the relevant body must provide it.

(4) The advice provided by the relevant body must be informed by the views of persons who (between them) have experience of—

(a) providing higher education on behalf of, or being responsible for the provision of higher education by—

(i) an English higher education provider which is neither authorised to grant taught awards nor authorised to grant research awards,

(ii) an English further education provider, and

(iii) an English higher education provider which is within neither sub-paragraph (i) nor sub-paragraph (ii),

(b) representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers,

(c) employing graduates of higher education courses provided by higher education providers,

(d) research into science, technology, humanities or new ideas, and

(e) encouraging competition in industry or another sector of society.

(5) Where the order authorises the provider to grant research awards or varies or revokes such an authorisation, the advice provided by the relevant body must also be informed by the views of UKRI.

(6) Subsections (4) and (5) do not prevent the advice given by the relevant body also being informed by the views of others.

(7) The OfS must have regard to advice provided to it by the relevant body under subsection (3) in deciding whether to make the order.

(8) But that does not prevent the OfS having regard to advice from others regarding quality or standards.

(9) Where the order varies or revokes an authorisation, the advice under subsection (1) may be requested before or after the governing body of the provider is notified under section 45 of the OfS's intention to make the order.

(10) Where there are one or more sector-recognised standards, for the purposes subsections (1) and (8)—

(a) the advice regarding the standards applied must be advice regarding the standards applied in respect of matters for which there are sector-recognised standards, and

(b) that advice must be regarding those standards as assessed against sector-recognised standards.

(11) In this section—

"designated assessment body" means a body for the time being designated under Schedule 4;

"humanities" and "science" have the same meaning as in Part 3 (see section 107)."

Viscount Younger of Leckie: I beg to move.

Amendment 116A (to Amendment 116)

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

116A: After Clause 44, at end insert—

"( ) The OfS must not authorise a provider unless—

(a) the provider has been established for a minimum of four years with satisfactory validation arrangements in place, or

(b) the Quality Assessment Committee is assured that the provider is fully able to maintain the required standard expected for the granting of a United Kingdom degree for the duration of the authorisation, and may therefore be authorised to grant taught awards or research awards or both, and has reported to the Secretary of State; and

the OfS is assured that the provider operated in the public interest and in the interest of students.

( ) In this section the "Quality Assessment Committee" is the Committee established under section 25 and "validation arrangements" has the same meaning as in section 47(4)."

Baroness Wolf of Dulwich: My Lords, I listened carefully to the Minister's response on this and I have to say that I was rather disappointed. I was very pleased with the government amendment, to which I put my name, but I feel that, as part of thinking hard about how new providers enter the system in the decades ahead, we have to be aware of the fact that, although there is enormous promise, there are also enormous threats. I am rather taken aback by how many new providers we have.

Looking at the fact sheet on degree-awarding powers, I note that there is an intention to reduce the typical amount of time before a track record is approved as adequate in validation to three years rather than the existing four, which is not a good idea. If completely new institutions are going to go straight to having degree-awarding powers, I reiterate the importance of being absolutely sure that it is a special type of institution, that it is well established and that there is a good reason for this. It is worth remembering that we have now, around the world, a large number of cases of institutions that have gone through apparently quite thorough regulatory oversight and have still failed—in large numbers in the United States.

I accept that the Secretary of State has set up a regulator, which will be independent, and clearly I do not think that he or she should involve themselves in every decision. However, this is a very important part of our higher education system and our reputation. If we are creating brand new institutions that can go forth and give degrees straight away, and which therefore often carry the rather strange term of having "probationary" degree-awarding powers, this ought to go right up to the top. In the next few years we will have a new and, I hope, exemplary regulator with a very well-known and highly respected chairman. However, the reality is that regulators are subject to regulatory capture and, as time goes on—particularly if we have the volume of new entrants coming through that the Government would like—there will be real risks.

For that reason, as well as because I would like to encourage the Secretary of State to be involved in this and to think actively about where something really exciting can occur and should be given support, the suggestion in our amendment that on that route the Secretary of State should have some involvement remains a good one. Therefore, rather sadly, I would like to test the opinion of the House on this.

6.42 pm

Division on Amendment 116A

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Amendment 116A agreed.

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6.54 pm

Amendment 116, as amended, agreed.

Clause 46: Appeals against variation or revocation of authorisation

Amendment 117

Moved by ***Lord Judge***

117: Clause 46, page 27, line 24, leave out from "appeal" to end of line 27 and insert "shall be on the grounds that the decision was wrong."

Lord Judge (CB): My Lords, I declare my interests as the commissary for the University of Cambridge and a visiting professor at King's College London. I regard Amendment 123 as consequential on Amendment 117. The amendment arises in the context of what was described just a few minutes ago as the last-resort power, granted by Clauses 44 and 54 of the Bill. The OfS has power to revoke the authority of a university to grant degrees and to deprive the university of the name and title "university". They are, either or both, processes that would destroy the university in question.

The Bill envisages an appeal process but, certainly in relation to these powers—in my respectful submission, destructive powers—it would be depressingly inadequate. The objective of Clause 46, and Clause 56 as amended, is to provide an appropriate remedy for such a destructive power. A remedy is provided in the Bill: a form of judicial review. I am not sure that many in this House will often hear a former judge deride a remedy by way of judicial review, and I am not deriding it—I am saying that it is not good enough, because a judicial review has limitations. It provides for an assessment of the process for correcting errors, but it is not, and never has been, a remedy that enables the merits, or otherwise, of a particular case and decision to be considered. In other words, it does not provide for a full appeal from the decision—rather a review of the way in which the decision was reached.

My argument is very simple: that simply will not do here. You cannot win a judicial review, and the grounds provided in the present Bill do not enable you to provide an argument based on this simple proposition that the decision was wrong—that's it—and it should. A step of this kind, which can lead to the destruction of a university, is so serious that the university should be entitled to go to the First-tier Tribunal with the simple argument, "This is not good enough. Your judgment is wrong. You have made a premature decision. You have made a decision that is too severe". None of those arguments is encapsulated in the present basis for appeal that is provided.

A university can argue that the decision was wrong in law, but that is not much of a concession, since being wrong in law is being wrong in law. It can argue that the decision was unreasonable, but unreasonable does not mean wrong. Two perfectly reasonable people can disagree. Both would be reasonable; neither would be unreasonable. To be unreasonable in the law—and I hope that I shall be excused for using this sort of language—you have to be able to show that the decision was batty, which is not quite what we have in mind here. As to the facts, that does not help very much, because what matters is the inference that you draw from the facts, and subsection (2)(c) of this clause, listing the present grounds, underlines how limited the basis of appeal would be.

The argument is that we are dealing with the issue of last resort—the final destruction of a university and an institution's ability to grant degrees—and we are saying that, at best, you are entitled to a judicial review. I speak of course in the context of the university, but it is just worth bearing in mind that we are also talking about something that affects the students at that university as well as the staff and those who have left that university, particularly those who have left it in the last few years, on whose CV there appears a first class honours degree from X failed university. From their point of view, it would be just as catastrophic as it would be for the university itself.

Finally, we must hope that these powers will never be used and that the issue will never arise for decision. If it does arise, it will be a very rare occasion. If what we are considering is an issue of this importance, which will, one hopes, occur only very rarely, we must make a proper remedy. I beg to move.

7 pm

Lord Brown of Eaton-under-Heywood: I will speak very briefly to lend support in as full a measure as I may to this proposed amendment. I echo everything that was said by the noble and learned Lord. The contrast between what is provided for in Clause 46(2) and what his amendment strives for—a full merits appeal—is as well illustrated in the language of Clause 46(2)(b) as in any other way, because for this purpose you have to show that the decision was "wrong in law". If the Bill had wanted to say that it was wrong in law or in fact—just wrong—it could have said so. That is what is now proposed. Judicial review is simply not a sufficient basis of appeal for decisions as fundamentally and crucially important to the future of the institution and those who are affected by it as is required.

Lord Mackay of Clashfern: My Lords, I support the amendment. As I understand the structure of the Bill, it restricts the appeal that a university or higher education provider would have to call in question the decision to destroy it. As my noble and learned friend Lord Judge said, destruction of a university involves a lot of people apart from the university, but it deals with the university in the most destructive way possible. Therefore, it seems to me that a full appeal is the least that could be expected. The jurisdiction is to a tribunal—a First-tier Tribunal—not to the High Court. My noble and learned friend's amendment accepts that but says that full examination of the merits must be allowed. The only way in which that can be done is to do what my noble and learned friend suggested. It is abundantly plain that this must be right.

Lord Marlesford (Con): My Lords, since the House has had the benefit of the views of three noble and learned Lords, I hope that the Minister will hasten to admit that this is a case of incompetent drafting and not waste further time on it.

Lord Stevenson of Balmacara: My Lords, they used to say that real tennis was the game of kings. I suspect that the game of Parliament is listening to noble and learned Lords tearing into a piece of badly drafted legislation. We have enjoyed that very much. I will add one point and make a concluding comment. Clause 46 is the first of two. I hope that the noble and learned Lord will accept that Amendment 123 to Clause 56 is consequential as it deals with exactly the same matter as Amendment 117. We do not wish to encourage noble Lords to repeat themselves—although that would be much more fun. Secondly, we were not able to sign up to this amendment because when it was tabled it was immediately snapped up by others. Therefore, we were not able to express our public opinion of it. However, should the noble and learned Lord wish to test the opinion of the House, we will support him.

Lord Young of Cookham: My Lords, looking at the names on this amendment, it is certainly a gold star amendment, to use the language of the OfS. When I looked at it, I was relieved to see that the name of my noble and learned friend Lord Mackay was not on it. Therefore, I was somewhat disappointed when he rose to his feet to lend his formidable support to the amendment.

I can see that these amendments stem from concerns that there need to be appropriate safeguards and checks on the OfS's powers under Clauses 43, 44 and 54. We fully agree and have listened to the concerns expressed in Committee. As a result, we have tabled two sets of amendments. First, there is Amendment 116 after Clause 44 and related amendments, which we have just discussed in an earlier debate. These ensure that the OfS must seek expert advice before granting degree-awarding powers or varying or revoking them on quality grounds. Secondly, there are amendments to Clauses 43, 44 and 54, which we have just debated in the group with Amendment 107. These amendments clearly set out the limited set of circumstances where the powers of revocation can be used, such as in cases of serious quality concerns. These further strengthen already very robust safeguards, including statutory processes guaranteeing providers the opportunity to make representations and a right of appeal. By the way, there is nothing in the Bill to prevent further appeals to higher courts.

Noble Lords also suggested in Committee an annual report on how the OfS exercises its powers of revocation under Clauses 43, 44 and 54. I accept that this is a good idea and would contribute to greater transparency. I can therefore tell noble Lords that in respect of each year where the OfS has made use of its powers to revoke degree-awarding powers or university title, we will ensure that a report be laid before Parliament that includes information on how the powers have been used.

Turning turn specifically to the amendment, the grounds for appeal in Clauses 46 and 56 have been carefully chosen and are largely based on what a judicial review would take into account. Despite the noble and learned Lord's disparaging remarks about judicial review, it is the way in which public bodies are held accountable. These are sensible and appropriate grounds which balance the need for a regulator to make robust and confident decisions using its unique expertise with the need to hold that regulator to account where it makes decisions that are not within the reasonable scope of its powers. The Bill as drafted achieves that balance.

An appeal can be brought on three grounds, as the noble and learned Lord outlined. The first is that the decision was based on an error of fact. This means that if the OfS based its decision on wrong or incomplete facts, it can be overturned by the tribunal. The second ground is that a decision was wrong in law. We have specified in our amendments, to which I referred a moment ago, exactly when the OfS can revoke degree-awarding powers and/or university title, and how it has to go about it. For example, if the OfS decided to take the step of revocation outside the circumstances we have now specified in the Bill, its decision could be overturned by the First-tier Tribunal. Likewise, Clauses 45 and 55 provide that the OfS must have regard to representations made. If it did not do so, this could amount to being wrong in law and would therefore be grounds for appeal. Lastly, an appeal can be brought on the grounds that the decision was unreasonable. A provider could appeal against the OfS on the basis that its decision was unreasonable, having regard to the facts of its case.

Those grounds for appeal are complemented by strong procedural safeguards, which, again, are clearly set out in the Bill. These ensure that any decision made by the OfS must be legally correct and factually accurate and reflect a reasonable judgment, the OfS having carefully considered the available facts and applied its expertise according to the law. That is a very high standard to which the Bill holds the OfS to account.

By contrast, there are real risks in taking the route mapped by these amendments. They propose a more general and much less clean-cut ground of appeal—namely, that an appeal may be brought when the decision of the OfS is "wrong", as explained by the noble and learned Lord. That is far less certain for the provider, for the regulator and indeed for the tribunal. It would also expand the range of cases that could go to appeal. What is "right" from one angle might always be seen as "wrong" from another. For example, will a provider that has its degree-awarding powers revoked on entirely justifiable grounds ever see that as anything other than "wrong"? Surely that provider should not have an automatic right of appeal, with all the delay, uncertainty and cost that that involves. The amendment would appear to allow that, as the balanced limitations of factual and legal accuracy and reasonableness would have been dispensed with.

Furthermore, the amendment would require the court to decide whether it agreed with the expert judgment reached by the OfS. Such an exercise would allow—indeed, it would require—a tribunal to put itself in the regulator's shoes and then substitute its judgment for that of the OfS. I have to ask whether that is really the right place for the tribunal to be—asserting expertise in higher education rather than, in a more focused way, looking at lawfulness, factual accuracy and reasonableness. I respectfully suggest that it is not. Changing the grounds of appeal in this way would risk creating a process whereby the tribunals, rather

than the OfS, regulated the HE sector. That is a powerful argument which noble Lords have so far not addressed.

I do not believe that the amendments are the right way to go—although they are well meant, I do not think they will take us in the right direction. Therefore, with respect, I ask the noble and learned Lord, Lord Judge, to withdraw his amendment.

Lord Hope of Craighead (CB): Is the noble Lord able, with the resources at his disposal, to give any examples of this formula being used in the case of other regulators? We are contemplating a process that challenges a decision taken by a regulator, so it would be helpful to know whether this is the normal pattern or whether the suggestion of the noble and learned Lord, Lord Judge, is the normal pattern.

Lord Young of Cookham: The noble and learned Lord qualified his question with the remark "with the resources at my disposal". The answer is that I do not have that answer at my disposal, but I will of course make inquiries and write to him.

Lord Judge: My Lords, we have just heard an utterly reasonable argument but, with great respect, it is wrong, and that is the issue the amendment is intended to address. Reasonable decisions may be wrong. Looking at this issue in depth, one hopes that the power will never have to be exercised. However, if it is, it will be an extraordinary power wielded by the OfS and it will not be open to the university in question to say, "We agree. All your facts are well set out but you have reached the wrong conclusion". That seems to be a ground of appeal that ought to be available.

We need not worry that amending the clause in the way we have respectfully suggested will lead to a huge torrent of cases. We hope that there will be no case at all but, if it arises, the straightforward way to go about it will be to say to the tribunal, "We are arguing that this was wrong". The tribunal is well able to assimilate the reasons why the OfS reached the decision it did, and will hear argument on behalf of the university. I propose to ask for the opinion of the House.

7.13 pm

Division on Amendment 117

Contents 185; Not-Contents 151.

Amendment 117 agreed.

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7.26 pm

Clause 47: Validation by authorised providers

Amendment 117A

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

117A: Clause 47, page 28, line 17, at end insert—

"(5A) The governing body of a provider involved in such commissioning arrangements may appeal to the First-tier Tribunal in respect of either the conditions specified by the OfS under section 47(2) or the validation arrangements made by the first provider (as defined in section 47(4)).

(5B) The grounds and procedures for any appeal made under (5A) are those specified in section 46."

Baroness Wolf of Dulwich: My Lords, I will not say that this is a tidying-up amendment, having been quite rightly told off about that, but it is meant to bring things into line and make sure that everyone in this emerging landscape of higher education is able to operate with confidence, knowing that if things are going wrong they have a route of appeal.

The amendment addresses validation, an area that Ministers are concerned about because they consider it to be fraught with problems for new providers. It is an area where new and innovative providers are encountering difficulties. There has been for a long time a difference of opinion about how major an issue this is. What the amendment sets out to do is state clearly that, if a commissioning arrangement involving the validation of a new provider by an existing provider goes wrong, there should be a means by which to appeal.

The Bill gives the OfS powers which, curiously enough, no one as far as I know has challenged during our long and slow progress. We seem to have had amendments to almost every clause, but not to this one. I think it is recognised that, if we are going to try to make it easier for good, new innovative providers to come in, there should be an active role for the Office for Students in that. It may wish to ensure that one provider can work with another institution, validate its degrees and help it to mature, and it has the power to do so. In the same way, there are existing powers for two institutions to get in touch with each other and go through validation. While I know that this is a major issue of concern for the Government, it is also true to say that the Competition and Markets Authority does not think that this is an area where there is a real problem with the market.

However, the relationship is not always easy, so the purpose of my amendment is simply to make sure that if things go wrong where a provider is involved in a commissioning arrangement of this sort, where one institution is the potential validator of degrees and another institution hopes to have its degrees validated

[Baroness Wolf of Dulwich]
if they are good enough, there is a clearly marked out route of appeal to the First-tier Tribunal. That is what this amendment sets out to introduce into the Bill. On that basis, I hope that the Government will see this as something which would ensure that everyone has a route of appeal and that they will consider it seriously. I beg to move.

7.30 pm

Lord Stevenson of Balmacara: I was expecting the noble and learned Lord, Lord Mackay, to speak to Amendment 118 in the group, if he wishes to do so.

Lord Mackay of Clashfern: My Lords, I did not understand why this provision is in the Bill. I was rather surprised when I first saw it, and when I raised the point at a meeting, those promoting the Bill seemed to be almost equally surprised. However, I have now found out exactly what it is for. It is intended to deal with situations where someone has gained a degree through various nefarious practices and that is discovered. Once you understand that, it is quite normal and certainly not unexpected that the same provision should apply to other arrangements. However, this is a special one for this particular situation. I am happy with the explanation and I shall not press my amendment.

Lord Stevenson of Balmacara: My Lords, given that elucidation, I shall say much the same thing but in different words in relation to Amendment 119.

My name was attached to Amendment 117A and I have listened carefully to the comments of the noble Baroness, Lady Wolf. It is an offer to the Government to tidy up an area that needs more attention.

I turn first to a letter we received by email today just before we got into the Chamber. The Minister may have something to say on this point which may resolve the issue. I am grateful to the noble Baroness for her support on Amendment 119. It was spoken to when we tried to link it to an earlier group of amendments in case, as has happened, the Bill was amended to reflect a situation where validation routes are twofold. One route involves working with another institution or provider for at least four years—some courses are longer than four years—and then applying for the powers at that time. The other route is by having a tougher assessment arrangement, which is done through the Quality Assessment Committee of the Office for Students and the designated body appointed in this area. In those circumstances, it does not seem necessary that there would be a requirement at any stage in the future for the OfS also to be a validator.

The amendment would remove the infelicitous possibility that the body which is now called a regulator, the Office for Students—I wish it had another name—would not only ensure that validation arrangements operated throughout the sector but would also be a validator and the regulator of those two processes. That does not seem appropriate. However, in the letter today there is an announcement, which I am foreshadowing, which deals with the fact that there will be a process of consultation on the precise way in which the OfS will provide a validation service. That seems to covers the point very well, so we will not press the amendment.

Lord Willetts: I am encouraged by what we have just heard from the noble Lord, Lord Stevenson. I think that there is a kind of logical structure here which the removal of Clause 48 would damage. We have currently a lively set of arrangements for validating degrees carried out by a range of universities. I was involved, for example, in supporting a programme to create a new higher education institution in Herefordshire. When it tried to find a validator, it had a queue of universities that wished to be the validator. We have a lively market at the moment, although there are concerns that it may not always cover every case and is not as open as it should be.

There is a proposal that it should be possible, if necessary, for the Office for Students to commission a validating body if it is concerned that validating is not being done properly. However, in cases where it has not been able to commission arrangements that ensure validation, in the last resort it may itself be the validator. The noble Lord, Lord Stevenson, is right that it is unusual for a regulator also to be the validator, but I hope we will hear from the Minister that the circumstances in which that became necessary are rather remote. Given what is already happening, one would expect either the current arrangements for validating to be satisfactory or for the OfS to be able to commission a body that will undertake validation.

The argument for Clause 48, which it is proposed should be deleted, is that it is the logical long stop in the event that it has not been possible to commission anyone else to carry out the arrangements. On the basis that it is unlikely the power will be necessary, but we can understand why it has to be held in reserve, I think Clause 48 is needed and the amendment to remove it would leave a potential gap in the system. I hope we will hear more on that from the Minister.

Baroness Wolf of Dulwich: My Lords, I agree with what the noble Lord, Lord Stevenson, has said and with his response to the letter, which is encouraging. I am particularly encouraged by the fact that there will be better consultation. Although I agree that we need a final long stop, what we have at the moment is that the regulator has to put itself on the register and then award degrees, and that could be addressed with a little more care.

Viscount Younger of Leckie: My Lords, we recognise that many validation arrangements are highly successful and beneficial to the institutions involved and to students. Validation will remain the chosen route to entry for many under the new regulatory framework. Under our reforms we plan to put in place an alternative route for high-quality providers to obtain DAPs without a track record, but this will not be the right route for everyone. We want providers to be able to choose the right option to meet their specific needs. It is therefore important that the validation services on offer are comprehensive and accessible to providers.

Unfortunately, this is not always the case at the moment, as Members of this House have recognised. In compiling his review of higher education funding, the noble Lord, Lord Browne, said he and his panel spoke to many organisations and found that in many instances 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. As the noble Baroness, Lady Garden, acknowledged, protectionist practices are sometimes adopted when it comes to current validation arrangements. This is why the Bill enables the OfS to take concrete steps aimed to improve validation services. Should this prove to be insufficient, the OfS may enter into commissioning arrangements with other providers.

The OfS cannot force registered higher education providers to enter into such commissioning arrangements. However, once a provider enters into the arrangements, the OfS could then require that provider, in line with the terms of the arrangement, to offer to validate. This is not unlike other arrangements where, for example, a party to a contract may require, in line with the terms of the contract, another party to do something. We in no way expect the OfS as part of this arrangement to require validation where the provider had legitimate concerns regarding the quality of provision. I cannot imagine a scenario where a provider would agree to such terms or where anyone would think it beneficial. Clause 3 sets out clear factors that the OfS must have regard to when exercising its functions, which include the promotion of quality.

The protections set out in Amendment 117A are therefore not required. Remedies for failing to act in accordance with the arrangements and for resolving disputes about them are expected to be provided for in the commissioning arrangements. Where they are not, other laws, such as the law of contract, may apply.

Turning to Clause 48 and Amendment 119, we anticipate that in the event that the OfS is still unable to address significant shortcomings in the validation market through other means, the Secretary of State may make regulations to allow the OfS to become the validator of last resort. I understand that there are still concerns about how this would work in practice and how the OfS would set up such a function. Let me help to this extent. Noble Lords may have received a letter I circulated today. I wish that this letter could have been circulated earlier. For very good reasons it was not able to be. To that extent, I apologise to the House.

I can confirm that, as part of the regulatory framework consultation, we will consult on how the OfS could best establish a validation service to ensure it is underpinned by the necessary expertise and that it is delivered in a way that prevents or effectively mitigates any conflicts of interest. This would enable the OfS to have a blueprint that has been stress tested with the sector through consultation and to be ready to act, subject to Secretary of State and parliamentary approval, as a validator of last resort should this become necessary. I stress that these regulations are subject to parliamentary scrutiny, so there will be an opportunity to scrutinise these powers. We expect the OfS to make a case to the Secretary of State as to why it is necessary for it to act as a validator of last resort, clearly setting out the nature and severity of the issues in the validation market.

There are further safeguards, in that the Secretary of State may attach conditions, such as ensuring that the service the OfS provides is underpinned by the necessary expertise and is sufficiently independent from its regulatory function, for example by being housed in a separate division. We have heard arguments that this would be unprecedented, but that is simply not true. For example, the Bank of England regulates many aspects of the financial sector to maintain financial stability in the UK, but in extremis will also act as the lender of last resort, or a market maker of last resort—that is, buying and selling assets such as government bonds to provide liquidity—at a time of financial stress.

There are also strong mechanisms in place to ensure that the quality of the OfS's validation provision is high. We would expect the OfS's advice to the Secretary of State to clearly set out how it will ensure its validation service is best in class. This could, for example, involve the OfS drawing on sector-recognised best practice principles, exemplar templates and processes. If the Secretary of State designates a body to fulfil the OfS's quality assessment function, I would also expect the OfS to draw on information from the designated quality body to help formulate its advice and recommendations to the Secretary of State, and to help inform how it can develop the capacity and reach of existing validation services while safeguarding the quality and standards of awards granted. These would be nominally in the OfS's name, but, importantly, would bear the overall branding of the institution being validated, which answers some of the questions that were raised. I hope that full explanation also answers the question my noble friend Lord Willetts asked about what "last resort" means.

Before I finish, I shall briefly address Amendment 118 and—without too much surprise, I hope—reassure my noble and learned friend Lord Mackay that Clause 48(6) replicates a standard provision relating to the awarding of degrees. These powers are simply designed to enable the degree-awarding body—in this case the OfS—to deprive students of their degree should this become necessary: for example, if it is discovered that it was wrongly obtained, such as through plagiarism.

Without Clause 48, the OfS would be left without adequate powers to ensure full and ongoing provision of good-quality validation services. As I said earlier, we will consult on how the OfS can best establish a validation service as part of the regulatory framework consultation, which will enable further input from the sector. With that explanation, I hope the noble Baroness will withdraw Amendment 117A.

Baroness Wolf of Dulwich: I thank the Minister very much for his words, which I have listened to with interest and optimism. On that basis I am very happy to withdraw the amendment.

Amendment 117A withdrawn.

Clause 48: Validation by the OfS

Amendments 118 and 119 not moved.

Amendment 119A

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

119A: After Clause 51, insert the following new Clause—

"Saving for right to grant degrees under the Ecclesiastical Licences Act 1533

Nothing done under this Part is to affect the right of the Archbishop of Canterbury, or any other person, by virtue of the Ecclesiastical Licences Act 1533 to grant a degree where the recipient is not required—

(a) to complete an appropriate course of study or an appropriate programme of supervised research, or

(b) to satisfy an appropriate examination, test or other assessment."

Amendment 119A agreed.

Clause 54: Revocation of authorisation to use "university" title

Amendments 120 to 122

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

120: Clause 54, page 34, line 34, at end insert—

"( ) The OfS may make an order under subsection (1) only if condition A, B or C is satisfied."

121: Clause 54, page 34, leave out line 35 and insert—

"( ) Condition A is satisfied if—"

122: Clause 54, page 34, line 41, at end insert—

"( ) Condition B is satisfied if, disregarding any transitional or saving provision made by an order under section 41 (1) or 44 (1)—

(a) the institution is neither authorised to grant taught awards nor authorised to grant research awards, or

(b) foundation degrees are the only degrees which the institution is authorised to grant.

( ) Condition C is satisfied if, due to a change in circumstances since the authorisation, consent or other approval was given, it appears to the OfS to be no longer appropriate for the institution to include the word "university" in its name."

Amendments 120 to 122 agreed.

Clause 56: Appeals against revocation of authorisation

Amendment 123

Moved by ***Lord Judge***

123: Clause 56, page 36, line 9, leave out from "appeal" to end of line 12 and insert "shall be on the grounds that the decision was wrong."

Amendment 123 agreed.

7.46 pm

Consideration on Report adjourned until not before 8.47 pm.

UK Exports

Question for Short Debate

7.47 pm

Asked by ***Viscount Waverley***

To ask Her Majesty's Government what strategy they have adopted to increase the United Kingdom's exports.

Baroness Buscombe (Con): My Lords, I remind all Back-Bench speakers that they have a three-minute limit.

Viscount Waverley (CB): My Lords, this Question encourages the Government to share their thoughts on this important subject. There will be other opportunities as we prepare for completion of the Brexit negotiations, but we need to start a process now to prepare for the time when we leave the European Union. I thank all noble Lords speaking this evening. Sensing contributions of an international nature, I will restrict my remarks more to the situation as I see it within our country.

I declare that I am the founder of SupplyFinder.com, a powerful multipurpose network of active business opportunities and information across 195 countries in 25 sectors and 11 languages. It is a comprehensive website, three years in development.

The United Kingdom is embarking on an ambitious new journey, for which we must prepare and manage carefully. Addressing the export promotion needs of our devolved regions and England will lead to employment growth and prosperity. Although a measure of uncertainty has been removed, many challenges remain. It therefore cannot be business as usual; rather, we must tackle these difficulties with clarity of vision, determination and renewed vigour.

We will succeed in increasing exports if we place increased emphasis on tolerance, respect and the well-being of all our people, all pulling together. Our country thrives in times of great adversity. We keep calm and carry on, stoically British.

Now the task is more nuanced. We must be outward-looking and positive as a nation, dispensing with negativity and adopting a can-do attitude. Not only are we called upon to be resilient, we also must be entrepreneurial, seeking and capitalising on every opportunity. Let us embrace the vital contribution of women in society and business. Let us relish our extraordinary multicultural diversity. These are the strengths that form the bedrock of our 21st century society, the pillars helping to define and unite us as a nation. "UK first, in a spirit of partnership with existing and new friends", should be our mantra.

An early question for Government is, "What do they consider to be their best role?". Government must share the burden and understand where their strengths lie to succeed in increasing exports. Should the Government fulfil a B2B role, or might it be better to outsource these activities and focus on B2G and, of course, G2G—Government to Government? Their core mission should be to strengthen links between private sector and public sector, creating the right environment to allow for the private sector to succeed as equal partners.

Taxpayer money can be better channelled through partnerships with the private sector. It is essential, however, that the Government support business confidence, particularly if there is any short-term economic downturn. The French and German Governments proactively support their exporters, while our UK private sector is often left to fend for itself. The primary responsibility is to create the right environment for the private sector to thrive. Would the Government consider incentives, such as tax breaks and allowances to support British exporters?

Government must enhance the business capabilities of the Civil Service and consider an urgent and transparent root-and-branch reform to meet the challenges of the future. In addition, Government must ensure that export finance is available where there is traction from our exporters to popular and even sometimes risky markets.

What are realistic levels of export values and numbers of new exporters? Indeed, how are we to measure success? Understanding this would help devise policy. The Government's recent Green Paper, *Building Our Industrial Strategy,* is a good starting point, a road map to reach a destination. Questions then arise: by whom, to where, and by when? Generally, there are insufficient data on which to gauge the efficiency of business support performance. Estimates of the current number of exporters vary widely. It needs to be decided whether manufacturing will regain its prominence, and if so, which aspects. This sector requires strategic thinking and clarity to address varying needs of airport expansion, energy generation and the future of the foundation industries that underpin manufacturing. Government should move more quickly and use this network to create access into new markets, helping with market intelligence and research, increasing awareness of business opportunities and enabling ease of access for SMEs. The Overseas Business Network initiative has so far delivered. The Prime Minister's trade envoys are excellent. Both should be recognised and supported further, particularly into new markets.

It is essential that all stakeholders are around the table and playing an active role. Business needs a simple and, ideally, a single route to advice and support. Digital routes exist, but business prefers to speak to a person. This is where multipliers, approved chambers of commerce and the trade association movement come into play. Their B2B contributions are a great strength. I think I am right in saying, however, that there is no single central list of trade associations in the UK. That needs to be resolved. Some will rightly ask, "What of funding? What of resources?". Solutions could be found. For example, part of the fees for each company registering with Companies House could be given to a nominated chamber and association. This would generate beneficial multipliers to improve services. Competition would dictate to which nominated multiplier these funds would go. Companies would attach themselves ideally to one chamber and one association. These B2B activities should then be marshalled to ensure maximum impact on opportunity.

Government should support more mini fast-in, fast-out missions as well as the big set pieces. They should insist that all applications for public funds, whether small business support grants or major infrastructure proposals, be weighted by the contribution each makes to the nation's exporting capability. They should develop a comprehensive package of trade missions over the next three years to introduce both new and experienced businesses to new markets and to generate new trade and project the positive GB message that we are an outward-looking nation reaping benefits from Brexit.

Sector trade also must be promoted by the creation of hubs manned principally by the private sector, centres of excellence, properly supported and funded to facilitate the needs of exporters. The UK has a comprehensive national and local network of chambers as well as an overseas network and is a trusted international brand that opens doors. These all need to be developed as vital resources. Figures suggest that in the past, one in five SMEs exported. Has that increased? Do the Government have a target level? Gone are the days when the world would come knocking. Business must get out into the field, understanding local culture and local rules.

The challenge is how to get them out there. Encouraging joint ventures or dependable partnerships would seem a useful way forward. There are plenty of initiatives in the offing, but we need to be innovative in our thinking, make things happen.

Yesterday I offered introductory remarks to the New Silk Road Forum. The Iranian ambassador gave a keynote speech. Opportunities abound for UK business interests, but we need to get a move on.

What might the UK reasonably expect to achieve in future trade agreements, and over what period of time? That is a general question which I will not develop this evening. I have focused on policy but time does not permit me to address FTAs, other than to wish the noble Baroness and the noble Lord, Lord Price, well.

I will say a very quick word about the events industry, an industry of paramount importance and one which requires support. It attracts 9 million visitors and, on average, 170 exhibitors for each show. Internationally, just 20 UK-based organisers create 1,049 events outside the UK. UK shows can be used to secure an international position for the UK. Challenges include the need to ease entry. Health and safety and data issues also require attention.

We are in a fast-moving world of differing geopolitical and geo-economic alliances. This is a call to action. We are on the starter blocks of a long journey, poised for the off. The prize: a successful global Britain, a critical link to an interconnected world, a vital hub for international commerce and increased exports. Let us make it happen.

7.58 pm

Lord Patten (Con): My Lords, every time that I get into our utterly dependable 1950 Series 1, Mark 1 Land Rover down in the West Country, I am reminded that its very construction and materials are the result of a post-war "Export or die" approach, for it is made of ex-aerospace-destined aluminium. Steel was reserved for only the most critical of exports, such as the Austin Atlantic for the United States. Exporting was critical

[Lord Patten]
then, but how much more so now when the current account deficit is the largest—at 5.4% of nominal GDP—since records began in 1948, when those very Land Rovers were being designed.

The Minister will be relieved to hear that I think that the Government are developing a correct strategy, starting with the UK being the world's most open market to inward investment, net of what we decide are truly strategic assets in the national interest, such as defence. I hope that we will never adopt the approach, for example, of the French, who stepped in to stop foreign investment in Danone, declaring its yoghurt to be a strategic national asset. Rather, our openness is critical for exporting, as the very flood of recent welcome investment from abroad will then in its turn generate much UK-based exporting abroad.

It is clear that Dr Fox and the DIT have constructed a good template for our strategy: 50 key countries, 200 key sectors and all the rest, with which I agree, although I would like to see some specific concentration on our relationships with the Commonwealth countries, about which my noble friend Lord Marland, who knows much more about these things, may later have some thoughts. Whatever, once embedded, these aims must be stayed with, be not tinkered with and be long term. This is because persistence pays. Years back, in the windows of the then DTI down the road in Victoria Street were plastered signs saying something like, "Exporting is fun". Well, it may be rewarding in the end and eventually enjoyable when things turn out well, but exporting is a slog, capital intensive, risky and grinding hard work, as networks are built up on the ground. To that point and to the suggestion from the noble Viscount that we need to regenerate the business views of so many in the Civil Service, I wonder whether the Minister shares my concern at the ever-accelerating roundabout of job hopping by civil servants at home and in our posts abroad. If exporting is a long-term business and it takes years to build relationships, we need to have people in post who are there for the same length of time and have the same staying power to help our people in what they try to do, rather than moving on.

The Department for International Trade says, "Let's make 2017 the year of exporting". It is really a decade of exporting that we need now. I ask my noble friend the Minister whether the Government have set a target for increasing the small 11% of UK businesses that export to a more realistic number by, let us say, 2025 and if so what that target is. This should be a target-driven business.

8.02 pm

Lord Haskel (Lab): My Lords, I agree with the noble Viscount, Lord Waverley, that, after Brexit, it will be more important than ever to get British business trading with the world. I join the British Chambers of Commerce in regretting that there was no new support for exporters in today's Budget.

The Government's current efforts to help exporters and deal with supply-chain problems deal largely with manufacturing, the more tangible part of our economy. But slowly and surely, it is the intangible part of our economy that has been growing and by some accounts now absorbs more investment than manufacturing. So I put it to the Minister that it is just as important to help our exports in knowledge and software, in know-how and data, in networks and branding, in aesthetic content, individually and in their many combinations—sometimes together with manufacturing—because this is the way international business is going.

The Starbucks franchise is an export as important as a tangible product, with its quality standards, systems, algorithms, branding and all the other things contained in the Starbucks franchise book.

In our economic data, these intangibles are lumped together with services. According to government data, we are a net exporter of services to the EU 27, with a surplus of €28.8 billion. But according to Eurostat, the EU 27 have a surplus of €30.1 billion on their exports of services to the UK. These figures are for 2015 from a paper published last month. Perhaps the Minister can tell us who is right, or are we just counting differently?

In their help to exporters, Ministers should recognise the growing importance of intangible exports and digital goods. If we are to help exporters in this sector, which is of growing importance for our export businesses, we really have to understand what is going on. Do not listen to just me: Sir Charles Bean made this point in his report to the Government on intangible investment. What will the Government do to help and understand this sector? As the noble Viscount said, we cannot just go on with business as usual. We have to move with the times.

8.05 pm

Lord Popat (Con): My Lords, I thank the noble Viscount, Lord Waverley, for securing this important and timely debate. Britain's trade deficit is the greatest economic challenge facing our country. For almost all the past four decades, we have run a trade deficit. Last year, it was around £40 billion. Put simply, we do not have enough exports to pay for imports and we have to borrow to finance this problem. We need to be very clear that it is unsustainable; any exports strategy must identify why the situation exists and how we can address those problems.

There are many causes that I would like to highlight, but time limits me to three specific issues. The first is productivity. Britain's productivity problem is well documented and means that we are inefficient and our exports more expensive. Business investment rates remain too low; our businesses are often not operating with the most up-to-date technology.

The second is complacency. For the past three years, I have been part of the judging panel for the Queen's awards for exports. We review hundreds of amazing applications, from businesses which have created what should be world-leading products. But they are not, because they limit themselves to our nearest trading partners. Too few of those companies are leading the charge in emerging markets, where we really need to be. We must be more outward-looking and ambitious.

The third issue is the lack of joined-up thinking between the public and private sectors on exports, which I have often seen in my role as the Prime Minister's trade envoy to Uganda and Rwanda. Those

companies which wish to export—despite my previous comments, I know that there are many—often look to government for support. Sometimes, I think they wish they had not bothered. We have many strategies and many organisations ready to help, but there are so many gaps between those organisations and departments that it is easy for companies to fall down the middle.

In the time I have left, I want to make three small suggestions on ways in which the Government can help improve our export performance. The first is further to expand UK Export Finance, as the noble Viscount, Lord Waverley, mentioned. Secondly, we need to increase the staffing of the Department for International Trade in overseas markets. In the two countries I cover, we have one permanent staff member for DIT, yet east Africa has huge potential for growth. Winning contracts in emerging markets means more taxes paid to the Exchequer; it will pay for itself. Finally, we have to change the mindset of both our leading companies and our SMEs towards exports and emerging markets. We must be outward-looking and start to think global.

These are only a few points on part of a much bigger issue, but I want to conclude with one important point: the demand for British goods and services abroad is absolutely huge. Establishing a market for our products is not the issue; it is the supply that is the problem. We simply must change that.

8.10 pm

Lord Marland (Con): My Lords, I, too, thank the noble Viscount for tabling this very important debate. In doing so I declare my interests, which are in the House of Lords register, and my role as chairman of the Commonwealth Enterprise and Investment Council. The answer to the exam question starts tomorrow, because tomorrow I play host to 35 trade Ministers from the Commonwealth here in the United Kingdom. There is no greater opportunity for the UK to engage in this. The UK Government have been slow to adopt and engage with this particular opportunity. In fairness to them, they are now coming in strong and being very supportive—but it has taken a lot of nudging. That is indicative of the problems that the Government face at the moment. I ask the noble Baroness when I am going to receive a response to my letter asking for a correction to the White Paper, where the Government take credit for organising this event, which I underline is organised by the Commonwealth, not the UK Government.

The Commonwealth includes one-third of the world's population, all speaking English, with the Queen as head of state. The Queen, through enormous efforts, with the royal family, has kept the thing alive, despite, in fairness, the UK Government—and I say this having been a Minister, the Prime Minister's trade envoy, and setting up the Prime Minister's trade envoy network, of which the noble Lord is a very valuable partner. Trade within the Commonwealth is projected to be £1 billion by 2020: it is proven that the Commonwealth factor means that it is 19% cheaper to do business inter-Commonwealth and this is such a great opportunity that it is actually a no-brainer for the United Kingdom to come, to work, to develop and to rebuild relationships with Commonwealth countries which it deserted when it went into the European Union.

I am very proud to be British; I have been a British businessman for most of my life and I still am. British businesses and British businesspeople are the foremost in the world. We have a great, intrepid spirit—we have always known how to export, as my noble friend Lord Patten said, and I am a great believer in it—but the fact is that we have lost our desire to export. We have been able, through a prosperous economy, to feed on our internal economy, so learning to export again will be a huge challenge. As the Minister will know, only 13% of UK companies export. That is an amazingly horrific figure for someone who thinks that we are part of an exporting nation.

Of course, it is not the Government's responsibility. The Government are there to enable, not to do the deals, so many of the points made by noble Lords this evening are about helping the Government to recognise the best ways and routes to market for business. I pick up on my noble friend Lord Patten's point that having someone in post for three years when trade is such a long-term endeavour is a complete waste of time. We have to tear up the scrapbook and start again. We have to get the CBI working, and to get all the other agencies that work for business helping to push this initiative further. I am confident about the future—I know we all are in this Chamber—but, as noble Lords have said, there are many pitfalls and we have to get the Government into gear to get the economy going.

8.13 pm

Baroness Lane-Fox of Soho (CB): I, too, thank the noble Viscount, Lord Waverley, for initiating this debate. I do not know him well but I already like him for having had the forethought to secure it on International Women's Day—and not only that but for having secured a stellar international female Minister to reply to the debate. I would like to tell noble Lords about some data that were released today from the ScaleUp Institute, of which I am a trustee, started by the indomitable Sherry Coutu.

There are 1,000 businesses run by women in this country that are fuelling the growth of the economy. Together, they are contributing £15 billion to our economy. They range in size and scale from £1 million to more than £100 million and they are what she and we at the institute term "scale-up businesses". I challenge the Government to pay more attention to these female-led businesses. In particular, helping them to export could be very easy, low-hanging fruit to quickly grow our markets.

Of the nearly 1,000 businesses that have been identified by the ScaleUp Institute in its work today, more than 870 have seen 30% growth year on year; 553 have seen 20% growth year on year; and 343 have seen 50% growth year on year. These are big numbers, all being driven across the country in many different sectors. Surprisingly, London is not the centre of these businesses: the Thames Valley and Buckinghamshire lead the way, followed closely by the Midlands, with London in third place. This is heartening when we hear so much about certainly my sector, the digital sector, coming from London only.

[Baroness Lane-Fox of Soho]

These are not just digital businesses, either. They are in leisure, hospitality, services, recruitment—even IT, I was surprised to see. So there is a huge opportunity to help these businesses grow: 84% of the CEOs said that they would like to be included on government trade missions and that exporting was one of their top three priorities. There is a huge amount that could be done if we could take the women away from their daily work, show them different markets and help them learn how to sell.

I have three quick suggestions. First, can the Government please include more women in their trade missions from this cohort which have been identified as high-growth businesses? Secondly, can we have better university courses for women to learn how to package their products and do trade deals? I mucked up many expansions at lastminute.com; it is difficult and it would very valuable if there were more rigorous university courses. Finally, could we have incentives for foreign investment into these female-led businesses, since they really are on the fast track to growth?

I feel enormously encouraged. I know there is a lot of doom and gloom, potentially, as we have this debate, but here is a set of 1,000 businesses growing at a rate of knots that want to be trading across the world. I know that the noble Lord has interests in Mongolia and across central Asia. I travelled there over six months in my gap year before university, ambling around being useless. Rather than encouraging more Marthas to go and be useless in Mongolia, let us encourage more women to do important trade deals with these important countries.

8.16 pm

Lord Sheikh (Con): My Lords, following our vote to leave the European Union we have a chance to redefine and build our trading relationships across the world. We must therefore be devising and implementing rigorous strategies to increase our exports to other countries. I draw attention to the UK's growing Islamic financial services industry and the opportunities it presents. Here, I declare an interest. I serve as co-chair of the All Party Parliamentary Group on Islamic Finance. I am also a voluntary patron of the Islamic Finance Council.

The UK has the largest Islamic finance industry outside the Muslim world, with assets now exceeding $20 billion. Worldwide, the industry is now worth more than $2 trillion. Last year, growth in the Islamic banking sector continued to outpace growth in conventional banking in systems where it had been established. Moody's Corporation also states that the sector has potential for further double-digit growth in the coming years.

Specifically in the UK, the industry has progressed significantly in recent years. In 2013, the World Islamic Economic Forum was held in London, the first time the conference had been held outside the Muslim world. The then Prime Minister, David Cameron, confirmed the issue of a sovereign sukuk for £200 million. He also announced the arrangement of student loans and start-up loans on a sharia-compliant basis. I commend the former Prime Minister for realising the potential of Islamic finance and for being proactive in pushing it forward. I hope that our current Prime Minister will do the same.

We are also the leading centre in the West for education relating to Islamic finance and training. We have universities that provide specialist courses. We have an increasing number of personnel qualified in Islamic finance, including highly-trained asset managers, insurance providers, accountants and lawyers. We should now be looking to export these services overseas. We can help establish Islamic finance in other countries that may wish to emulate our own success. We can also further develop markets in countries where Islamic finance already exists. As Islamic finance grows across the world, maintaining a powerful hand in it will offer us a gateway to many global markets and economies. We must harness our talent and expertise in Islamic finance and other industries and export it to the world.

Finally, we must consider providing sharia-compliant export finance. The expansion of export finance facilities is important, as was mentioned by the noble Viscount, Lord Waverley, and my noble friend Lord Popat.

8.20 pm

Lord Bilimoria (CB): My Lords, the Prime Minister said that, when it comes to Brexit,

"no deal is better than a bad deal".

In 2015, before the European Union referendum, the UK recorded the largest current account deficit as a percentage of GDP among the G7 economies. Yet in 2015 UK exports grew faster than world exports for the first time since 2006.

When we talk about exports, we need to look at investment as well. About 45% of the UK's investment abroad is in Europe, with around 35% of holdings in the Americas. Just over half of investment into the UK comes from Europe, while 33% comes from the Americas. The EU accounts for 45% of our exports and 53% of our imports. We have a trade deficit with the EU and a surplus with the rest of the world: 55% of our exports are non-EU. But overall, of course, we have a deficit as a country.

My own business, Cobra Beer, a joint venture with Molson Coors, exports to every European Union country, and we import from Belgium as well. More than £500 million-worth of beer was exported from the UK in 2016, making British beer the UK's third most valuable food and drink export. But 63% of those exports go to the European Union, which is why the BBPA said:

"Continuing tariff-free access to our biggest market is essential as we leave the European Union".

Recently, the European Union Committee produced a report titled *Brexit: The Options for Trade*. I thank the noble Viscount, Lord Waverley, for initiating this debate. In that report the committee said:

"While a FTA provides the greatest flexibility in securing a bespoke deal … we see no evidence that trade on terms equivalent to full membership of the Single Market … could be achieved. We do not think it will be possible to negotiate a comprehensive UK-EU FTA within two years".

Does the Minister agree that this will be very difficult for us? The price of trading in the EU on World Trade

Organization rules—the alternative to a deal on a new EU FTA—is giant: as high as £58 billion, according to the Institute for Fiscal Studies. Does the Minister agree with that?

To pursue an independent trade policy will be difficult, and yet UK trade as a share of GDP has been increasing continually since 1940. It is now 60%. The UK has always been a powerful advocate for free trade within the EU. If you look at exports of UK goods and services, the vast majority of the top 10 client countries are in the EU. We are also a very attractive inward investment destination—the third highest in the world. I ask the Minister: how is the new Department for International Trade different from UK Trade & Investment, with which I worked very closely as the founding chairman of the UK India Business Council?

We hear the rhetoric from the Secretary of State, Liam Fox, that we will lead the charge towards a world of open and fair trade, so let us rise to this challenge—a golden opportunity as never before. I have worked with the GREAT campaign. Will the Minister confirm that it is an excellent initiative? I have worked very closely with our high commissions and embassies around the world and they need to be applauded and our businesses need to use them much more than they do.

It is not about just goods and services. When it comes to trade, it is about movement of people. International students bring in £25 billion to the economy. They are important. Our immigration rules are important, hand in hand with our trade.

Finally, today we have had the Budget. To my knowledge there is not one mention of the word "exports"—but they are crucial to our economy.

8.24 pm

The Earl of Dundee (Con): My Lords, I join others in congratulating the noble Viscount, Lord Waverley, on securing this debate. In my remarks on UK exports and a strategy for increasing them, I will touch briefly on three aspects relating to British cities: first, their current level of success, for any future trade deal with the EU must aim to preserve and raise this standard; secondly, the actions that the Government should now take further to strengthen the commercial muscle of our cities; and, thirdly, within Europe yet irrespective of the EU, the potential of certain useful and available methods and facilities for enhancing trade and exports.

British cities export three times as much to the EU as they do to the US and 10 times as much as they do to China. In 61 out of 62 cities, the EU is the largest market. Exeter heads the list. It sends 70% of its goods and services exports across the channel. So while it is right to be ambitious about expanding trade with other countries, does my noble friend the Minister agree that as we leave the single market the absolute number one priority arising from a new trade deal with the EU is to consolidate and build upon these current results and achievements?

To strengthen commercial abilities in the first place, there are a number of actions that the Government can now take. The key issue is skills. Clearly, an insufficiency will deter foreign investment. Already across the UK there is much divergence. In Exeter just 1.5% of people have no formal qualification, yet in Birmingham as many as 16.5 % do not. Nor do UK cities fare well against their European neighbours: only six of them manage to outperform the European city average in terms of low-skilled people in their economies. To reverse these deficiencies, does my noble friend concur that several government responses are now called for, including more-targeted endeavours to improve numeracy and literacy, particularly in schools in underachieving places; policies to redress the present shortage of qualified maths and science teachers; and guidelines for new metro mayors—some of whom are elected this May—for improving adult skills in their areas?

City centres themselves, particularly in the north, often deter foreign investment as well. Does my noble friend consider that funds should be allocated accordingly, partially from the £23 billion productivity fund for city centres announced by the Chancellor last year?

Also, so that transport gets better inside cities, and following this year's buses Bill, is she in favour of reregulating bus services? The effect of this is not as high profile as more grandiose transport projects; nor is it expensive; yet it is likely to help the performance of cities rather more.

Then on city business rates, can she give an assurance that the revaluation of commercial property, which determines how much tax is paid, will in future be done on an annual or a biannual basis?

Finally, we may take heart from the new approach adopted and evidenced in recent years by both UK and European cities. For there is now a wider perception of "trade" and a feeling that people-to-people links best lay the foundations for mutual economic growth at local, regional and city level. This welcome development is supported by the Council of Europe, in whose parliamentary assembly I have the honour to serve, and by its Intercultural Cities programme. If my noble friend considers that this programme may as yet not be sufficiently known about, will her department be able to draw it to the attention of relevant parties which can then choose to benefit from it?

In summary, there is a hopeful prospect ahead, provided that, with quite some determination, threads such as these are properly identified and pulled together. As outlined, they include: necessary government measures to promote city exports; beyond the EU, making use of various other European opportunities and interventions; then, not least, an EU trade deal which ensures that current levels of exports are preserved and raised.

8.28 pm

Baroness Northover (LD): My Lords, I thank noble Lords for allowing me to speak in the gap. Like the noble Lord, Lord Popat, I am delighted to serve as a trade envoy, in my case to Angola. I pay tribute to the noble Lord, Lord Marland, who devised the trade envoy network. It is needed now more than ever.

Unlike Ministers, trade envoys can focus solely on their respective countries. They can build relationships with businesses and ministries there and here. This is

[Baroness Northover]
illustrated by the case of Angola. Angola is an oil-rich country, where BP and the Aberdeen supply chain have major interests. But as oil prices have dropped and reserves are diminishing, Angola, like so many oil-rich countries, is seeking to diversify. It has huge needs in infrastructure and services and enormous potential in hydropower, agriculture and minerals. All are areas in which British businesses have expertise.

UK Export Finance is helping to underpin UK involvement in Angola, as elsewhere. As a result of its involvement in the hydropower sector, a Scottish company which thus far has not worked outside the UK will, in conjunction with a global Spanish company, begin to work and expand in a far different market. There is also our world-class education sector. The Royal Agricultural University is helping Angola's agribusiness potential. While in Angola, I was able to flag opportunities at the business school at Oxford. I am now about to meet the 11 Angolan students who will, as a direct result, be coming here this year.

As the United Kingdom looks to develop its long-term trade with some of the new and emerging markets, we can and must help to link British business with possibilities in these markets. The trade envoys can help.

8.30 pm

Lord Mendelsohn (Lab): My Lords, I thank the noble Viscount, Lord Waverley, for introducing this debate.

I also use this opportunity to pay tribute to the noble Lord, Lord Marland, who did an excellent job of bringing together and galvanising the Commonwealth's Trade Ministers. I join him in urging the Government to clarify as quickly as possible that it was not the Government who organised this but the Commonwealth, with whose nations we have a special relationship. As the president of the Commonwealth Jewish Council, I think it is important that our best relationship with that modern, free association of nations is one where they do not believe that we still feel we have a special sense of ownership.

I would like to focus on the export side of the trade debate. Exports account for 30% of Britain's economy, but our export performance lags behind. We have an annual value of around £500 billion, generated by 223,000 companies, and while the proportion of our companies exporting is comparable with Germany and France our performance on exporting goods lags behind.

I was very interested to read in the last edition of the *Sunday Times* about its excellent small and medium-sized export 100 list. There was an interesting section where it said:

"The number of companies focusing their efforts on customers in Europe has edged up to 85 companies, from 80 last year. More of the companies, 77 versus 71, are also targeting North America, with Asia seeing a decline as a main market, from 45 companies to 37".

So our fastest-growing SMEs are focusing exporting on Europe and America, and interest in the Far East is declining. That is a very worrying sign.

A recent study also suggested that, based on past experience, around half of those exporting today might be expected to quit exporting within six years. We are looking for an additional 100,000 companies to be exporting by 2020, but I suggest that if we found ways to support those thinking of quitting exporting, we might get some easy wins.

I join the noble Lords, Lord Haskel and Lord Bilimoria, in regretting that the Budget did not have a single measure of support for exports.

I regret that the noble Viscount, Lord Waverley, had to introduce this debate as it is of such importance that it should have been introduced by a Minister. When the noble Lord, Lord Maude of Horsham, took on his post, he introduced an important debate in this House, which I thought produced a fair degree of consensus and a lot of support. It rested on four pillars, and I would like the Minister to give us some sense of where we stand now, because it was a good strategy for trying to change things.

The first of its pillars was about turbocharging the EU trade agenda by making sure that we implement swiftly the trade agreements that exist. Where do we stand on those currently?

Another was about galvanising across Government, not just UKTI and UK Export Finance. The whole of Government needed to be mobilised, not just the glacial progress that we have with the Foreign and Commonwealth Office, and all home departments should engage with business sectors to be involved in this. Where are we on this? Has the Department for International Trade, in which exports are a pillar, helped or hindered and what progress has been made?

Another tried to focus on first-time exporters and there was money applied to them. How much progress has been made there?

The noble Lord also made an interesting point about innovation. He pointed to the UK-Israel Tech Hub, which is an important example of bringing together potential partners to look at investment or the potential of exports. Israel, a very small nation, has been able to globalise its trade principally by using American companies. Will we use that as a template to create joint ventures where we can use Britain's scale to attack other markets, using the high technology in other places?

This is an essential debate and I worry that our performance has been poor. If we do what we have always done, we will get what we have always got. Now is the time to make a significant change and I would like to see the Government coming forward with a serious change strategy.

8.34 pm

Baroness Mobarik (Con): My Lords, I begin by saying how much I have enjoyed today's debate. The depth, breadth and scope of the speeches really reflects the wealth of experience in your Lordships' House. This is exactly the kind of broad and creative thinking that the Government are encouraging to inform our strategy as we move forward. It is a pleasure to respond on behalf of the Government. I thank noble Lords for the valuable, valid and powerful points that they have made this evening. I especially thank the noble Viscount, Lord Waverley, for posing this Question for Short Debate and for his views. It is clear that noble Lords recognise the great importance of global trade, as do

Her Majesty's Government. With this in mind, I would like to set out the Government's strategic vision and address the points raised during this debate.

The Department for International Trade provides market access, support and advice to UK business, both in the UK and abroad. We engage with key trade partners in order to build on our trade relationships and improve the policy environment for international trade and investment. Through the GREAT Britain campaign, we build a global appetite for British goods and services and encourage more people to visit, study, invest in and do business with the UK. There are two parts to the Government's strategy to support UK exports. The first is to increase the value of the UK's exports. We identify the markets and sectors where intervention by government and financial support are vital in helping UK firms to supply the largest projects around the world. This ensures that government resources are concentrated on high-value areas.

The second element of our strategy is to increase the number of businesses fulfilling their exporting potential. Our suite of support for potential and existing exporters is spearheaded by our award-winning Exporting is GREAT digital platform. We also provide exporters with financial support through UK Export Finance, and work is currently under way to make UKEF services even more accessible. The noble Viscount, Lord Waverley, referred to the importance of export finance. Since 2011, UK Export Finance has provided a total of £18.8 billion of support to exporters. Measures announced in the Autumn Statement 2016 included the doubling of UKEF's total risk appetite to £5 billion.

The noble Viscount, Lord Waverley, also asked what role the Government should be playing in promoting exports. The Department for International Trade provides support that is designed to complement rather than crowd the private sector and is targeted where government can add most value. We identify the markets and sectors that present the greatest export opportunities, which allows us to focus our efforts on a number of high-value areas, known as high-value campaigns, to achieve maximum impact and success. For example, in our Kazakhstan programme, we have facilitated 51 local partnerships and helped UK companies win contracts worth more than £6 billion since 2011-12.

Our support is tailored according to where a business is at in its exporting journey. For smaller businesses that are not yet exporting, we provide trusted country guides that help them understand the market from the get-go and ensure that they enter a market in which they have the potential to succeed. We also support trade missions that give businesses a view into a chosen market before they commit to export. We use our extensive network and comprehensive in-market presence to help open the door while leveraging our HMG brand. Finally, we use our Government-to-Government relationships to help bring down structural trade barriers such as regulation.

My noble friend Lord Patten and the noble Viscount, Lord Waverley, remarked that we need to be ambitious in our targets and drive to get more businesses exporting. Our flagship digital platform—GREAT.GOV.UK—helps businesses access a range of digital tools so they can access the support that is right for them. Launched in November 2016, the website gives UK businesses access to millions of pounds-worth of potential overseas business to help them start or continue exporting. It also provides a new, searchable directory to match businesses with worldwide demand for UK goods and services. Since November, the Find a Buyer service has attracted almost 2,000 export-ready UK companies to sign up and start promoting their products to businesses across the world. Global investors can also find UK suppliers by accessing the international-facing side of GREAT.GOV.UK. The site offers practical advice to potential investors, and the pages have been translated into Chinese, German, Japanese, Spanish and Portuguese, with Arabic to launch later this month.

Finally, we have launched the selling online overseas tool, which helps match UK businesses with the right global online marketplace for their products and services. DIT is currently working with 39 of the top global e-marketplaces, such as Amazon and Alibaba, to give UK businesses access to a potential audience of 2 billion consumers. Preferential deals exclusive to clients referred by DIT have been negotiated by government with a number of these e-marketplaces, making the UK one of the easiest and best places from which to sell goods online.

Alongside our work to support British businesses to export, we will continue to be a champion of free trade. Inside the EU, the UK is one of the strongest advocates of free trade. Outside the EU, we will continue to be one of the strongest voices worldwide for free and open trade. My noble friend Lord Marland spoke of the importance of Commonwealth trading links. Later this week, DIT Ministers will meet their counterparts at the Commonwealth Trade Ministers' meeting in London to discuss how we can best achieve continuity in our trading relationships once the UK leaves the EU, when we will have our own independent trade policy. I take this opportunity to pay tribute to noble Lords who have served as trade envoys, including my noble friend Lord Marland, for all the work that they do. In time, we will negotiate free trade agreements that will lower barriers to trade and create vital opportunities for UK businesses. We are keen to seize the opportunities that leaving the EU will present—as are many of our international partners who recognise the attractiveness of doing business with the UK.

I thank all noble Lords for their contributions over the course of this debate. In particular, I take note of its positive tone and of the phraseology of the noble Viscount, Lord Waverley: "can do", "all pulling together" and "call to action". That is exactly what we need as we move forward.

I will pick up a few more points. The noble Viscount, Lord Waverley, raised the importance and success of the trade envoy network. I am pleased to say that, as of March this year, trade envoys have made 44 visits to 31 markets of the kind he mentioned, including Turkmenistan and Azerbaijan. The noble Viscount was right to raise the issue of adequate data. The Department for International Trade is working with HMRC to ensure that we have the most robust data when it comes to identifying companies that are exporting and how we can target support effectively.

My noble friend Lord Patten is right that success is reliant on having the right talent in building relationships with business so that more can thrive in the global

[Baroness Mobarik]
marketplace. The DIT is focused on continuing to hire, and keep, the brightest and best from Whitehall and the private sector.

As the noble Baroness, Lady Lane-Fox, pointed out, it is right on International Women's Day that the Government are focused on ensuring that we have a trade policy and export support that allow all people to benefit. As for small businesses, last year, 92% of the companies that DIT supported were SMEs.

The noble Lord, Lord Bilimoria, made a point about the GREAT campaign. I, too, recognise the fantastic success of the project: through the Exporting is GREAT campaign, more than 20,000 responses have been registered to export opportunities published online since November 2016. The noble Lord, Lord Bilimoria, made some other valid points. The Government believe that it is in everybody's interests to arrive at a mutually beneficial deal. We are a great global nation with much to offer Europe and the world.

My noble friend Lord Dundee mentioned the importance of skills. I am pleased to point to the measures announced in today's Budget on investment in England's technical education to ensure that our companies have the talent to compete on the global stage, including the new T-levels.

I am aware that perhaps I have not been able to respond to all your Lordships' points in full. If that is the case, I will write where required. The expertise of noble Lords will be invaluable to the Government on this important issue.

Lord Marland: I am sorry to interrupt my noble friend but she has not touched on my question about when the Government are going to respond to my letter about removing the error in the White Paper. I would be very grateful, if she is going to write to me, if we could get the letter this week, because the acknowledgement has been outstanding for some time and it is quite embarrassing for the Commonwealth, as the noble Lord, Lord Mendelsohn, quite correctly enunciated.

Baroness Mobarik: I fully take that on board. As I have said, there may be outstanding questions. I absolutely accept the question put by my noble friend Lord Marland and will definitely take it back and write in due course. I am sure that your Lordships' House will continue to play an invaluable role in informing the Government on this crucial and important subject as we go forward.

Higher Education and Research Bill

Report (2nd Day) (Continued)

8.48 pm

Schedule 5: Powers of entry and search etc

Amendment 124

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

124: Schedule 5, page 89, line 22, at end insert—

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

Lord Watson of Invergowrie (Lab): My Lords, the amendment standing in the name of my noble friend Lord Stevenson is really a probing amendment, designed to ask the Minister why we have Schedule 5 and why we need it. We have more than five pages on powers of entry and search, from the power to issue search warrants to those of inspecting, copying, seizing and retaining items. It all sounds terribly dramatic, and the reasons for it are not at all clear. Such a power was not in the 1992 Act and has never, as far as we or those connected with the higher education sector are aware, been necessary before. Perhaps the Minister can say whether there are problems that we are not aware of which are so serious that they demand a schedule all to themselves.

When it comes to Schedule 5, the Explanatory Notes refer us to the commentary on Clause 56. That does not enlighten us all that much, although it goes into slightly more detail:

"The warrant may permit or require a constable to accompany an authorised person and that constable may use reasonable force if necessary".

That all sounds as though something serious is envisaged by the Government. Three-quarters of the Technical and Further Education Bill currently before your Lordships' House is taken up with insolvency procedures—something that the Government do not envisage happening other than in extremely rare circumstances. Perhaps the Minister will say the same about Schedule 5. We certainly hope so, because we do not want these powers to be used at all, but certainly only sparingly. If entry and search is deemed to be required, it should happen only after a serious breach of a registration condition is suspected. That is why we set out fraud or serious or wilful mismanagement of public funds as conditions that must be met. Short of that, the vague conditions of the schedule do not meet the test. Can the Minister explain why this is necessary and in what situations he envisages where it might be necessary? I beg to move.

Lord Young of Cookham (Con): My Lords, I am grateful to the noble Lord for the way that he posed his questions as to why we need these powers, and I agree that we hope that they will be used rarely. We are revisiting a debate that we had in Committee, and I am grateful to those who participated in that debate, particularly my noble and learned friend Lord Mackay.

In the light of the debate that we had in Committee, we have carefully reflected on the schedule, but remain of the view that it should stand as drafted. This will ensure that the Office for Students and the Secretary of State are able to investigate effectively if there are grounds to suspect serious breaches of funding or registration conditions at a higher education provider.

The proposed amendments would narrow these powers so they could be used only where there are suspicions of fraud, or serious or wilful mismanagement of public funds. We believe that most, but not all, cases where these powers would be used would fall into that category. However, narrowing the powers in the way proposed could affect our ability to investigate effectively certain cases where value for public money, quality, and the student interest was at risk, but where

these might not clearly constitute fraud, or serious or wilful mismanagement of public funds at the time of the application for the warrant.

Higher education providers will be subject to OfS registration conditions. As an example, the OfS could put in place a condition to limit the number of students a provider with high drop-out and low qualification rates was able to recruit: for instance if the OfS considered that those performance issues are related to the provider recruiting more students than it can properly cater for.

Lord Watson of Invergowrie: My Lords, I hear what the Minister says. He is talking about low-qualification and high drop-out rates. Could it be that we have never needed this power until now because of the present university architecture, but given the expectation that there will be new arrivals on the scene, the Government are implicitly saying that they foresee dangers in future that have not been considered a threat hitherto?

Lord Young of Cookham: I will come in a moment to why at present there is not provision for these types of institutions, where there is for every other, and I hope that that may answer the noble Lord's question.

I was explaining that a breach of such a condition may not clearly constitute wilful mismanagement of public money if the provider was using the tuition fees in line with their purpose—the provision of a designated higher education course to an eligible student. However, there is a significant risk that value for public money, quality of provision and the students' experience will be seriously negatively affected. If the OfS has grounds to suspect that the provider is in any case undertaking an aggressive student enrolment campaign, it is important that evidence can be found swiftly to confirm this, and to prevent over-recruitment.

If the amendment were made, a warrant to enter and search may not be granted in cases such as that. The amendments would also amend the powers so that the search warrant must state that all the requirements for grant of the warrant specified in Schedule 5 have been met. My noble friend Lord Younger wrote to Peers at Committee stage to clarify that it is not usual practice within powers of entry provisions for the magistrate to certify that conditions for grant of the warrant have been met, and we are not aware of any examples of this.

Schedule 5 sets out the conditions that must be met for a warrant to be granted, and we have full confidence that this constitutes a strong and sufficient safeguard to ensure a warrant would be granted only where necessary. This is a standard approach used in existing legislative provisions relating to search warrants and powers of entry. Examples from recent legislation include the powers to enter and search within Section 39 of the Psychoactive Substances Act 2016 and the powers to enter within Schedule 5 to the Consumer Rights Act 2015.

To be clear, a requirement to state that conditions have been met would not provide an extra legal safeguard. The requirement for these conditions to be met already exists in the schedule as drafted. There are strong safeguards in place to ensure these powers are used appropriately—and, I hope, rarely. A magistrate would need to be satisfied that four tests were met before granting a warrant: that reasonable grounds existed for suspecting a breach of a condition of funding or registration; that the suspected breach was sufficiently serious to justify entering the premises; that entry to the premises was necessary to determine whether the breach was taking place; and that permission to enter would be refused or else requesting entry would frustrate the purpose of entry.

These criteria will ensure that the exercise of the power is appropriately limited. Further limitations are built into Schedule 5, including that entry must be at a reasonable hour and the premises may be searched only to the extent that is reasonably required to determine whether there is or has been a breach. Powers of entry, such as these, already exist for a wide variety of other types of education. Ofsted has inspection powers in respect of schools, colleges, initial teacher training, work-based learning and skills training, adult and community learning and education and training in prisons.

Local authorities have powers to enter the premises of maintained schools. Regulators of qualification awarding bodies also have powers of entry. So, to answer the noble Lord's question, currently HE providers are an exception as neither the Department for Education nor the Higher Education Funding Council for England has a statutory right to enter an HE provider if serious wrongdoing is suspected. To that extent, we are bringing these institutions into line with other institutions in education, and indeed other fields. I therefore ask the noble Lord to withdraw this amendment, against the background of the reasons I have given for the schedule remaining as it is at the moment.

Lord Watson of Invergowrie: I thank the noble Lord for that, but I have to say that I am even less reassured than I was before moving the amendment. The Minister mentioned, as I did earlier, low qualification levels and high drop-out levels, and he then went on to talk about aggressive student enrolment campaigns. That conjures up images of press gangs going round the bars in ports and people being carried off, never to be seen again—or, in this case, to be seen again in a new higher education institution near you. It is a rather bizarre concept that I cannot quite picture in my mind.

The question is basically, "Why now and why not in the past?". As far as anyone is aware, and the Minister has not suggested it, there has been no lacuna. The Minister said he is bringing this sector into line with parts of other education sectors. I do not know the detail on that, but my basic question is: where did the demand come from? Five pages in a schedule does not exactly suggest a tidying-up exercise, if we are allowed to use that phrase. It seems rather odd. However, I shall leave it at that. It does seem rather odd but in the circumstances, none the less, I beg leave to withdraw the amendment.

Amendment 124 withdrawn.

Amendment 125

Moved by ***Lord Mackay of Clashfern***

125: Schedule 5, page 90, line 15, at end insert "and that all the requirements for the grant specified in this Schedule are met,"

Lord Mackay of Clashfern (Con): The amendment arises out of an observation I made when this schedule was considered in Committee. I think it was the noble Baroness, Lady Brown, who said that this was quite a serious matter.

Viscount Younger of Leckie (Con): I am sorry to interrupt my noble and learned friend but I believe that the amendment is within the group we have just concluded.

Lord Lucas (Con): My Lords, I believe that my noble and learned friend has the right to speak to any amendment in its place in the Marshalled List.

9 pm

Lord Mackay of Clashfern: I think that that is certainly so; my understanding of time and practice here suggests that it is. Perhaps I may continue.

The noble Baroness, Lady Brown, made the point that the noble Lord was making on the previous amendment: that this is really rather novel. You can imagine the effect on a higher education provider if it appeared in the newspaper that, the night before, a search warrant had been issued for its headquarters. In answer to that, my noble friend Lord Younger of Leckie said that the conditions are very strict, and he read out the fairly detailed conditions. I thought it might be a simple safeguard to require a signature to say that these conditions had been met. I got a letter the day after that suggesting that this was an unheard of stipulation. As you can imagine, that slightly worked me up to see what I could do about it.

The provisions say that a search warrant must specify the name of the authorised person who applied for it and so on, and,

"state that it is issued under this Schedule".

That is a fairly important provision. It occurred to me that all one had to do was add after that the following simple words,

"and that all the requirements for the grant specified in this Schedule are met".

That seems very straightforward and easy.

Look at how these magistrate's search warrants are granted. One must remember that where the conditions in a particular provision are important, the magistrate may not have in his head exactly what the conditions are. Therefore, I suggest that this amendment is a rather easy and convenient way of making sure that the magistrate's attention is directed to the detailed requirements of the schedule, which have to be met before the warrant can be granted. That seems very straightforward and I cannot see anything wrong with it. So far, I have not heard any reason why it would not work. Therefore, I beg to move this amendment.

Lord Young of Cookham: My Lords, might I respond to the points that my noble and learned friend has raised? In so doing, perhaps I will respond very briefly to the point made by the noble Lord, Lord Watson, in concluding the previous debate about why these powers were necessary and where the demands came from.

As I said, at present, neither HEFCE nor the Secretary of State has the statutory right to enter a HE provider to investigate if serious wrongdoing is suspected. This compromises investigators' ability to obtain evidence of what may have happened and makes it harder to tackle rogue providers.

In its 2014 report on alternative providers, the National Audit Office said that the department has no rights of access to providers and that this affects the extent to which it can investigate currently. Therefore, we believe that these powers are needed to safeguard the interests of students and the taxpayer and to protect the reputation of the sector.

I apologise to my noble and learned friend, but I tried to address Amendment 125 when I—

Lord Watson of Invergowrie: I thank the noble Lord for giving way. I appreciate that he is taking the opportunity to clarify that last point, but to some extent he has stirred the pot again. He is talking now about rogue providers. My point was that, up until now, we have not been aware of rogue providers. There is clearly a fear that in the not too distant future there will be rogue providers, and that surely is a bigger issue than the question of having five pages in Schedule 5 to deal with them.

Lord Young of Cookham: No, the provisions are not required for the reasons that the noble Lord has suggested but because we believe they are necessary for the current institutions and in the light of the NAO report, which was written before these new providers came on to the scene. The department has no right of access to the providers. This affects the extent to which it can investigate currently rather than in future.

I turn to my noble and learned friend. I am not sure that I can usefully add to what I said earlier. I would not of course challenge for a moment what he said about practice in the judiciary. My understanding is that it is not usual practice within powers of entry provision for the magistrate to sign a certification document, and we are still unaware of any examples of this. The relevant clause in the Bill, as I think I said a moment ago, sets out the considerations that magistrates would have to take into account when making their judicial decision to grant a warrant, and we have full confidence that this constitutes a sufficient safeguard to ensure that a warrant will be granted only where necessary. For that reason, we are not persuaded that his amendment, in saying that it would have to be signed, constitutes an extra safeguard to ensure that a warrant would be granted only where necessary. I hope that, against that background, my noble and learned friend will feel that he does not have to press his amendment.

Lord Mackay of Clashfern: I am very sorry, but it strikes me as absolutely essential that the warrant be signed. I do not think that there is any question but that the magistrate has to sign the warrant. Given that the warrant has to contain a statement that it is under the schedule—in other words, the magistrate has to

say that it is under the schedule—it is only common sense. There are special conditions here, which my noble friend relied on as justifying the proposition that they should have this provision, in spite of what the noble Baroness, Lady Brown, said about how detrimental it might be to a higher education provider. I am not disputing the need for the warrant at all; all that I am suggesting is that it would be a very important safeguard that magistrates' attention would be drawn specifically to these quite elaborate conditions. They are quite detailed, and I do not think that it is likely that a magistrate will have them in his head, or her head, as they approach the grant of a warrant, when whoever it is comes along and applies for it.

Therefore I am not asking for any separate signature—one signature is enough—but the signature would include the phrase that I have put in this amendment, after the fact that it is under this schedule. That seems to be absolute common sense, and I am extremely sorry that the Government have not had the willingness to accommodate this, which occurred to me in the course of dealing with the matter here. Surely, that is what Committee stages are for. If the Government are to cast aside what I have suggested, given that I have a certain amount of experience of magistrates' warrants and so on, I sincerely hope that before Third Reading this is taken into account. Otherwise, it seems to me an absolutely idiotic attitude from the Government to simple improvements suggested in the course of the discussion.

Lord Young of Cookham: I am grateful to my noble and learned friend, and of course I will with my colleagues have a look at this between now and Third Reading, but what we have done here is to take a standard approach used in existing legislative provisions relating to search warrants and powers of entry. We are simply seeking to replicate the procedure that already exists in similar circumstances, when for whatever reason powers of entry are required. We are simply applying best practice and extending to these institutions powers that already exist to institutions in the educational field. However, in view of the very strong feelings that my noble and learned friend clearly has on this, and in view of his greater knowledge than mine in matters judicial, of course we will take it away and have another look at it. Against those undertakings, I hope that my noble and learned friend might feel able to withdraw his amendment.

Lord Mackay of Clashfern: Certainly, with that understanding, I am prepared to withdraw the amendment and I sincerely hope that wise counsels will prevail by the time we come to Third Reading.

Amendment 125 withdrawn.

Clause 59: Cooperation and information sharing by the OfS

Amendment 126

Moved by ***Lord Lucas***

126: Clause 59, page 37, line 24, at end insert—

"( ) The OfS may publish any information that it holds as Open Data if it considers it to be in the public interest to do so."

Lord Lucas: My Lords, with the permission of the noble Lord, Lord Willis, I wish to speak also to Amendment 127. With these amendments I seek merely to replicate existing good practice, as my noble and learned friend said that he was seeking to do a moment ago.

It appears to me that one of the great successes of the coalition Government was the move to open data. One of my earliest exposures to that occurred in 1996 and 1997, when I was the Whip here for the Ministry of Agriculture in the middle of the BSE crisis and we spent a year trying to understand what was happening—what the route of infection was and how the disease worked. We had some good scientists in the Ministry of Agriculture, but eventually we took the decision to release the data to outside scientists. Three weeks later, we had the answer. It was not that they were better scientists but that there were more scientists with a different set of ideas. That success has been replicated in many aspects of the economy through this Government's determination to make data open and accessible for commercial and other purposes to a very wide range of people. I regret to say that in my own business, *The Good Schools Guide*, this has resulted in all sorts of competitors popping out of the woodwork who suddenly have access to all sorts of interesting data about schools and are doing things with those data that I had not thought of doing. That is very tiresome, but as a principle it is excellent.

University data have been locked away. There is a great chunk of data in UCAS. Anybody who has tried to deal with that body has found that it is an astonishingly hard nut to crack. It is unco-operative, even to the extent of destroying references which might have been used to link UCAS data to other datasets. I hope that is now changing. This Bill is a great instrument in that regard. However, UCAS has lots of data which students need to know, such as data on the actual requirements to get on to a particular course. For example, a document may say that AAB grades are required to get on a particular course, but is that what is actually required? Smart schools know that that is not the case and that you can get on that course with three Bs. However, unless you have that sort of resource, you tend to think that what is stated by UCAS is accurate. What are the chances of getting on a course? What is the ratio of applicants to places? Again, those seem to me obvious data that should be available. Therefore, I hope that there will be an attitude of openness and of making data consistent, easily understood, linked to other data sources and produced promptly.

At the moment, HESA data on who has joined universities and on what terms appear 18 months after those students have joined their universities. Why is that? There is absolutely no good reason at all for that. There is no similar practice in the DfE with regard to schools and schools data. Those data are provided much more quickly. Providing data late merely means that everything is out of date, less connected, less relevant and harder to keep up with.

If we adopt an attitude of providing open data where possible, and managed closed data as with the national pupil database but making it as accessible as possible, we will get much better information sets available to students and we will really start to get at

[LORD LUCAS]
questions such as drop-out rates. Why do students drop out of courses? We do not know. It is not a good thing. It is very tough for the students and it is not fun for anybody. It is certainly not fun for the Government, who end up with a chunk of loan that will probably never be repaid. We need to understand why that is happening. Students need to see that this is coming. As others have said, getting HESA's permission to publish those sorts of data is extremely hard. It is something on which we absolutely ought to be taking a lead, as the Government have done in other areas in the Bill.

I want from my noble friend the comfort of knowing that in this Bill the Government have equipped themselves with everything they need to make data open wherever they can and that they will not accept old practices as the way that things should go forward. I beg to move.

9.15 pm

Baroness Garden of Frognal (LD): My Lords, I support Amendments 126 and 127 in the names of the noble Lord, Lord Lucas, and my noble friend Lord Willis. I accept the arguments that the noble Lord set out clearly and I look forward to the Minister's reply.

I also add my support for Amendment 130, as I did in Committee. As we have already discussed, those on non-permanent contracts may find it more difficult to deliver quality teaching with all the uncertainties hanging over them, and it would be useful to have data to see whether that is in fact the case. The reverse situation with lifetime tenure tended to have the effect of too much certainty of employment, which could lead to a lack of incentive to devote time and trouble to quality teaching, but tenure is not really a problem that we have to address these days. The employment status of staff and the staff to student ratio are both significant factors in teaching. I hope that the Minister will be able to accept this amendment and I look forward to his reply.

Lord Stevenson of Balmacara (Lab): My Lords, I support the amendments in the names of the noble Lords, Lord Lucas and Lord Willis, which were explained very well by the noble Lord. They would contribute to a better understanding of all the issues that have arisen during the course of the Bill and would be a source of good data for the future as we see how the system being brought into play works in practice.

My Amendment 130 stems from Clause 61, which would place a duty on the relevant body or the Office for Students to put in a series of measures in relation to data that are to be published. The requirements are not very detailed—there is broad discretion—but the broader areas relate to student entrants, the number of education providers of different types, the number of persons who promote the interests of students and a good range of other things. Curiously, it does not really go down into the detail of some of the mechanics mentioned by the noble Baroness, Lady Garden, when she spoke on behalf of the noble Lord, Lord Willis, and these are the issues picked up in my amendment. It happened to be topical because, when the Committee stage took place, there was an investigation into the use of part-time, non-permanent and permanent staff in higher education on zero-hours contracts—I think that was the term used. This amendment at least points in that direction but I think that it has a wider resonance, and I look forward to hearing the Minister's response.

Lord Young of Cookham: My Lords, I am grateful to those who have spoken in this debate for addressing data issues. I entirely share the view of my noble friend that as much data as possible should be made openly available as soon as possible, and I have no difficulty in endorsing the broad principles that he enunciated.

However, I do not think that the issue here is about the powers to obtain data under the Bill. The current drafting already enables the OfS to make data available in connection with the performance of its functions and it also gives the Secretary of State the power to require application-to-acceptance data for qualifying research purposes. I am sure my noble friend will accept that, however we draft the powers of the OfS, data protection rules will necessarily mean that open data are subject to restrictions on sensitive and personal data.

With regard to the amendment in the name of the noble Lord, Lord Willis, although I sympathise with its intent, the OfS will be a regulator of HE providers, with the power to require such information from them as is required to perform its functions. However, it is not feasible to expand its remit to impose conditions on private companies that it does not regulate and with which it has no regulatory relationship.

Although I do not believe that these amendments are the answer to overcoming barriers to accessing data, I agree that greater collaboration between sector bodies on sharing and making comparable data available to students and researchers is something that we must continue to strive for. We would expect the OfS and the body designated to compile and publish higher education information on behalf of the OfS to play a part in encouraging that collaboration. The requirement to consult on what, when and how data are published will ensure that the interests of the sector, as well as those of students and prospective students, as called for by my noble friend, are taken into account. Moreover, in the spirit of co-regulation we must also recognise that the sector is already taking measures to address the points raised by my noble friend through the recently published HESA open data strategy, along with the recommendations made in the Bell review around the co-ordination of data.

I turn now to Amendment 130, which relates to an issue raised by the noble Lord, Lord Stevenson, in Committee. I understand his concerns about the job security of higher education staff and I can reassure him that the Government value the crucial contribution of HE staff. I remind the noble Lord that we are not seeking to determine on the face of the Bill exactly which data must be collected. Data requirements and needs evolve over time. The relevant data body needs to maintain the ability to adapt to changes and therefore data requirements will be decided through a period of consultation. The OfS will have a duty to consult on data collection and publication in conjunction with

the full range of interested parties. In respect of the publication duty, the OfS will also have the discretion to consult persons that it considers appropriate, including any relevant bodies representing the staff interest. It would be inappropriate to specify workforce data when all other data requirements will be agreed through a period of consultation. It also risks pre-judging the consultation process.

However, I can offer the noble Lord some reassurance on workforce data. The current data body, HESA, already collects data on so-called "atypical" academic staff whose working arrangements are not permanent. This is governed by the code of practice for higher education data collections. Discussions were held last year between the trade unions, employers' representatives and HESA on improving understanding of employment patterns in the HE workforce. This has led to proposed improvements to the HESA staff record. These are currently going through consultation with a view to being implemented in 2017-18. We are confident that this issue will be considered as part of the data consultation and that the OfS will want to build on HESA's positive action in this area. I would therefore ask my noble friend to withdraw his amendment.

Lord Lucas: My Lords, I am grateful to my noble friend. He has answered all the points I raised very satisfactorily.

I am delighted that the noble Lord, Lord Stevenson of Balmacara, spoke to his amendment as well. There are datasets that are not obvious but which can have a great effect on the way the sector progresses. If the sort of information he is suggesting is made public, there will be a trend towards better behaviour. Students care about these things. If you are considering a university, you care about who is going to be teaching you and what sort of workforce it is. Also, the fact that a university has a strong cadre of highly valued permanent staff who have been in post for a long time is something that can be used in its recruitment policy. It is the sort of thing that students like to know, so I would encourage the OfS to look wide in its definition of data, and certainly to include things like gender relationships and relationships in general between students and staff. That sort of thing is a great driver of good behaviour. From time to time we hear stories of bad behaviour, so unless the information is surfaced and it becomes commonplace for higher education institutions to have to tell people what is going on, these things can too easily be hidden.

I commend the Government for their attitude to data and I look forward to the OfS following the diktat that my noble friend has just outlined. With that, I beg leave to withdraw the amendment.

Amendment 126 withdrawn.

Amendment 127 not moved.

Clause 60: Duty to compile and make available higher education information

Amendment 128 not moved.

Clause 61: Duty to publish higher education information

Amendments 129 and 130 not moved.

Schedule 6: English higher education information: designated body

Amendment 131

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

131: Schedule 6, page 94, line 27, at end insert—

"( ) a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, higher education staff,"

Lord Watson of Invergowrie: My Lords, Amendments 131 and 132 mirror those that we brought forward in Committee. They concern the entitlement of higher education staff to be consulted prior to the OfS making a recommendation of a body suitable to perform the data functions. In such situations, this schedule provides for a number of registered providers of higher education, covering a broad range of different types of providers, a broad range of students on higher education courses and a broad range of employers of graduates, which is perfectly understandable and acceptable.

That is it, apart from the catch-all,

"such other persons as the OfS considers appropriate".

In Committee, the Minister said that the Government did not think it appropriate to restrict the ability of the OfS to consult such other persons as it considered appropriate. These amendments do not do that. If we had extended them to delete the reference in the schedule to "such other persons", that would have closed things down. However, we are not doing that; we are leaving it there and suggesting that we should add another provision to ensure that staff working in higher education are part of the process. That does not mean only academic staff but includes all categories of people who contribute to making the experience of students fulfilling in every way possible. These people know higher education and the way in which institutions work, and so caretakers, catering staff, IT support, technicians and other categories should be asked to bring the benefit of their experience to bear in the decision either to designate a body or to remove that designation.

The Government do not give adequate consideration to the role that staff working in higher education can play. They have a contribution to make and they should be enabled to make it. This is not a radical suggestion—it certainly ought not to be—and adding one more category to those who must be consulted would certainly not be onerous for the Office for Students. I beg to move.

Lord Young of Cookham: My Lords, I repeat what I said in an earlier debate: we appreciate the role of all HE staff and there should be no imputation to the contrary.

This is another issue which we discussed in Committee. The amendments would require the OfS to consult HE staff on designation of the data body and would

[Lord Young of Cookham]
require the Secretary of State to consult HE staff before removing such a designation. We are committed to a system of co-regulation for the designated bodies, and this means that both the OfS and the sector should have confidence in the designated data body. Therefore the Bill already contains a requirement for the OfS to consult a broad range of registered HE providers on designation of the data body, and the Secretary of State must also consult before removing such a designation.

Providers are, of course, made up of HE staff, and in consulting HE providers we would expect their responses to be inclusive of the views of their staff, not only the academic community at that institution but the administrative and support teams, who in many cases directly gather and then submit the data required. So we expect that the views of staff on data and designation will be represented in their institution's response.

However, there is nothing in the Bill to prevent direct consultation with staff groups. The OfS and the Secretary of State will have the discretion to consult any person, including a staff representative body. We would expect it to adopt an open approach, and we bear in mind the remarks that have just been made by the noble Lord.

The legislation must be broad and flexible to stand the test of time and therefore, despite the urging of the noble Lord, we should resist specifying this sub-group, or any other group with an interest, in the list of consultees when the current drafting of the Bill is sufficient to ensure that the views of HE staff will be represented both in the designation process and in the removal of designation. Against that background, I ask the noble Lord to withdraw his amendment.

Lord Watson of Invergowrie: My Lords, I find that partially encouraging. The Minister's initial remarks will be noted by those who represent staff—trade unions and other organisations—and in future will be shown to the management of higher education institutions when the time comes for them to be consulted on designation or "dedesignation", if there is such a word, in this context. I am sure the Minister did not mean to be disparaging, but for the staff to be described just as a "sub-group" undervalues the role they play in the running of an institution. That is why we believe there is a case to add one more provision, while still leaving it open for anybody else to be included.

However, the Minister's remarks have been helpful. It would be even more helpful if at some stage they could be issued as some form of guidance to higher education institutions, but it is up to staff representatives, trade unions or whoever to use those remarks and ensure they are turned into meaningful representation within higher education institutions. On that basis, I beg leave to withdraw the amendment.

Amendment 131 withdrawn.

Amendment 132 not moved.

9.30 pm

Clause 70: Grants from the Secretary of State

Amendments 133 and 134

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

133: Clause 70, page 44, line 19, leave out from "protect" to end of line 26 and insert "the institutional autonomy of English higher education providers."

134: Clause 70, page 44, line 27, leave out "So"

Amendments 133 and 134 agreed.

Clause 71: Regulatory framework

Amendment 135

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

135: Clause 71, page 45, line 41, at end insert—

" In exercising its regulatory functions under this section, the OfS must have regard to the Regulators' Code."

Lord Stevenson of Balmacara: My Lords, with the agreement of the noble Baroness, Lady Wolf, and in the absence of the noble Baroness, Lady Brown, I will speak to this group. We understand that their Amendment 135, which we support, has been overtaken by events. It may be subject to an announcement that would remove the requirement for it, which I am sure we would all be grateful for. I have read through the Regulators' Code and looked in detail at what it does. It can do nothing but good for the sector. It is an effective and useful guide. It will be extremely helpful to all those who will have to deal with the OfS as it moves into its new role. It is to be welcomed that the Government have seen the sense of the amendment we tabled in Committee and have decided to move forward in this way.

Amendment 136 is a slightly different beast. I am grateful to the noble Baroness, Lady Deech, who always seems to get stuck at the end of debates and has to hang here to make her very valuable contribution. That situation will change when we next discuss amendments that have her name to them. This one concerns an issue that has been growing in impact as we have been discussing and thinking about the issues raised in the Bill.

There is not, as might be implied by the drafting of Amendment 136, any sense in which we would resile the authority of the CMA regarding the work that will be done by the OfS and its associated committees and structures. The CMA has statutory rights to engage with anything consumers do in the public and private realms. Therefore, it will from time to time no doubt take an issue and respond to complaints. All these things are set out in statute in the ERR Act and the Consumer Rights Act 2015. However, there clearly are operations under the whole umbrella of the CMA that will have a resonance and possibly an ability to be dealt with by the Office for Students. It would be more appropriate for it to do these as part of its regulatory functions.

This is a question we have asked before and have not had a satisfactory answer to, which is why we are bringing it back tonight: what exactly is the boundary between the Office for Students in its regulatory mode

and the CMA? At the moment the CMA has taken quite a serious first step into discussions with higher education providers. It has carried out a survey of the way they treat their consumers: students. It has drawn certain conclusions from that and is currently obtaining undertakings from a range of providers, many of which are well-known household names. This is a dog that barks and bites. We have to be very careful where it might go. We would not in any sense wish to constrain it, but it will introduce a completely new sense of engagement between those who respond to offers from higher education institutions to go to them and study, the results they obtain, and their attitudes to and relationships with such institutions.

However, the detailed work of that will necessarily fall to the Office for Students, so there really are questions. Where does the boundary lie? What are the parallel powers that the Government are setting up in this area? Will the OfS have the same powers that the CMA has, as defined in the two Acts that I have already mentioned? Are there new and additional powers that are not being mentioned? If so, could we have a note about these? Where exactly are we on this? I think there is a danger that this ground will be rather trampled over. I have said this was a dog that not only barked but bit, but I think there are other worries that there may be some sort of competitive urge between the two bodies to be more regulatory than the other, and I hope there will be powers available to make sure that that does not happen. We do not want too many dogs, and we certainly do not want them biting. We want to make sure at the end of the day that the true interests here, which are the interests of the students, are not curtailed or in any sense hampered by the fact that regulators are exercising functions in a lot of different ways. I am speaking to this amendment but there is a previous one in the group, and I will respond to mine once the noble Baroness has responded. I beg to move.

Baroness Deech (CB): My Lords, I will speak about Amendments 135 and 136. It was a bit of a shock to many people to find that the Competition and Markets Authority had entered this rather competitive field of regulation. The CMA's job is to promote competition and make markets work. I think much of the debate we have had over the past few weeks is precisely about how universities are not really about competition and markets; they are about collaboration, scholarship and research.

The OfS is replacing HEFCE, which was the lead regulator, but the OfS is not taking over the Office of the Independent Adjudicator. I declare my interest as the first holder of that office, a few years ago. The OfS is intended to be a single, student-focused regulator. I think the Government might be seen to be undermining their own scheme if they allow the CMA to meddle in affairs which really are not suitable for it. There is already far too much compliance and legalism for universities to deal with—human rights, health and safety, data protection, freedom of information, judicial review, Prevent guidance and much more, including the common law. There is a crowded enforcement field as well—the CMA, other higher education bodies, consumer protection legislation, the Office of the Independent Adjudicator, Scottish and Northern Irish ombudsmen, government departments, the Advertising Standards Authority and the Quality Assurance Agency. The CMA admits how fragile its own guidance is because everything depends on how the courts would interpret consumer law applied to universities' functions.

I would argue that the CMA is also an inappropriate regulator because it shows little experience of how universities work. It is insistent on clear information being given about course variation before a student signs up. This is an example of how it is inappropriate. The prospectus for a student goes to print four or five years before the potential student who has read it graduates some years further on. It is impossible, therefore, in a prospectus to lock in lecturers for five years because of sabbaticals, fluctuating demand and finances, and even building works. How can a university predict what its fees will be five years from now, especially with new mechanisms being introduced right now? The CMA has recently opined that it thinks that it is unfair for universities to withhold formal qualifications from a student who is in debt. Does it have any idea how difficult it is to chase a student through debt collection procedures or failure to provide campus accommodation the following year—which it suggests as a sanction—when a student has left with no forwarding address or gone abroad, as frequently happens?

The CMA will also come into conflict and overlap with the Office of the Independent Adjudicator. The latter has been in existence for about 13 years and has decided thousands of cases, many of which have a consumer flavour. It has given a wide range of advice to universities about the same issues that the CMA has involved itself in. The OIA's task, however, is to decide what is fair and reasonable. This is not the same as the CMA's perspective, which is about deciding a dispute on the precise terms of the contract.

The Office of the Independent Adjudicator offers alternative dispute resolution, which is far better than resort to litigation. Unlike the CMA, the OIA can be flexible and offer resolution tailored to the needs of the wronged student—not money but a chance, for example, to retake a year or have extra tuition. The OIA should prevail over the CMA because it was based on a statute designed to provide that one specialised service for students; namely, the settlement of complaints according to what is fair.

There is something wrong in theory about letting the CMA drive issues of university information and practices. Its perspective would cement the student as a paying customer expecting to reach an acceptable outcome. But we are dealing in this Bill with a participatory process—education, not training; knowledge, not skills; and teaching, not rote learning—in a situation that involves a relationship of give and take between students and lecturers, parents and universities, and employers and government. We do not want the commercialisation of this relationship, as if it were the purchase of a car. We want value placed on stimulation, career guidance and intellectual growth, not just the path to a paper qualification.

The consumer model that the CMA applies results in a totally one-sided set of contractual details. It seems to think that there are no obligations on students

[Baroness Deech]
to pull their weight and no enforcement mechanisms against students' own shortcomings. There is no mention by it, or in the TEF, of students' efforts and their responsibility to learn. This one-sided market approach is more likely to lead to complaints about poor teaching after an unacceptable result has been handed down. We expect collaboration and not competition.

Higher education is not like a consumer transaction. The education relationship is unique. There is no fixed outcome which can be measured by organisations such as the CMA because the quality of the experience is determined by the aptitude and hard work of the student, as well as the facilities and teaching offered by the university.

Higher education is one of a class of major events in life which do not readily lend themselves to government by contract. Such situations are too emotional and personal, with no clear goal and perhaps an imbalance of power. The issue may be too important for the rest of society to be left to the narrow issue of a contract between the individual parties. Only overall regulation focused on the goals of higher education and the student will do, not intervention from an unrelated and unrepresentative body such as the CMA.

The CMA focuses on choice, price and competition. It assumes that satisfying the consumer-student is all that matters. Its view of contracts is about the provision of education, but it is no help when it comes to what education should achieve. Its interventions will not only overlap and conflict with the Office of the Independent Adjudicator but will lead to more micromanagement, box-ticking, checking and inspection, and not to greater quality or public benefit. It has no place in this new system.

Lord Lucas: My Lords, I have a lot sympathy with what the noble Baroness, Lady Deech, said. Where I disagree with her is on university admissions. That seems to me to be a pure consumer transaction. The consumers are provided with information on which they are asked to make a decision. This is an area where I like the idea of there being common standards across the consumer realm rather than some cosy deal that, in the case of higher education, makes it unnecessary to provide the consumers with the level of information and reassurance that they have elsewhere. I think that it is even more necessary. It is probably the second or third biggest single transaction that most people will make in the course of their lives: their commitment to the amount of student loan they will end up with at the end of three years and their commitment to a direction in life which may require a lot of effort and sacrifice to change if they have taken one particular way down.

At the moment I think that it should be very much open to question by the CMA whether what is being provided to students is true, accurate and as much as they should have. Yes, I agree that the Office for Students should have a role in this, but the standards, the bar which we are aiming at, should be set in accordance with our national standards—and at the top of the range of national standards. I think that the CMA has a role in that. So I agree with the noble Baroness, Lady Deech, about what happens when you are in a university: all those sorts of relationships, the outcomes and the need for students to contribute, it being a partnership and so forth. It is very hard to read that as a consumer contract. But that first moment of decision—or that rather strung-out moment of decision—seems to me to be very much CMA territory.

9.45 pm

Baroness Wolf of Dulwich (CB): My Lords, I do not want to say very much about this. I did not withdraw the amendment which my noble friend Lady Brown and I originally tabled and which the noble Lord, Lord Stevenson, kindly introduced, because I wanted the opportunity to say in the House how very much we appreciate the fact that the Government listened to us on this and how convinced we are that introducing the Regulators' Code into the OfS's actions will be entirely for the good. It will take care of a great many anxieties we had about details in the Bill and we are truly appreciative of that.

I also want to agree with what the noble Baroness, Lady Deech, said about the realities of dealing with students who are in a university and how you cope with problems, complaints and all the issues which come to the Office of the Independent Adjudicator. It is really important that the Government take account of the fact that this is not like a situation where you buy a coffee and if you do not like it you go and buy another coffee. My noble friend spoke very eloquently. I hope the Government will listen to her on that as much as they listened to us, and I thank them very much.

Lord Young of Cookham: I am grateful to noble Lords who have spoken to these two amendments for their contributions to this debate. I shall deal with the easy one first.

My noble friend explained in his letter earlier this week that he had listened to concerns around the regulatory powers of the OfS and the assurance that noble Lords, many of whom have spoken in this debate this evening, are seeking around its adherence to the Regulators' Code. As already stated in the Bill, under Clause 3(1)(f), we share the aspiration that the OfS should comply with recognised standards of good regulatory practice. We remain wholeheartedly committed to the principles of the Regulators' Code, and because the OfS is the sector regulator, we agree that it should sign up to the code. I am therefore pleased to confirm the announcement made on Monday that the OfS will voluntarily commit to comply with the code, with a view to its regulatory functions being formally brought into scope when the list is next updated via statutory instrument.

I now turn to the more difficult amendment about the respective roles of the CMA and the OfS and what the interface is between the two. In his letter to noble Lords earlier this week, my noble friend recognised the concern over the respective roles and responsibilities of the CMA and the OfS. I will explain why we believe that this a not a substantiated concern. I think that the noble Baroness, Lady Deech, used the right expression when she said, "We expect collaboration". That is exactly what we expect.

The CMA is not a sector regulator but an enforcer of both competition and consumer protection law across the UK economy. The CMA has the specific role and specialist expertise to enforce competition law and consumer protection across the whole of the UK economy. It would be unprecedented, as has been suggested at times, for the competition and consumer enforcement functions of the CMA to be transferred entirely to a sector regulator. Even where sector regulators have enforcement functions, the CMA retains powers as an enforcement authority, with appropriate arrangements for co-ordination of concurrent functions.

In the past the CMA has provided general advice to HE institutions on complying with consumer law. In addition, its consumer enforcement powers have been used in relation to the sector. Specifically, it has received undertakings from providers around, for example, academic sanctions for non-fee debts, such as accommodation debts; information for prospective students on additional non-fee costs; terms and conditions on fee variations; and fair complaints procedure.

HEIs are expected to comply with consumer law, enforced by the CMA. The OfS will be expected to take on board the CMA's guidance and best practice when it develops the details of the regulatory framework. It is perfectly usual for an organisation that is subject to sector regulation to be required to comply with legal requirements that are enforced by bodies other than the sector regulator. For example, even in regulated sectors the Environment Agency carries out regulatory and enforcement activity in relation to the environmental aspects of an organisation's activities—for instance, as regards waste and contaminated land—and the Health and Safety Executive enforces health and safety requirements.

Although the CMA and OfS share areas of common interest in relation to competition and consumer matters, their roles are distinct and complementary, not contradictory. This is the joint view not just of Ministers but of the CMA. So we expect the CMA and the OfS to work productively together, just as the CMA works well with other regulators—indeed, as it does with HEFCE at the moment—and we see no reason for this to be different once the OfS is established. There will be a further opportunity to explain respective roles and responsibilities, as necessary, as part of the consultation on the regulatory framework this autumn.

Students—in addition to being students—have consumer rights, and universities and other higher education providers that do not meet their obligations to students may be in breach of consumer protection law. Compliance with that law is important not just to protect the students but to maintain student confidence and the reputation of the HE sector, and to support competition.

The noble Baroness asked whether there was confusion about the regulatory roles of the CMA, the OfS and the OIA. I applaud the work that she did at the OIA. As I think I said a moment ago, subject to the passage of the Bill, the OfS will be the regulator for higher education providers in England. The OIA will continue to operate as the body designated by government to operate the student complaints scheme in higher education, so it is not a regulator and it will continue to deal with individual student complaints. The CMA is not a sector regulator but an enforcer of both competition and consumer protection law across the UK economy, and it has the specific role and specialist expertise to enforce competition law and consumer protection across the whole of the UK economy. So there is no overlap of responsibility between the CMA, the OfS and the OIA, although the OfS will be expected to take on board the CMA's guidance and best practice when developing the regulatory framework.

As I said, there will be an opportunity, as part of the consultation on the regulatory framework this autumn, to explain, discuss and identify the respective roles and responsibilities of these three bodies as necessary. In the meantime, I ask the noble Lord to withdraw his amendment.

Lord Stevenson of Balmacara: I thank the Minister for that reply. On the relatively simple question—the good news, as he called it—of Amendment 135, I echo the remarks of the noble Baroness, Lady Wolf. We are very grateful for the listening and reflecting that has taken place. The end-result is exactly as we would want it. This is a body that will be carrying out regulatory functions. It would be better if it were fully subscribed to the Regulators' Code. I understand that there will be a transitional arrangement. If that is the intention, we wish it well and that will be the right solution for that.

However, I am a bit more puzzled about the question of the overlap and links between the CMA and the Office for Students, particularly in relation to the very powerful case made by the noble Baroness, Lady Deech, whose experience in the OIA leads to real and very important questions about where this is all going to go. As she pointed out, and I do not think was picked up by the Minister in detail—although I will read what he said in *Hansard*—there are three bodies with very different functions and aims. They have very different cultures, missions and outturns that they will be looking for. I do not quite see how that all fits together.

I understand that there will be a consultation period, but we are starting from a very odd position. With the competitive focus and the competition issues—the possibility that institutions might seek to challenge the work being done by other higher education institutions through the Competition Appeal Tribunal—this is a new world that is going to cause quite a lot of concern, worry and cost. It is certainly a deflection from their main purpose of the higher education institutions engaging in this. That has not been dealt with, and I wonder whether it might be possible for more information to flow our way.

On the detailed precision about where the CMA sits in relation to the Office for Students, I understand that will have to evolve. I am not in any sense being critical of that, and I have already admitted in my opening statement that we understand the role that Parliament has given to the CMA. That cannot be taken away but, surely, there is a case here for a memorandum of understanding at least—some sort of written documentation so that we would at least

[Lord Stevenson of Balmacara]
have a baseline on which to operate. I did not hear that from the Minister. Perhaps he could reflect on that and write to me about it.

It was a good aphorism to say that these are complementary but not contradictory groups working here, but it will be very difficult to see for a few years where this will all settle down. He may be right in what he asserted: it may be that this is in the best interests of students, but it is a bit hard to see that at the moment. While I see no particular case for progressing this amendment, or any others related to it, to improve the Bill, I wonder whether it might be sensible to have a quick meeting about this. Those who are keenly involved in this might just share experiences about where our nervousness comes from to ensure that there is nothing to be picked up, at least by a statement about a way forward to set out the broad understandings under which we will start the system before we get to Third Reading. With that, I beg leave to withdraw the amendment.

Amendment 135 withdrawn.

Amendment 136

Tabled by ***Baroness Deech***

136: After Clause 71, 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 Deech: I may not have made myself clear enough. I thoroughly agree with the noble Lord, Lord Stevenson, that the solution is probably a memorandum of understanding. I was trying not to talk about the clash between the CMA and the OfS, if there is one, but there is definitely a clash because two bodies, the CMA and the Office of the Independent Adjudicator, are right on the same field. The Office of the Independent Adjudicator has been handing out hundreds of decisions every year about prospectuses, facilities and the consumer rights of students. I have already come across one case where it seems that the CMA has been contradicting the OIA. There is definitely confusion and a clash there, albeit a well-meaning one. They are coming at it from different perspectives and it seems quite unnecessary to have the CMA going in over the same territory. There has to be a solution. The OIA is not a regulator but a complaints handler and it is deeply involved in what one would call consumer transactions. But if the Minister will be happy to consider an MoU in some solution, then I am content not to move the amendment.

Amendment 136 not moved.

Clause 73: Secretary of State's power to give directions

Amendments 137 and 138

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

137: Clause 73, page 46, line 32, leave out from "protect" to end of line 39 and insert "the institutional autonomy of English higher education providers."

138: Clause 73, page 46, line 41, after "but" insert ", whether or not the directions are framed in that way,"

Amendments 137 and 138 agreed.

Clause 79: Meaning of "English higher education provider" etc

Amendments 139 to 141

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

139: Clause 79, page 49, line 38, after "see" insert "—

(a) "

140: Clause 79, page 49, line 39, leave out "and (6)"

141: Clause 79, page 49, line 39, after "education)" insert ", and

(b) section (Duty to monitor etc the provision of arrangements for student transfers)(5) and (6)(duty to monitor etc the provision of arrangements for student transfers)."

Amendments 139 to 141 agreed.

Clause 81: Other definitions

Amendments 142 and 143

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

142: Clause 81, page 50, line 42, at end insert—

""the institutional autonomy of English higher education providers" has the meaning given by section 3(7);"

143: Clause 81, page 51, line 1, at end insert—

""sector-recognised standards" has the meaning given by section 14 (2B);"

Amendments 142 and 143 agreed.

Consideration on Report adjourned.

Children and Social Work Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments. The Commons amendments were ordered to be printed.

House adjourned at 9.59 pm.