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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

Tuesday 4 April 2017

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Television Broadcasts: Audibility
Question

2.36 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government whether they will consult United Kingdom television broadcasters, particularly the BBC, to ensure that the viewing public can clearly hear the dialogue, particularly in dramas.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, there have been a number of dramas over the past few years in which the dialogue has been difficult for some people to hear. TV viewers should be able to hear and understand their favourite shows. It is a long-standing principle, however, that government do not interfere in broadcasters' operational activities, and therefore it would not be right for government to consult on this matter.

Lord Naseby (Con): My Lords, that is an extremely disappointing Answer. Is my noble friend aware that there are 25 million licence fee holders who want to hear the dramas, particularly on the BBC, which is the main offender, and that they want clear audibility? Against that background, does he recognise that all this problem started in 2014 with the drama "Jamaica Inn"? There were well over 1,000 written complaints to the BBC about the inaudibility of that show. That was followed by "Happy Valley", "To Walk Invisible", "Taboo" and recently "SS-GB". Against that background, is it appropriate that the ordinary viewer has to consult subtitles to understand what the dialogue is? If my noble friend cannot apply pressure on the chairman of the BBC, does he recognise that someone will have to make a complaint to Ofcom?

Lord Ashton of Hyde: My noble friend, as always, goes to the heart of the matter. I completely agree that viewers should be able to understand dialogue as they first view a programme. I am clear that this is a matter that the BBC takes seriously, and it has issued new guidelines as recently as December 2016. To put things in perspective, though, the BBC makes 22,000 hours of new programmes every year, so since 2014—the year to which my noble friend referred—that is 66,000 hours of new material, and I think there have been audibility problems with six programmes.

Lord Gordon of Strathblane (Lab): My Lords, while I partly agree with the noble Lord, Lord Naseby, that some producers, in pursuit of authenticity, insist that people mumble, usually in indecipherable regional accents as well, does the Minister agree that the main problem lies with the design of modern television sets? Thin LED television sets have very poor sound systems. I must confess that in my own case, although obviously not in the case of somebody as young as the noble Lord, Lord Naseby, advancing years tend to have something to do with turning up the volume.

Lord Ashton of Hyde: My Lords, the noble Lord is exactly right. There are many reasons why audibility could be a problem. However, the fact is that it is the responsibility of broadcasters to produce programmes that are audible under normal conditions, and they always try to do that. At the end of the day, no broadcaster wants to make programmes that people cannot hear.

Baroness Grender (LD): My Lords, does the Minister agree that now more than ever the BBC is needed to deliver real news and ditch fake news, especially on a day when our own Prime Minister has condemned the National Trust for something it has not done while she is trying to do deals in a country where, if you tried to organise an Easter egg hunt, you would probably end up in prison?

Lord Ashton of Hyde: All the channels have a responsibility to provide impartial news and are regulated by Ofcom, including, very soon, the BBC.

Lord Fellowes of West Stafford (Con): Will the Minister agree that the fashion for mumbling dialogue in search of greater truth—because that is what it is all about—is simply that, a fashion, and not a new one? We had a lot of trouble with it in the 1950s and 1960s. When it comes to an unfortunate fashion, the Government have no proper role other than to hope it will soon pass.

Lord Ashton of Hyde: My Lords, it is all about editorial policy, and the director is in charge. One person's mumbling is another person's atmosphere.

Lord Blunkett (Lab): My Lords, atmosphere is fine if you can lip-read but when you cannot, the mumbling which is indecipherable to most people becomes not just an irritant but an impossibility. I hope the Government will lean on the new regulator, Ofcom, to bring a bit of common sense so that when somebody whispers to you, it is expected that you will hear the whisper, and when someone talks to you on television, it is hoped that eventually you will be able to hear them.

Lord Ashton of Hyde: I did not quite catch the last bit of that question. Of course, Ofcom's Code on Television Access Services sets out the obligations on TV broadcasters to provide subtitling and audio description and signing, and my noble friend Lord Borwick's amendment has given the Government the power to introduce that for on-demand services as well.

Baroness Kidron (CB): My Lords, I draw the attention of the House to my interests as a producer and director. Will the Minister agree with me that in our regional and national theatres, on screen and in the cinema, we have a wealth of the finest actors in the world, and, although I am very sympathetic to the noble Lord, that we would prefer fine performance over fine diction?

Lord Ashton of Hyde: That is exactly the sort of thing the Government should not make a decision on.

Baroness Rawlings (Con): My Lords, as many noble Lords may look after elderly people, they will know that television is a great companion. Will the Minister agree that many young actors and people in general do not enunciate clearly—I am afraid that I take issue with the previous speaker—and not as clearly as the noble Lord, Lord Blunkett, did, when you could hear even his softest tone? Elocution and language are so important. Will the Minister agree that if people spoke more clearly, there would be less misunderstanding and less trouble in the world?

Lord Ashton of Hyde: My Lords, I am not an expert on enunciation, but I am told that it is all to do with your diaphragm.

Lord Dobbs (Con): My Lords, perhaps I may take this opportunity to agree with my noble friend Lord Fellowes that when dialogue is written it is always clear. A great part of the problem may be that modern televisions are all screen and the speakers face backwards. It is bound to be a technological problem when the speakers face away from you, apart from the fact that of course we are all getting a little older and perhaps deafer.

Lord Ashton of Hyde: My Lords, I certainly do not agree that all written dialogue is comprehensible, although my noble friend is an obvious exception to that. The point is that the director is in charge of the entire programme and should listen to the rushes and to what he has produced. Sometimes it is perfectly reasonable for an actor to face away from the camera but it is important that he can still be heard.

Healthcare: Spending

Question

2.45 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government whether they will increase spending on healthcare as a percentage of gross domestic product to be in line with the G7 average.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, since 2010 health spend has increased in real terms and is broadly in line with the EU average. This Government are giving the NHS an additional £10 billion above-inflation increase in its annual funding by 2021. We have now gone beyond that, with £425 million of new capital spending for the NHS announced at the spring Budget, and we have pledged to provide further capital at the autumn Budget.

Lord Clark of Windermere (Lab): My Lords, I thank the Minister for his Answer, which goes a long way towards explaining why the NHS is at breaking point. Our hospitals and GPs' surgeries are full, social care is on its knees and staff are working in impossible conditions. Those are not my words; they are the words of the BMC, which knows what it is talking about. My Question is not about Europe; it is about the G7. First, will the Minister confirm that as a country we are next to the bottom of the G7 nations in health spend? Secondly, why will the Government not commit us to meeting the average of the G7 countries, which would go a long way towards reviving our wonderful National Health Service?

Lord O'Shaughnessy: The noble Lord makes the point that the NHS is operating in challenging conditions, not least because of rising demand and expectations. Notwithstanding that, there is a huge improvement in performance. More operations are being performed, there are more diagnostic tests, more people are starting cancer treatment, and people say that they have never been more satisfied with the quality and dignity of care that they are receiving. Those are the points that we need to bear in mind when we talk about the fantastic work that NHS staff do.

Baroness Brinton (LD): My Lords, perhaps we can push the Minister for a clear answer on this. The average spend of G7 economies is 10.4% of their GDP in comparison with the UK's 9.8%—a gap of £10.3 billion. The Government are proudly saying that they are putting in just under £0.5 billion this spring, with a bit more capital to follow, but what are they going to do to address that shortage, given that £10 billion could provide 10,000 extra GPs and other help in primary care?

Lord O'Shaughnessy: As I referred to in my previous answer, the Government have provided additional funding to the NHS—£10 billion more by 2020. It is also worth noting that since the 2015 election over £9 billion of additional funding has been found for social care, which of course has huge strains upon it, and that makes a big difference.

Lord Bird (CB): Does the noble Lord agree with Brian Ferguson, the chief economist of Public Health England, when he says that prevention is much more cost effective than other forms of intervention and that we have to push up the amount of spending on that, which is in the region of 4% to 5%? Is the Minister prepared to talk to MPs and Lords who want to push up the amount spent by this Government on prevention methodology in this country?

Lord O'Shaughnessy: The noble Lord is quite right: we need to move from an NHS that deals with illness to one that promotes healthcare, and preventive healthcare is a huge part of that. We are providing over £16 billion of public health funding for local authorities to do that over the period of the spending review. Of course, I shall be delighted to meet any Peers and MPs who want to talk about that further.

Lord Davies of Oldham (Lab): What is the Minister's response to the fact that we have seen the largest sustained reduction in spending as a percentage of GDP in the history of the NHS? Does not that explain why the NHS system is in crisis?

Lord O'Shaughnessy: The noble Lord might be interested to know that health funding as a proportion of public spending has increased since 2010, from just over 18% to almost 20%. He talks about a challenging position, but that is not just because of rising demand or an ageing population. It is worth remembering that when the coalition Government came into office, we were borrowing £150 billion a year. It is a fantastic testament that we have managed to increase spending on healthcare in real terms while dealing with the problems that Labour left us.

Lord Lamont of Lerwick (Con): Does my noble friend not agree that in making comparisons between the proportion of GDP spent on health by ourselves and other G7 countries, one reason there is a difference is because most other countries in the G7 have a variety of funding sources and are not all providing tax-funded services? Some of them have larger voluntary sectors and some have a larger contribution from the private sector. Although this is a very real problem, is not one avenue for changing things that ought to be considered looking to expand the private and voluntary sectors as well?

Lord O'Shaughnessy: My noble friend is quite right to point out that there are different funding systems in different countries. We, of course, have a taxpayer-funded system that is free at the point of use, which this Government are fully committed to. There are different ways of funding healthcare. However, it is worth reflecting on polling carried out by Ipsos MORI which showed that 69% of the public said they get good healthcare in the UK, contrasted to just 57% in France and 59% in Germany. That is a huge testament to the work that everyone in the NHS does.

Lord Crisp (CB): My Lords, does the Minister accept that there is a real problem here? On prevention and the work that NHS England is trying to do to change the system, does he further accept that there is a need for transitional funding, not least for running services in parallel? Additional funding is needed to make the changes that need to happen.

Lord O'Shaughnessy: The noble Lord is quite right and he speaks with great authority on this issue. The sustainability and transformation plans are providing the changes that we are looking for. That is precisely why additional capital funding was announced in the Budget: to provide and seed that kind of change so that we can run in parallel services that we need to reduce and upscale those that we need to increase, particularly community care.

Hospitals: Patient Transport

Question

2.52 pm

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

To ask Her Majesty's Government what steps they are taking to reduce waiting times for patients using hospital patient transport.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, it is the responsibility of local NHS commissioners to decide how best to deliver patient transport services. We do not centrally monitor these waiting times. The eligibility criteria for patient transport services stipulate that patients should reach appointments in a reasonable time, in reasonable comfort and without detriment to their medical condition. Where local issues arise in the delivery of these services, we expect commissioners to take swift action.

Lord Harries of Pentregarth (CB): I thank the Minister for his reply. Recently, I had to take my wife, who is extremely disabled, to hospital using hospital patient transport. After a satisfactory medical appointment we then had to wait three and a half hours for hospital transport to take us home. The following day I took her to another hospital and there we had to wait one and three-quarter hours. In the light of this experience, I asked around and discovered that some people are having to wait as long as six hours—and these are people who are extremely disabled, and some of them are without escorts to take them to the loo. Does the Minister agree that this is totally unsatisfactory and that there needs to be a proper system of monitoring and, if necessary, sanctioning the private companies that are now operating this service?

Lord O'Shaughnessy: I am sorry to hear of the wait faced by the noble and right reverend Lord's wife, and indeed others. Those delays do not sound acceptable. There are clear guidelines in the standard contract for commissioners to outline the quality of patient services, and they are inspected by the CQC. I would certainly be happy to meet him to talk about this in more detail and find out exactly what is going on.

Baroness Walmsley (LD): My Lords, according to the NHS website, there are some areas in which patient transport services are not available. I want to ask the Minister two things about that. First, what should patients in those areas do if they need transport? Secondly, are the Government going to hold to account the CCGs that are not commissioning these services?

Lord O'Shaughnessy: There are challenges in patient transport, particularly in rural areas. That was one of the reasons for the Department for Transport creating the Total Transport pilots in an attempt to deal with the problem. In Devon, the local authority and CCG are now working together to provide better transport. As I said, it is in the clinical commissioning standard contract to provide that kind of transport and NHS England is responsible for making sure that it is provided.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister said that there are no national targets in relation to patient transport services, but there are targets in relation to ambulance services. Can he tell the House when those targets were last met by the ambulance services in England? Can he also tell me why, in the mandate for 2017-18 to NHS England, no guarantee is given that the NHS will come back to meeting those ambulance targets? Can I take it that,

[LORD HUNT OF KINGS HEATH]
just as the Government have now decided to drop the 18-week target for surgery, they are also dropping the idea of a target for ambulance services to be met?

Lord O'Shaughnessy: I am afraid the noble Lord is wrong on the 18-week target—it has not been dropped. It is within the mandate. The 18-week target is being fulfilled in the vast majority of cases. Performance is much better than it was 10 years ago in terms of both median waits and the number of people who are waiting. I do not have the precise figure for ambulance services. However, they are in the mandate and local trusts are expected to deliver against the targets in the mandate.

Lord Polak (Con): My Lords, some patients cannot use patient transport. Your Lordships will be aware of the story in the press over the past 24 hours about the desperately ill young man and father of two. If he lives past midnight tomorrow, when the changes to the widowed parent's allowance take effect, it will mean a substantial financial loss to his family. This is not a story—it is real. His wife and mother of his two children is a close friend of my wife. Other families will be in the same situation. Will the Minister talk to his ministerial colleagues so that the Government can display understanding and humanity and allow this brave young man to pass peacefully from this world with dignity, in the knowledge that the financial future of his children is taken care of?

Lord O'Shaughnessy: I am sorry to hear about the case of this young man and offer my sympathies to both him and his family. I appreciate the urgency and I understand that this person may not have long to live. I shall certainly speak to colleagues as soon as humanly possible and come back to the noble Lord with information on the situation.

Lord Hunt of Kings Heath: My Lords, the noble Lord said the Government have not dropped the 18-week target. What on earth, then, did the chief executive of the NHS mean when he said on Friday that the NHS would not achieve that target and that it would take less priority than other targets?

Lord O'Shaughnessy: The chief executive of the NHS was talking about the relative priority and importance of achieving A&E waiting times in particular to the targets that it is not hitting at the moment. The five-year forward view delivery plan refers to the fact that elective operations will continue to increase and that the median wait may move marginally. However, it is worth pointing out that 10 years ago the median wait for an in-patient for an elective procedure was 15.6 weeks—under a Labour Government, of course—and in January this year it was 10.6 weeks. The median may increase but it is still within the 18-week target.

Baroness Royall of Blaisdon (Lab): My Lords, the statement from Simon Stevens was very honest and welcome but it means some profound changes in the National Health Service. Will the Government come forward with a statement as to how these changes will be implemented and when?

Lord O'Shaughnessy: The five-year forward view delivery plan is a publication by NHS England. We continue to back it to deliver its ambitious plans, which include further increases in diagnostic tests and making sure that even more people survive cancer. We are focused on ensuring that the system is as efficient as possible in order to do this.

The Archbishop of York: My Lords, the Minister speaks with such clear diction that we can hear every word he says. He is not producing a drama, but although I have been listening to him carefully, I do not think that he has answered the Question put to him by the noble and right reverend Lord, Lord Harries. He asked what steps were being taken,

"to reduce waiting times for patients using hospital patient transport".

I did not hear the answer. All I heard was that the Minister was willing to have a word with him, but it is not just about the noble and right reverend Lord and his wife. A lot of other people are in the same predicament. We want to know what those steps are. That is the nature of the Question and, if I did not hear the response, I apologise.

Lord O'Shaughnessy: I thank the most reverend Primate for giving me the opportunity to come back on this. First, NHS England is working with clinical commissioning groups to make sure that the kind of delays outlined by the noble and right reverend Lord, Lord Harries, do not happen. Also, a series of 39 pilots are being conducted in rural areas which are particularly badly affected by patient transport delays to put in place the kind of transport necessary to make sure that people who cannot get to hospitals and may miss appointments are able to do so.

Royal Marines

Question

3 pm

Asked by ***Baroness Jolly***

To ask Her Majesty's Government whether they plan to change the size and role of the Royal Marines.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the naval service, which includes the Royal Marines, is growing, with 400 more personnel, more ships, new aircraft and submarines. It is only right that the naval service decide the balance of roles within it to ensure that skills are matched to front-line priorities. That is a military judgment which is kept under continuous review and thus is a matter for the First Sea Lord and the other military chiefs to advise on.

Baroness Jolly (LD): My Lords, the House understands that tough decisions are taken in times of austerity, but on the "Today" programme last week the Secretary of State said that if something is no longer needed, it is redundant. This could signal a deliberate move towards a capital-intensive engagement, away from elite personnel—the Royal Marines is a world-renowned flexible amphibious force—all at a time when hybrid warfare is increasingly likely. In this context, can the Minister say whether the Royal Marines are viewed as redundant?

Earl Howe: My Lords, the Royal Marines are certainly not redundant. As the noble Baroness knows, they have a worldwide reputation as one of the world's elite fighting forces. But at the same time it is important that we look at matching roles to tasks, and that lies at the nub of her Question.

Lord West of Spithead (Lab): My Lords, I do not think that the Minister is being completely clear when he talks about the growth in numbers. The 2010 SDSR led to a reduction of around 4,000 naval personnel, which was a ridiculous number, and only 400 were added five years later. There is a shortage of money in the Navy, and it is no good saying that the Navy makes the choice: it is having to make very hard decisions because it is underfunded. Does the Minister not agree that there is a lack of coherence in our amphibious capability, in that we are paying off HMS "Ocean" early, having spent £65 million on her; we have sold an LSD(A) to the Australians and have an LPD in reserve; and now we are talking about reducing the number of Royal Marines?

Earl Howe: My Lords, I do not accept the picture being painted by the noble Lord. As he knows, the annual budget cycle is our yearly process which allocates resources to defence spending requirements for the next 10 years. It focuses on ensuring that the programme is affordable and balances military and financial risk. The 2017 annual budget cycle is in fact still under way, but the process means that we continually reassess our financial position and prioritise accordingly.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend the Minister not agree that this is precisely the sort of operational matter that should be left to the Joint Chiefs of Staff? I want to place on record my admiration for the Royal Marines, with whom I had contact on HMS "Cumberland" and at other times when serving with the Armed Forces Parliamentary Scheme, which I commend to the House.

Earl Howe: My Lords, I am grateful to my noble friend and I fully agree with her. Ministers make decisions based on military advice in this area.

Lord Touhig (Lab): My Lords, I shall take this to another point. The whole House would be shocked if there were redundancies among the Royal Marines, but the Government have form on denying full pensions to Armed Forces personnel made redundant. In 2013 I raised the issue of servicemen who had fought in Iraq and Afghanistan and were made redundant just days before they qualified for their full pension. One was so angry that he sent his medals back. Will the Minister state today that if there are redundancies in the Armed Forces, this shameful sleight of hand will not be repeated against the men and women who served our country?

Earl Howe: My Lords, I will of course look into that and I am grateful to the noble Lord for raising the matter. All I would say is that no part of the Armed Forces can be exempt from the need to look for efficiencies. Navy Command would not be doing its job if it did not regularly ask itself whether the balance between marines and sailors is right, whether there are roles that need to be performed by those currently performing them, and whether there is duplication of roles. That is a normal part of military and financial management.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, the Minister has generously acknowledged that what Britain needs in these uncertain times is forces that are fast, flexible and mobile. As he rightly said, the Royal Marines are second to none worldwide with that capacity. If this is about hard choices, would it not be to play fast and loose with the nation's defence to place the strength and capability of the Royal Marines at risk in order to fund two gigantic, empty tin cans rattling around the oceans without aircraft to fly from them—or now, it seems, troops to put in them?

Earl Howe: My Lords, I hope that the noble Lord and the House know that the carriers, when they arrive, will be fully manned and have British aircraft on them before they are brought into service. I can assure him that we will make sure that the Royal Marines are properly trained and equipped to perform the vital tasks we ask them to undertake.

Lord Stirrup (CB): My Lords, I listened very carefully to the answers the Minister has given. If there is a key strategic judgment to be made about the balance of capabilities between the surface fleet and the Royal Marines, surely the last strategic defence and security review was the time and opportunity to do that. It was not done then, so is not the only conclusion we can draw from the current situation that there is insufficient funding in the Ministry of Defence to afford what was decided upon at the end of the last SDSR?

Earl Howe: My Lords, we set out our key priorities in the 2015 strategic defence and security review. At that time we announced an £11 billion investment package towards our highest priority defence equipment needs over the course of this Parliament. We have been quite open that some of the funding for this is contingent on delivering efficiency savings. I concede that the savings are challenging, but we are working very hard to deliver them.

National Citizen Service Bill [HL]

Commons Amendments

3.10 pm

Motion on Amendments 1 to 3

Moved by ***Lord Ashton of Hyde***

That this House do agree with the Commons in their Amendments 1 to 3.

1: Clause 13, page 4, line 37, at end insert ", subject to subsection (2).

(2) An amendment made by this Act has the same extent as the provision to which it relates (and this Part extends accordingly)."

2: Clause 14, page 5, line 2, leave out "This Part comes" and insert "Sections 1, 10 and 12 to 15 come"

3: Clause 15, page 5, line 8, leave out subsection (2)

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the National Citizen Service Bill returns to us after its passage through the other place. I shall explain briefly two government amendments that have been made there. They are minor and technical amendments to correct the drafting of the "Extent" and "Commencement" provisions in Part 2. These are merely technicalities and it falls to me to ask the House to approve the corrections.

When the Bill was introduced in this House, Clause 13 provided that the extent of the Bill was England and Wales only. Schedule 2, however, contains four consequential amendments to other Acts: for example, the Freedom of Information Act 2000 and the Equality Act 2010. Those Acts have extent beyond England and Wales.

When consequential amendments are made to those other Acts, they should have the same extent as the provision of the Acts they are amending. This ensures that the section being amended has a uniform extent. This is standard legislative practice. The consequential amendment to the Freedom of Information Act, for example, should have the same extent as the section of the Freedom of Information Act that it amends. Clause 13 should reflect that.

Commons Amendment 1 ensures that this is the case by qualifying Clause 13 with:

"An amendment made by this Act has the same extent as the provision to which it relates (and this Part extends accordingly)".

In other words, if the part of the original Act being amended has provision beyond England and Wales, the consequential amendment does too.

The second amendment is to Clause 14, "Commencement". The Bill as introduced in this House provided that the whole of Part 2, which sets out general technical provisions, and Schedule 2 should both come into force on the day the Act is passed. This would have meant that the consequential amendments referred to in Clause 11 of Part 2 came into force on the day the Bill received Royal Assent. At this point, the new NCS Trust charter body will not necessarily exist. Part 1 of the Bill and Schedule 1 come into force on such day as the Secretary of State decides and makes by regulation. In reality, this will be after Royal Assent and once the royal charter is granted.

This would have meant that, even though the new NCS Trust would not have come into existence until after Royal Assent, the Freedom of Information Act and others would have included it straightaway on Royal Assent, and there is no sense in these Acts covering a body that does not yet exist. Commons Amendment 2 corrects that.

I hope that this explanation serves to justify the need for the amendments. I beg to move.

Baroness Barker (LD): My Lords, I shall speak to government Amendment 2. Last October, when this legislation to turn the National Citizen Service into a royal charter body came before your Lordships, I said that,

"the fact that the National Citizen Service provides young people with a great opportunity to meet new people, try new activities and develop skills and confidence at the critical age of 16 or 17 is not up for debate. However, pretty well everything else in this Bill should be".—[*Official Report*, 25/10/16; col. 120.]

I did so partly because the political decision of Mrs May's Government to spend £1 billion on one project at a time when public services for young people were disappearing seemed somewhat cavalier. Furthermore, the NCS Trust, an organisation which enjoys unprecedented political support, receives 99% of its funding—£475 million in 2015—from government, but it has a weak governance structure and a patchy performance record.

However, my main concern stemmed from the fact that the decision to scale up this project was justified on the basis of an evaluation report commissioned by the Cabinet Office at a cost of £1 million. Extensive and expensive as it was, it failed to ask two crucial questions: how does the scheme compare with other similar schemes for young people and could the intended outcomes be achieved more efficiently and effectively by putting the scheme out to tender?

Since the NCS Trust accounts do not meet public sector transparency requirements, we on these Benches—lone voices—asked searching questions of the Government last autumn. We asked why this organisation, whose four-week engagement programme with 16 and 17 year-olds costs somewhere between £1,500 and £1,850 per place, was given preference over other schemes such as the Scouts, whose placements cost about £500 and last, on average, about four years.

Why should an organisation which from the outset was insulated from the rest of the voluntary sector be fast-tracked to royal charter status? Why should an organisation that not only failed to meet its targets for young people on placements but overpaid £10 million for places that were not filled be deemed not just suitable to be scaled up but, in the words of the noble Lord, Lord Maude, become,

"a permanent feature on the landscape of our nation".—[*Official Report*, 25/10/16; col. 123.]

Why have the Government ignored the lessons of past failures, such as the Work Programme? The more forensic our questions, the more bluster came from the Government.

3.15 pm

But someone listened. The Public Accounts Committee decided to hold an inquiry and put our questions directly to the NCS. Its hard-hitting report was published on 14 March this year and it uncovered further weaknesses in the governance, leadership and safeguarding of the NCS Trust. It called for robust plans from the trust and the Department for Culture, Media and Sport for how costs would be modelled and long-term outcomes systematically evaluated. This is the only opportunity to raise the key points made in that report.

The Public Accounts Committee said:

"NCS has shown early signs of success but the Department for Culture, Media & Sport lacks the data to measure long-term outcomes or understand what works".

That point was reinforced when Mr Stephen Greene, in his interview on the "Today" programme of 14 March, was unable to answer that point when questioned.

The Public Accounts Committee recommended that the department should,

"establish a clear plan, and secure agreement with other government departments where necessary, by September 2017 for how it is going to evaluate the long-term impact of NCS".

The second recommendation was that,

"despite revising downwards the target for the number of NCS participants … The Department and Trust need to think radically about what meeting the revised target means for how NCS is provided and works alongside other organisations. We expect to see detailed plans to support achieving the revised participation figures within six months".

That point was made repeatedly by us on these Benches. The committee said:

"The Trust and Department cannot justify the seemingly high cost".

It recommended that they,

"develop a robust and complete NCS cost model and publish benchmarking of its costs in advance of the next commissioning round in 2018".

On the overpayment of £10 million, the Public Accounts Committee said:

"In its response to this report the Trust should update us on progress with recovering monies paid to providers, in respect of 2016 and previous years".

It pointed out that the NCS Trust had not met standards of transparency.

Baroness Buscombe (Con): May I say that at this stage of the passage of the Bill it is not right to make what is akin to a Second Reading speech? This is consideration of Commons amendments, so I ask the noble Baroness to come to a close.

Baroness Barker: Perhaps the House will understand that this is my one and only opportunity to raise a matter which is of key importance.

Baroness Buscombe: I say to the noble Baroness that there has been plenty of opportunity through the passage of the Bill.

Baroness Royall of Blaisdon (Lab): I am a fervent supporter of the NCS. However, I think it is absolutely right and proper that the noble Baroness, Lady Barker, puts these questions, because, following the publication of the report of the Public Accounts Committee, this is the only time when she is able to put these questions. That is not to say I am against the Bill, but she is right to put the questions.

Lord Elton (Con): If we do not follow the rules, we shall never get anywhere. The noble Baroness does not appear to me to be addressing the amendments; therefore she is not in order.

Baroness Barker: If the noble Lord will allow me to finish, I am going to come to the point about commencement, which is what this amendment is about.

I simply wish to say that the level of financial and other reporting which the NCS Trust has given so far has been found to be inadequate by the Public Accounts Committee, which has asked the trust to provide a timetable and an action plan to put in place the governance, leadership and expertise necessary to deliver the expansion of this project.

We have argued from these Benches that citizenship and civic participation are important, but we raised these questions throughout the passage of the Bill and we did not get answers. They are fundamental to the capacity of the organisation to deliver this scheme.

The Bill should not be commenced. Its commencement should be delayed until all the recommendations of the Public Accounts Committee have been fulfilled and a report has been provided to Parliament, and until the governance, management, planning and performance of the National Citizen Service Trust and the Challenge Network have been independently evaluated and a report produced. The Public Administration and Constitutional Affairs Committee should hold an inquiry into the role of Ministers and officials, just as it did with Kids Company. The transformation of the NCS into a royal charter body should be delayed until its eligibility can be proven.

In the meantime, the trust should be enabled to run its 2017 programme and it should be informed that its tenure and the remainder of its contract will be subject to the fulfilment of the criteria I have just mentioned. The National Citizen Service is a worthwhile enterprise. The body it has been entrusted to is not yet fit for purpose and a great deal of public funding is going to be staked on an organisation which so far has proven itself unable to deliver. On that basis, the Bill should not go ahead.

Lord Blunkett (Lab): My Lords, I declare my registered interests in this area as a board member. The noble Baroness, Lady Barker, has raised some rational points in relation to the Public Accounts Committee, and they should be taken seriously. But to say that these matters have not been addressed and then to say in the next breath, "I have addressed them throughout the passage of the Bill and did not receive answers", beggars belief.

I sat in Committee and on Report, as other Members of the House did, and heard the noble Baroness, Lady Barker, quite rightly, repeatedly raising the questions she has raised this afternoon; raising the comparative issues—which are not comparable—with regard to the Scouts; and raising issues in relation to contracting out by the National Citizen Service, which is a commissioning body and contracts out the actual delivery of the service to dozens of organisations in the voluntary and not-for-profit sector. The very reason the Bill is before us—and I welcome the two technical amendments—is precisely to ensure that the lessons of the past four years have been learned and will be taken forward.

That is why the noble Baroness's speech today, together with her numerous interventions in Committee and on Report, which she is perfectly entitled to make, would make a very good speech in favour of the Bill. As I understand it, she welcomes the National Citizen Service, questions the value for money, and raises issues from the Public Accounts Committee, which have not yet been answered, but raises one absolutely fundamental issue: that the long-term outcome measures of the investment in young people engaging with voluntary service and the week's residential course cannot yet be proved. That is a non sequitur. How can you prove the long-term outcomes at this stage of measures that have been in place for only four years?

[Lord Blunkett]

On that count alone, and on the count that the measures that the noble Baroness questions have been questioned—even though this afternoon she says they have not been, and have not been answered—we should progress with the Bill, which will set in place an entirely new board and structure. I will not be part of that, but I wish the National Citizen Service well because, although it was not my idea and did not spring from my party, it is a fundamental investment in the well-being of our country and our young people.

Lord Beecham (Lab): My Lords, I will not detain the House for long at all. I declare my interest as a serving councillor and as an honorary vice-president of the Local Government Association. I rise simply to ask for some reassurance—it may have been given, but I have not seen it—that the new duties comprised in Amendment 1, which is a perfectly sensible amendment that I support, will be regarded as falling within the new burdens doctrine so that, if local authorities are required to expend more on providing the services identified here, they will be reimbursed by government in accordance with that doctrine.

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for his introduction of the amendments. We gave the Bill considerable scrutiny when it was in your Lordships' House, and I am only sorry that we did not pick up the drafting points that he has had to bring back after consideration in the Commons. We have taken the view that the National Citizen Service Bill has a very narrow purpose, intended to secure the future of the NCS and to make the NCS Trust more accountable to Parliament and the public. This is what it does and we support the amendments.

Lord Ashton of Hyde: My Lords, I am grateful for those comments. I pay tribute to the noble Baroness, Lady Barker, who has been if not a lone voice then a voice that has addressed the scrutiny of the Bill the whole way through. Where I take issue with her is whether this is the correct place to do it. This Bill has been passed by both Houses of Parliament, with the exception of these drafting amendments. Both Houses have agreed it after scrutiny at all the different stages, and I would dispute whether this is her only chance to raise her points about the NAO and the Public Accounts Committee. There are many other avenues, but within the scope of Bill procedure, this is not one of them. I am certainly happy to meet her at any time she wants, along with my officials from the department, to talk about the issues that she has. I am reasonably confident that I can expect further scrutiny in this House on the National Citizen Service from her—I do not want to invite it, but I think that I may have it. I am grateful to the noble Lord, Lord Blunkett, who answered many of the points better than I can, so I will not repeat them now.

As far as the noble Lord, Lord Beecham, is concerned, I am not fully sure whether I understood his question. However, the NCS is a commissioning body, so any provider that does the work and provides the courses, be they local authorities or charities, will be paid by the National Citizen Service. It is not a question of extra duties being placed on other people. The money is there and that commissioning body will commission it from suitable avenues, some of which were mentioned by the noble Baroness, Lady Barker.

I hope that I explained in my opening remarks the technical reasons for these amendments and I therefore commend the Motion.

Motion agreed.

Children and Social Work Bill [HL]

Commons Amendments

3.28 pm

Motion on Amendments 1 to 11

Moved by ***Lord Nash***

That this House do agree with the Commons in their Amendments 1 to 11.

1: Clause 4, page 5, line 35, leave out from beginning to end of line 4 on page 6 and insert—

"(6) In this section—

"relevant child" means—

(a) a child who was looked after by the local authority or another local authority in England or Wales but ceased to be so looked after as a result of—

(i) a child arrangements order which includes arrangements relating to with whom the child is to live, or when the child is to live with any person,

(ii) a special guardianship order, or

(iii) an adoption order within the meaning given by section 72(1) of the Adoption Act 1976 or section 46(1) of the Adoption and Children Act 2002, or

(b) a child who appears to the local authority—

(i) to have been in state care in a place outside England and Wales because he or she would not otherwise have been cared for adequately, and

(ii) to have ceased to be in that state care as a result of being adopted."

2: Clause 4, page 6, line 13, at end insert—

"(8) For the purposes of this section a child is in "state care" if he or she is in the care of, or accommodated by—

(a) a public authority,

(b) a religious organisation, or

(c) any other organisation the sole or main purpose of which is to benefit society."

3: Clause 5, page 6, leave out lines 24 to 36 and insert—

"(2) A registered pupil is within this subsection if the pupil—

(a) was looked after by a local authority but ceased to be looked after by them as a result of—

(i) a child arrangements order (within the meaning given by section 8(1) of the 1989 Act) which includes arrangements relating to with whom the child is to live, or when the child is to live with any person,

(ii) a special guardianship order (within the meaning given by section 14A(1) of the 1989 Act), or

(iii) an adoption order (within the meaning given by section 72(1) of the Adoption Act 1976 or section

46(1) of the Adoption and Children Act 2002), or

(b) appears to the governing body—

(i) to have been in state care in a place outside England and Wales because he or she would not otherwise have been cared for adequately, and

(ii) to have ceased to be in that state care as a result of being adopted."

4: Clause 5, page 6, line 43, leave out from "is" to end of line 45 and insert ""looked after by a local authority" if the person is looked after by a local authority for the purposes of the 1989 Act or Part 6 of the 2014 Act."

5: Clause 5, page 6, line 45, at end insert—

"(5A) For the purposes of this section a person is in "state care" if he or she is in the care of, or accommodated by—

(a) a public authority,

(b) a religious organisation, or

(c) any other organisation the sole or main purpose of which is to benefit society."

6: Clause 6, page 7, line 46, at end insert "or

"(c) appears to the proprietor of the Academy—

(i) to have been in state care in a place outside England and Wales because he or she would not otherwise have been cared for adequately, and

(ii) to have ceased to be in that state care as a result of being adopted;"

7: Clause 6, page 8, line 11, leave out from "is" to end of line 13 and insert ""looked after by a local authority" if the person is looked after by a local authority for the purposes of the Children Act 1989 or Part 6 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)."

8: Clause 6, page 8, line 13, at end insert—

"(5A) For the purposes of this section a person is in "state care" if he or she is in the care of, or accommodated by—

(a) a public authority,

(b) a religious organisation, or

(c) any other organisation the sole or main purpose of which is to benefit society."

9: After Clause 9, insert the following new Clause—

"Placing children in secure accommodation elsewhere in Great Britain

Schedule (*Placing children in secure accommodation elsewhere in Great Britain*) contains amendments relating to—

(a) the placement by local authorities in England and Wales of children in secure accommodation in Scotland, and

(b) the placement by local authorities in Scotland of children in secure accommodation in England and Wales."

10: Clause 11, transpose Clause 11 to after Clause 31.

11: Clause 32, transpose Clause 32 to after Clause 30

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, for five months last year this House diligently scrutinised the Children and Social Work Bill and produced an important piece of legislation to improve the care and protection of our vulnerable children, and the support provided to those who work with them. Since November, that process has continued in the other place and I am delighted that as a result, the Bill has now been brought for our consideration today. I hope that after today's debate noble Lords will agree that the Bill is now in good shape and that our productive dialogue on its provisions should move on to the critical matter of effective and timely implementation.

This group of amendments strengthens areas of the Bill to which the House has already devoted much time. These are small but important refinements; I will endeavour to explain how they will make the current provisions of the Bill still more impactful.

3.30 pm

Amendments 1 to 8 deal with educational support for children adopted from care. I am sure noble Lords across the House will remember the thorough debates we had on this topic and, in particular, the heartfelt intervention of the noble Baroness, Lady King. On Report in October I confirmed to the House,

"that the Government will table an amendment to the Bill in the other place to bring children adopted from care outside England within the scope of Clauses 4 to 6".—[*Official Report*, 18/10/16; col. 2288.]

I am delighted to say that Amendments 1 to 8 deliver on that commitment. Taking account of the differing care systems around the world, they provide for support from the virtual school head at local authority level and designated teachers within schools for children who have been adopted from care in countries other than England and Wales. I am sure the House will welcome this development.

Amendment 9, along with Amendments 22 to 28, and 30, are concerned with the small number of children—20 at present, according to our most recent data—who are placed by local authorities in England and Wales in secure accommodation in Scotland. Making such placements is a well-established practice allowing local authorities to consider a fuller range of specialist provision in seeking to identify the most appropriate placement for a child in their care and making best use of the available capacity within Great Britain. The amendments, therefore, do not make any substantive change to current practice or policy but are rather a technical fix to make clear the powers under which a child might be placed in these settings and address a legal gap identified by the Family Division of the High Court in September last year.

Apart from Amendments 10 and 11, which simply move clauses to new positions in the Bill for housekeeping purposes, the remaining amendments in this group relate to the social work clauses of the Bill.

I thank noble Lords for their challenge and scrutiny in relation to the new regulator for social workers, Social Work England. I am delighted that we have reached an agreed framework for the new body, one which I believe puts us in an excellent position to drive forward the reform and support needed in the profession. I give my specific thanks to the noble Lords, Lord Hunt and Lord Warner, whose continuous engagement in this subject has greatly helped us achieve a legal framework that supports all our ambitions for the profession while promoting and maintaining the vital protection of the public.

I shall spend a little time on Amendment 14. This new clause will make it possible for government to pursue improvement work for the profession and set improvement standards that make it clear what social workers should know and be able to do to practise effectively. It is only right that vulnerable children and adults should expect strong professional practice from their social workers. We know that they do not receive that strong support and that quality varies across the sector. Almost one in four councils inspected under Ofsted's current inspection framework has a judgment which indicates that its practice is inadequate. In the light of that startling statistic, it is critical that the

[Lord Nash]
Secretary of State is able to bring forward improvement activity that she believes will help raise the standard of social work practice by making clear what standards are expected of children and family social workers and assessing social workers against those improvement standards.

In other professions, we might expect a professional body to undertake that work but, for now at least, there is no such body for social workers. With the distinct regulatory functions that Social Work England will rightly have, we believe the Secretary of State is in the best position to drive this improvement forward. Indeed, she is the only person who can. In doing so, she will, of course, want to work exceptionally closely with the social work profession.

Amendment 14 will be the subject of review, as is already set out in Part 2, and we will consider whether it is appropriate to transfer the improvement role in the future to another body, which this amendment also allows for.

My honourable friend Edward Timpson has set out in the other place and in speeches to the sector his belief that a sector-led professional body is an important part of the social work profession's development, and he has made clear his desire to see proposals from the sector about how such a body might be created. I would like to be clear that the improvement standards under Amendment 14 are intended to be distinct from the professional standards that the regulator, Social Work England, will set. This is an important distinction. The improvement standards will define specialist standards of practice over and above those required by the regulator for registration. The Secretary of State will have no role in taking action against individual social workers who do not meet the regulator's standards.

In enabling the setting of specialist improvement standards for social workers and enabling assessment against those standards, this clause is critical to the future of the children's social care system, to social workers and to the children they help and support. It will enable the introduction of a national assessment and accreditation system for child and family social workers, and will enable similar arrangements to be applied in social work with adults where appropriate. This follows extensive consultation with local authorities, including 31 enthusiastic pilot councils, and with representatives of social workers themselves.

The national assessment and accreditation system will provide for the first time a consistent way of recognising the specialist knowledge and skills that child and family social workers, supervisors and leaders need for effective practice. In doing so, it will trigger a sharper investment in continuous professional development, a focus on the quality of practice and a social work profession more confident in its knowledge and skills and in the professional quality of the work that social workers do with children.

The Government have recently consulted on the national assessment and accreditation system. The consultation closed on 14 March and almost 400 individual responses were received, including responses encapsulating the views of hundreds of social workers. There is a great deal of support for the aims of the new system but there was a wide range of comments about how its rollout can happen in a way that minimises disruption to the social work workforce. We are considering these comments carefully, and Ministers will announce their decisions on the way forward later this year.

In addition, we are working closely with the 31 local authorities that have volunteered to be part of phase one of the rollout of the accreditation system. Recent feedback from them suggests that they continue to see great value in having an indicator of their social workers' capabilities and a lever to drive a sharper focus on continuing professional development.

The remaining social work amendments, Amendments 15 to 21 and 31 to 33, are a set of technical and consequential changes aimed at bringing clarity to the law governing the social work profession and bringing it into one succinct piece of legislation. These new clauses and amendments and the associated schedule merely provide clarity to the legislation, which will offer simplicity and transparency to the law governing the social work profession. They do not make substantive changes to the content of the present legislative framework but, rather, ensure a continuation of current provisions in light of the changes made by Part 2 of the Bill, particularly to maintain the support that the Government already provide to social work training.

Through Amendment 15, the Government want to make it absolutely certain that the Secretary of State is still able to ensure that adequate provision is made for social work training, as is currently the case. This includes the ability to provide financial assistance to those undertaking training, as well as to the various organisations such as higher education institutions, working in partnership with local authorities, that provide social work training. The Secretary of State currently has functions of this nature under Section 67 of the Care Standards Act 2000. Amendment 15 would replace those functions in respect of social workers in England, setting out the Secretary of State's powers in this area using modern drafting and in a way that makes clear her powers in relation to social work training in one clear and dedicated piece of legislation. The amendment is intended to ensure the continuation of current support to those bodies providing social work training, including higher education institutions, something that the Government are absolutely committed to. I beg to move.

Baroness Pinnock (LD): My Lords, I am pleased to say that the Bill has been significantly improved by scrutiny in both Houses. The Minister has been of particular help in this iterative process by being willing to listen and to amend according to the informed debate in Committee and on Report in this House. We support the amendments listed in this group that extend the duty of local authorities in respect of children adopted from state care outside England and Wales, as well as the other changes in this group regarding secure accommodation and improvements to social work training and standards. On this, I have been alerted by the British Association of Social Workers of its concern that the training is not expressly linked to institutions of higher education. Perhaps the Minister could comment on that concern.

On Amendment 14, we support the action to improve standards in social work training and social work in children's services, but I regret that the Minister has today linked training with children's services that are deemed less than satisfactory when inspected by Ofsted. At this point I declare my interest as in the register as a councillor in the Borough of Kirklees and a vice-president of the Local Government Association.

I continue to express my concern that the Bill adds to the duties and responsibilities of local authorities—and of schools—at a time when local authorities are adjusting to very large reductions in their funding, when the Government have made a commitment that there should be no new responsibilities for local government without the funding being provided. I hope to hear from the Minister that there will be additional funding for children's social services to reflect the additional duties and responsibilities that the Bill rightly places on them. We cannot have something new and improved without providing the means to achieve it.

With those comments, we generally support the amendments in this group.

Baroness Walmsley (LD): My Lords, I add a few words to those of my noble friend Lady Pinnock. I particularly thank the Government for the amendments to Clauses 4, 5 and 6, which were in response to a promise made to the noble Baroness, Lady King of Bow, and me during the Bill's passage through your Lordships' House. They will certainly improve the position of children in this country adopted from abroad, but, as you would expect, the amendments can only bring those children within the scope of the measures in the Bill.

The battle is not over for the parents of those children, because many of them are now coming to the age where they transfer from primary to secondary school and are having difficulty getting into the school which their parents feel is most suitable for their particular needs. Is the Minister aware that some parents and I have spoken to Mr Edward Timpson about the need to extend priority admissions and pupil premium plus to those children? We are waiting to see whether the Government will make those changes. Will the Minister agree to meet me and some of the parents of those children so that he may hear for himself their concerns? Having said that, they asked me to say that they thank the Government and very much welcome the changes that they have made.

Lord Ramsbotham (CB): My Lords, I, too, thank the Government for how far they have come since we started work on this Bill in this House many months ago. However, I raise one question, which I raised yesterday in the very helpful drop-in session held by the Minister, which refers to government Amendments 9 and 30. Government Amendment 9 allows children from England and Wales to be held in secure accommodation in Scotland. As we know, the circumstances in which a child looked after by a local authority may be deprived of his or her liberty by placement in secure accommodation are listed in Section 25 of the Children Act 1989.

Government Amendment 30 sets out a new schedule. Paragraph 5 of that schedule refers in particular to the Children (Secure Accommodation) Regulations 1991. It states:

"In regulation 1 … 'This Regulation and Regulations 10 to 13 extend to England and Wales and Scotland'".

Does that mean that Regulations 2 to 9 and 13 do not apply to children detained in Scotland? That is very important, because those regulations contain the requirement to obtain the child's and parents' consent to a move and the right to independent periodic review. If the regulations as set out in the government amendment are to be believed, those rights are removed from children who are transferred to Scotland.

I suspect that this is either an administrative oversight or has been left out not deliberately but because the implications were not wholly appreciated. I should be grateful if the Minister could clear up this question.

3.45 pm

The Earl of Listowel (CB): My Lords, I too welcome much of what the Minister has said, as well as the work undertaken by the Government and the Members of the other House, particularly their acceptance of the amendment of the noble Baroness, Lady King, on adopted children, as promised. The Minister's last words highlighting the continued financial support for higher education institutions to train social workers are also very important and very welcome.

I share my noble friend's concern about proposed new Clause 9 regarding secure accommodation in Scotland. I recognise that there is a crisis in the care of looked-after children. Since the death of baby Peter the number of children taken into care has risen year on year, and we anticipate that the number will increase even more steeply. There is pressure on foster placements and pressure on children's homes in England and Wales. I recognise that it is sometimes better to send a child a long way from home if there is excellent and specialist provision to meet their needs. However, as a patron of a children's advocacy charity, I know very well from young people themselves that what they wish for above all is continuity of positive relationships, so sending more children further away from home is always a matter of concern. I know that the Government are apprised of that principle. The thought that we are making it easier through this legislation to place more children out of England and Wales, far from their local authority—in Scotland—therefore causes me concern. The President of the Family Division of the High Court, Lord Justice Munby, said that this was something that needed to be considered, but he also said that there should be a joint Law Commission report into it. My concern is that it needs to be thoroughly considered. I would be grateful to hear from the Minister that, before this amendment is implemented, there will be thorough consultation to consider its implications.

On Amendment 14, on the improvement of standards for social workers, I agree that standards need to be improved. There has been a long-standing concern about the quality of education of social workers. I recognise that they have often not been fully equipped to practise when they have completed their courses. However, it is right to insist that the Secretary of State should consult with the social work profession and higher education institutions in developing these standards. The Minister was fairly reassuring on that point although he did not explicitly mention the higher education institutions. My concern is that there is a risk that ideology and strongly held personal prejudice can lead

[The Earl of Listowel]
judgment in the development of social work. The role of the social worker is highly emotionally charged, and it always has been. These people step into the lives of families and children for understandable reasons. The widest possible consultation with academics and practitioners would avoid the risk that the prejudices of one individual or one group could shape the standards too sharply.

I recognise the benefits of the innovative training models such as Frontline, which the Government introduced. The Minister has been fairly reassuring on this last point so I will not go further on that. I do not intend to speak again this afternoon but I warmly welcome the next set of amendments and the introduction of statutory personal, social health and economic education. A long-standing concern is that teachers in schools are just not equipped to teach the difficult subject of sex and relationship education. I hope that by putting this on a statutory basis many more teachers will be properly equipped and children will get the education they need.

Lord Warner (CB): My Lords, I too welcome what the Government have done in responding to some of the concerns that have been expressed about the Bill. They have shown their willingness to listen and to make amendments and I commend them for that.

I just want to raise an issue around secure accommodation. My warning lights always start flashing on the subject of children's secure accommodation. It is very difficult to regulate this area and to ensure that good care is provided, because the unit costs tend to be extremely high. If we have now got to the point where we have to take children over the border—where they have to cross the Tweed to get their secure accommodation—we should start to be concerned. This sector has shrunk and shrunk and shrunk in England. This was starting when I was chairman of the Youth Justice Board, up to 2003, and it is very difficult to get people to work in it, to set the systems up and to ensure that they continue to be safe.

There is something to be said, not just for the point made by the noble Lord, Lord Ramsbotham, but for taking an independent look at this sector and its economic viability. This is an area where, in effect, you almost have to pay for spare places to be available because you do not know when a child is going to require that accommodation. The Government now need to have a long, hard look at this. The sector has been shrinking for some time; it has proved difficult to get the finances right and to secure good staff. People are doing their best, but things can often go wrong in this sector. It is very difficult to ensure that these places are regulated properly. The Minister might want to write later, rather than responding today, but will he and his department consider whether a review of the sector is long overdue?

Lord Hunt of Kings Heath (Lab): My Lords, the Minister has paid due tribute to Members of this House for their contribution as the Bill was scrutinised some months ago. In return, the Minister's willingness—and that of his colleague in the other place, Mr Edward Timpson—has been commendable and is much appreciated. There is no doubt that the Bill has changed quite considerably. I particularly welcome the fact that regulation of social workers is now to be undertaken by an independent body, subject to the oversight of the PSA. I also welcome the Government's decision to accept that the innovation clauses which the Lords took out would not be reinserted in the other place. Essentially, they involved giving local authorities the ability to override primary legislation, so we have maintained an important principle.

The Minister has introduced a number of interesting amendments. I will follow other noble Lords in asking one or two questions. The noble Lord, Lord Ramsbotham, and the noble Earl, Lord Listowel, have raised important points in relation to secure children's homes in Scotland and the amendments brought forward by the Minister. There can, of course, be no objection whatever to dealing with the technical deficiencies which have been identified, but there is a concern that, across the last six years, there has been a, I think, 22% reduction in secure accommodation places for children. There would be a concern if these provisions were used inappropriately to transfer young people across the border because there were not sufficient resources in England. I hope that the Minister can assure me that this is purely a technical provision, that the Government are actually committed to ensuring that there are sufficient places in England, and that young people are not sent unnecessarily long distances from their homes. As the noble Lord and the noble Earl said, that cannot do very much to improve the quality of their lives, which is the purpose of secure accommodation.

I recognise that the provisions on improvement standards for social workers are a logical outcome of the Government accepting the proposition that social worker regulation should come under an independent regulator. The noble Lord said some welcome words about the Government's desire to encourage the development of a sector-led improvement body. Clearly, efforts have been made in this regard in the past that have not been deemed to work, but the Government are right to try to inspire another go at getting this right. The noble Lord will probably know that both BASW and UNISON have raised concerns about the Secretary of State setting standards and whether they are linked to the national assessment and accreditation scheme. I shall not go into that in detail, but clearly there is a concern among social workers about the way in which the scheme could be used potentially to penalise individual social workers. I hope that the noble Lord will set my mind at rest on that.

In taking forward these proposals on the establishment of a new regulator and the setting of standards and their assessment by the Secretary of State, I hope that there will be, as the noble Earl, Lord Listowel, said, full engagement with the sector, including with UNISON, BASW and other bodies. There is a particular role for the chief inspector of children's services here. I look across the Floor of the House at the noble Lord, Lord Laming, who was a most distinguished chief inspector of social services a few years ago. It is a very difficult role comprising being a principal adviser to Ministers and being head of a profession while upholding the public interest. The chief inspector of children's services has a very strong role to play in trying to pull the stakeholders

together rather than necessarily just confronting them. I hope that she and the Minister will take this suggestion as one that is meant in the best possible way. In the end, if this provision is to work effectively, it is very important that we take the profession with us as much as we can on this journey of improvement. The Opposition fully support the Government in seeking to improve standards in the profession. That is why we support the broad thrust of the Bill.

The noble Baroness, Lady Pinnock, talked about training providers. There has been concern, particularly in the light of the debate on the higher education Bill, about who the providers might be. If the Minister could give some assurance about the quality of provision in social work training, that would be very helpful.

I am grateful to the Minister for his work on the Bill, the amendments he has brought forward and for the overall thrust of where we are now going, which we support.

Lord Nash: My Lords, I thank noble Lords for their helpful comments. I repeat that these amendments, although important, are, for the most part, relatively minor. However, I will attempt to answer the points that were raised.

On the point about the role of higher education institutions, raised by the noble Baroness, Lady Pinnock, the noble Earl, Lord Listowel, and the noble Lord, Lord Hunt, as I said, the amendments in this group already include provision for financial assistance for organisations, including HEIs, providing social work training. The Government already play a role in ensuring that adequate initial HEI training is available and are absolutely committed to continuing to do this. This clause allows for this funding to be provided to HEIs, and the Government are committed to continuing this support.

The noble Baroness, Lady Pinnock, asked about funding. We have published a new burden assessment of the Bill's provisions, including a commitment to provide additional funding where appropriate.

The noble Baroness, Lady Walmsley, talked about issues that some parents face when their child transfers from primary to secondary education. I would be delighted to meet her and the parents concerned to discuss this matter further.

The noble Earl, Lord Listowel, and the noble Lords, Lord Ramsbotham, Lord Warner and Lord Hunt, also talked about secure placements in Scotland and generally. Placements in Scottish secure homes have happened, commonly, over time. These amendments are necessary to fill a legislative gap relating to secure placements in Scotland by English and Welsh local authorities—a technical point. While important, they do not seek to change policy; as I say, they are a technical fix.

4 pm

In answer to the point about parental consent, Section 25 itself contains no requirement for parental consent, and the proposed amendment does not alter the position as set out in law currently. That is, there is a duty on the placing authority to endeavour to promote contact between the child and their parents and any person who is not a parent but who has parental responsibility for the child and any relative, friend or other person connected with the child, unless it is not reasonably practical or consistent with the child's welfare. Such cases may include where the child has been abused or the parents or parent pose a significant risk of harm to the child.

On the question that the noble Lord, Lord Warner, raised in particular, as did the noble Lord, Lord Hunt, about whether there is a shortage of placements in this regard, at the moment we are talking of 20 children going across the border, but that is not a reason for not being concerned about the point. The commissioning and provision of secure accommodation rests with local authorities, which have a duty to ensure sufficient provision.

However, in recognition of the absence of a clear national picture of supply and demand for secure beds, and in response to calls from ADCS and other stakeholders to allow better central oversight, last May my department began funding a central co-ordination unit for secure welfare placements. This is run by Hampshire County Council and supports local authorities to find suitable placements for young people. The process is designed to ensure that places are allocated more quickly and easily as soon as a child is identified as needing secure accommodation. Emerging data from the unit are starting to give us a much better picture. I can say that it indicates that there may be pressure on the availability of welfare beds in the English secure estate, and we are engaging with ADCS, the LGA, secure accommodation providers, the MoJ and NHS England to establish how we can better plan and allocate this provision in the future.

I entirely agree with the point the noble Lord, Lord Hunt, made about the essential importance of taking the profession with us every step along the way. On the point about consultation, which the noble Earl, Lord Listowel, also raised, the amendment itself requires consultation, and we are absolutely committed to a full and open consultation.

I hope that I have been able to do justice to most of the points raised and that noble Lords across the House will support the Motion to approve these Commons amendments.

Motion agreed.

Motion on Amendment 12

Moved by ***Lord Nash***

That this House do agree with the Commons in their Amendment 12.

12: After Clause 32, insert the following new Clause—

"Education relating to relationships and sex

(1) The Secretary of State must by regulations make provision requiring—

(a) relationships education to be provided to pupils of compulsory school age receiving primary education at schools in England;

(b) relationships and sex education to be provided (instead of sex education) to pupils receiving secondary education at schools in England.

(2) The regulations must include provision—

(a) requiring the Secretary of State to give guidance to proprietors of schools in relation to the provision of the education and to review the guidance from time to time;

(b) requiring proprietors of schools to have regard to the guidance;

(c) requiring proprietors of schools to make statements of policy in relation to the education to be provided, and to make the statements available to parents or other persons;

(d) about the circumstances in which a pupil (or a pupil below a specified age) is to be excused from receiving relationships and sex education or specified elements of that education.

(3) The regulations must provide that guidance given by virtue of subsection (2)(a) is to be given with a view to ensuring that when relationships education or relationships and sex education is given—

(a) the pupils learn about—

(i) safety in forming and maintaining relationships,

(ii) the characteristics of healthy relationships, and

(iii) how relationships may affect physical and mental health and well-being, and

(b) the education is appropriate having regard to the age and the religious background of the pupils.

(4) The regulations may make further provision in connection with the provision of relationships education, or relationships and sex education.

(5) Before making the regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(6) The regulations may amend any provision (including provision conferring powers) that is made by or under—

(a) section 342 of the Education Act 1996;

(b) Chapter 4 of Part 5 of the Education Act 1996; (c) Schedule 1 to the Education Act 1996;

(d) Part 6 of the Education Act 2002;

(e) Chapter 1 of Part 4 of the Education and Skills Act 2008; (f) the Academies Act 2010.

(7) Any duty to make provision by regulations under subsection (1) may be discharged by making that provision by regulations under another Act, so long as the Secretary of State consults such persons as the Secretary of State considers appropriate before making the regulations under that Act.

(8) The provision that may be made by regulations under subsection (1) by virtue of section 70 includes, in particular, provision amending, repealing or revoking any provision made by or under any Act or any other instrument or document (whenever passed or made).

(9) Regulations under subsection (1) which amend provision made by or under an Act are subject to the affirmative resolution procedure.

(10) Other regulations under subsection (1) are subject to the negative resolution procedure.

(11) Expressions used in this section, where listed in the left-hand column of the table in section 580 of the Education Act 1996, are to be interpreted in accordance with the provisions of that Act listed in the right-hand column in relation to those expressions."

Lord Nash: My Lords, the Government want all children to have access to age-appropriate relationships education, relationships and sex education—RSE—and personal, social, health and economic education that relate to the modern world. We believe this is vital to ensuring that pupils are taught the knowledge and skills they need to stay safe and develop healthy, supportive relationships, particularly in view of their increasing use of online technology and social media. I know that many noble Lords have worked tirelessly to raise the profile of this issue and I thank them for their valuable contribution.

As my honourable friend the Minister of State for Vulnerable Children and Families stated on Report in the House of Commons, we have listened to calls for further action on this. That includes from professionals working in the field, from parents and carers and from young people themselves. Evidence presented to numerous Select Committees has added to the weight of evidence, and many teaching unions have also called for mandatory status, as have leading parent representative bodies such as Mumsnet and PTA UK. The growing concerns about child sexual abuse and exploitation, and about children sharing and viewing inappropriate materials, have convinced us that there is a compelling case to act in relation to pupil safety.

Amendment 12 places a duty on the Secretary of State to make relationships education and RSE mandatory. The strength of this approach is that it will allow us to engage with a wide range of interests and expertise ahead of putting the duty into effect. The outcome of this engagement will feed into both the legislative process needed to make these subjects mandatory and the guidance that will support schools in delivering high-quality, inclusive relationships education and RSE.

We are creating a regulation-making power to enable the Secretary of State to make PSHE mandatory. It is clear that the most pressing safeguarding concerns relate to relationships and RSE, but it is evident that wider concerns about child safety and well-being relate to the types of life skills that this subject can cover, such as an understanding of the risks of drugs and alcohol, and safeguarding physical and mental health. That is why we want to have the ability to make PSHE also mandatory, subject to the outcome of thorough consideration of the subject and careful consideration of the fit with the content of relationships education and RSE.

The wider engagement to consider content will begin this spring, and we expect that it will result in draft regulations and guidance for consultation in the autumn of this year. Following the consultation, we will lay regulations in both Houses, alongside final draft guidance, allowing for a full and considered debate. We envisage that the statutory guidance will be published in 2018, once the regulations have been debated and approved by both Houses, and at least one full year before the academic year 2019-20.

Our proposals have already been debated fully in the other place, and I have also had the opportunity to discuss them with some noble Lords individually and in drop-in sessions. Therefore, I know that there will be particular interest in certain points of detail, and it may help to cover some of them briefly at the start of the debate.

First, we do not want to be overly prescriptive on content and therefore have chosen not to specify in the Bill the exact content of the subjects. We know that the rapidly changing risks that young people face mean that the legislation could quickly be out of date if we attempted to list key topics. We will ensure that our external engagement results in a clear understanding of the full set of knowledge and skills that relationships education, RSE and PSHE should provide for children and young people.

However, Amendment 12 will ensure that the Secretary of State will be required to issue guidance on delivering these subjects to which all schools must have regard.

The amendment also requires that the guidance is given with a view to ensuring that pupils learn about safety in forming and maintaining relationships, the characteristics of healthy relationships, and how relationships may affect mental and physical health and well-being.

It will be essential, of course, that the content of these subjects is age appropriate. We expect the new subject of relationships education for primary schools to focus on themes such as friendships, different types of family relationships, how to deal with bullying and respect for other people. We anticipate that RSE in secondary schools will include topics such as sexual health, including sexually transmitted infections, and sexuality—all set firmly within the context of healthy relationships. It will also cover helping pupils to understand the law in relation to sex. This will complement elements already taught in the science national curriculum.

This will contribute to wider government efforts to improve all elements of internet safety. We want Britain to be the safest place in the world for young people to go online. We know that more needs to be done and the Department for Culture, Media and Sport has commenced work on a new internet safety strategy. The DCMS will consider all available options. It will want to talk to all the leading stakeholders, collect evidence and test solutions before delivering a sensible package of proposals.

We will consider the need for PSHE topics in this context and we expect our analysis to cover the broad pillars of healthy bodies, lifestyles and healthy minds, economic well-being and making a positive contribution to society. The amendment will ensure that education provided under these subjects is appropriate not only to a child's age but to their religious background. The Secretary of State must give guidance to schools on how to deliver this, but this provision will give faith schools the flexibility to teach these subjects reflecting the tenets of the faith, while still being consistent with their duties under the Equality Act.

We expect all schools to ensure that young people feel that relationships education and RSE are relevant to them and sensitive to their needs. As part of our wider engagement, we envisage working with organisations such as Stonewall and the Terrence Higgins Trust, which are already supporting schools very well in this area. The guidance will draw on existing good practice on how to provide good-quality, inclusive subject content that is also consistent with the ethos of the school.

Schools will be able to consider how best to teach these subjects, taking account of the age and religious backgrounds of their pupils, but not whether to teach them. The amendment does, however, provide for a right to withdraw from sex education in RSE for parents who would prefer to teach some or all of sex education to their children themselves. We will ensure that the right to withdraw is consistent with current case law regarding the age at which a pupil may have the right to make their own decisions about whether to withdraw from sex education or not. I want to assure noble Lords that all this will be covered in regulations, which will be subject to the affirmative procedure and therefore debated in both Houses.

The amendment does not provide for a right to withdraw from relationships education for pupils receiving primary education. This is because we envisage relationships education will focus on themes such as friendships, family relationships and dealing with strangers. I am sure noble Lords will agree that this is appropriate and important for all children to learn.

We are committed to giving schools time to prepare fully for these important changes, so that they will be ready to teach high-quality relationships education, RSE and potentially PSHE, pending the findings from our engagement and consultation. We therefore anticipate implementation will commence from September 2019.

I have mentioned already that we intend to conduct a thorough and wide process of engagement, both to develop regulations and guidance and to assess what support the sector may need as a result of this legislation. The department will begin this process of engagement as soon as possible after Royal Assent. We are considering what expert advice the department requires to help inform this work. We envisage seeking expertise in school leadership and the subject matter. As we have already set out, we intend to consult on the draft regulations and guidance in the autumn of this year.

The process will include activity with the teaching profession; subject associations such as the PSHE Association, whose former CEO Joe Hayman deserves recognition for working tirelessly for this cause for many years, and the Sex Education Forum; faith groups such as the Catholic Education Service, the Church of England and other leading faith representative organisations; leading children's stakeholders, such as Barnardo's, the Children's Society, the National Children's Bureau, the NSPCC and other voluntary sector groups such as Stonewall, the Terrence Higgins Trust and the End Violence Against Women Coalition; teaching unions; and organisations that work in this space with schools and children such as the Young Enterprise. Perhaps most crucially, we want this work to engage directly with children, young people and parents, so we can be sure that the end result delivers what they need and that we are helping children and young people to be safe and happy as they grow older.

Of course, we would also like noble Lords to contribute to this wider engagement, particularly those who have expertise and experience in these areas; for example, in online safety. I look forward to working with fellow Peers on this.

I hope that noble Lords will join me in supporting this considered approach to reforming this area of the curriculum in collaboration with schools. I know there are some amendments in this group that other noble Lords will wish to speak to, but I trust that the House will welcome the important principles I have set out and welcome, as I do, these Commons amendments. I beg to move.

Amendment 12A (as an amendment to Amendment 12)

Moved by ***Lord Storey***

12A: Line 4, after "relationships" insert "and sex"

Lord Storey (LD): I will speak to Amendments 12A, 12C and 12E in this group. I begin by thanking the noble Lord, Lord Nash, and his ministerial colleague Edward Timpson for having brought this very important amendment forward. They are to be credited and congratulated on what they have achieved. The Minister said that many Members have raised this issue and its profile over a long time in this House. It is hard to believe, as my noble friend Lady Maddock is reminding me, that it was perhaps only 20 years ago that we were debating Clause 28—do noble Lords remember that? How quickly things have changed. Of course, during the time of the coalition, we had equal marriage as well.

I want to thank not only the Minister and his Government but also all those who have campaigned on this issue for quite some time. When you think of PSHE, there is only one person in this Chamber you automatically think of. She is not in her usual place but she is here. That person is—I have forgotten her name. Help!

Noble Lords: Massey!

Lord Storey: It is the noble Baroness, Lady Massey—I had a senior moment. She has constantly asked Question after Question and always emails to say, "Make sure you are in the Chamber when I ask my Question". I am sure that she is thrilled with the result. I am sorry for forgetting her name.

4.15 pm

We need to be aware of the problem. When I first started teaching at a primary school on a council estate in Prescot, once a week for 12 sessions we took the BBC sex education programme "Merry-Go-Round". At that time there were not some of the frightening issues that children now face in primary schools. I shall come back to that issue in a moment.

To put this in context, the Terrence Higgins Trust in 2016 found that one in seven young people did not receive any sex and relationship education at school. Of this frightening figure, over half—61%—received SRE only once a year or less. The colloquial term was "the drop-down days". Currently, millions of children are not getting the right kind of information about relationships. Sensitive issues such as relationships with the other sex, with the same sex, domestic violence, abuse, female genital mutilation, forced marriage and stranger danger are all out there and young people do not get the proper support and guidance that they should get.

It is not only about saying—as we are—that we should have sex and relationship education but about the quality of that provision and the teaching of the subject. That is why I again welcome the Government's decision to provide guidance on this matter. It was only three years ago that Ofsted found that of those secondary schools teaching sexual relationship education, as it was then called, 40% required improvement because the teaching was inadequate. We need to make sure that the teaching, materials and content are right.

My concerns lie in two areas. I hope the Minister will clarify the first area, which concerns the Government's amendment, when he responds. To a Written Question from the noble Lord, Lord Northbourne, on sex and relationship education in schools, the Minister gave a fulsome reply. He said:

> "We plan to undertake a comprehensive programme of engagement with stakeholders about future provision in these areas. A key element of that engagement process will be gathering and using evidence to enable us to get the balance of subject content right … enabling schools to design appropriate lessons".

Putting that to one side for a moment, I also note that in their amendment the Government refer to the religious backgrounds of pupils. My Amendment 12C seeks to explore what the religious background means. Does it mean, for example, that the programme of study, when it is developed after consultation, will be age appropriate and include something about gay relationships? I assume that that content might include something about safe sex and contraception. How does that square with the traditions or the religious background of a particular faith school? Does it mean that they can say, "We are not happy about contraception or gay relationships so we will withdraw from those aspects of relationship and sex education"? I want the Minister to be very clear in his reply. I know that there are issues around the Equality Act, but I hope that the Minister can say basically what is in my amendment, which is that once the consultation has taken place and the programme of work is agreed, which is only right and proper, it will be expected of all schools, irrespective of their faith traditions or background, to teach these aspects.

The second issue I want to address goes back to primary education. We have come a long way so I am not going to push this, but I want to make the point. I regret that the sex part is not to be included with relationships. Primary school-age children usually have a teacher who they see on a daily basis in a small setting where it is natural to talk about sex and relationship education. Children are facing pressures ranging from sexting to access to pornographic sites and stranger danger, so it seems that as well as relationship education, sex education should go with it. It is interesting to note that around 53% of 11 to 16 year-olds have seen explicit material online and it is a matter of concern that new research undertaken by the security technology company Bitdefenders reports that children under the age of 10 now account for 22% of online porn consumption. If we divorce sex and relationship education, that has the potential to cause problems. As Michael Flood has rightly said in volume 18 of his *Child Abuse Review*,

> "pornography is a poor, and indeed dangerous, sex educator".

I regret the fact that we will not be giving primary school-age children sex and relationship education together.

I thank the Minister for bringing forward this provision and am pleased that this is going to be an affirmative process.

Baroness Massey of Darwen (Lab): My Lords, I wonder if I might speak given that I was named—but not shamed—in the speech made by the noble Lord, Lord Storey, and I thank him for his tribute. I feel that I must speak on what is quite an historic occasion. I am one of those people in your Lordships' House who has spent many years trying to get the issue of personal, social and health education, including relationships

and sex education, into the curriculum, and the word "compulsory" is music to my ears. I give the amendments a huge welcome and I think that the Government have been brave in putting them before us today. At last we can see real progress on this.

The noble Lord, Lord Storey, is right to say that these issues have been around in Parliament for the past 20 years. I recall my noble friend Lord Knight speaking in 2010 at a teachers' conference at which he received a standing ovation when he said that PSHE would be made compulsory by the Labour Party. Sadly the issue was washed away in the wash-up and it never happened, but I shall never forget my noble friend's standing ovation.

Until now, despite vocal support from children and young people, parents, teachers and other professional bodies, the words "must" and "make provision" have not been applied to these aspects of education; that is, forming and maintaining relationships and how they may affect physical and mental health. Nor have schools been required to make policy statements in relation to the education provided and to make them available to parents or other persons. The noble Lord, Lord Nash, mentioned many organisations, to which we are all grateful for their consistent support for this area of education. Children—it is they who are important here—will have the right to learn about issues that they are concerned about. They will have the right to learn about, for example, the danger of online pornography, abuse and how to protect themselves. But that is not the only thing: they will have the right to learn that most relationships are, in fact, fulfilling, happy and make sense to have.

Regarding the religious aspect, the best sex education teacher I ever met when I was an adviser was a nun. She said to me on issues such as abortion and homosexuality, "I do teach these things. What I do is put forward the Roman Catholic view of what these mean to the Church and to myself, but I do talk about them and feel that I can talk about them because I have put the viewpoint of my Church. It does not prevent me helping children to understand what such issues are about". I deeply respect that person for what she said to me.

Here I pay particular tribute to the noble Lord, Lord Nash. I remember a conversation with him when he was first made a Minister. I realised then that he understood the importance of enabling children to receive education in school to help them understand themselves, their behaviours and attitudes, and their own rights and responsibilities. I thank him for the legislation that is now before us. I am sure that he had a huge impact on making it happen.

I of course have concerns about delivery. I realise that amendments from colleagues are totally understandable, but we have to get on with delivery. Of course teachers will need to be trained and they will need resources. I wonder how the many excellent resources on PSHE, character education, citizenship and so on will be rationalised and brought together to form a holistic approach. Maybe schools will do it themselves. I do not know. I share Stonewall's concern; maybe the Minister can respond to this. Do the Government agree that the new legislation and guidance must comply with the Equality Act and will therefore require all schools, including those with a faith character, to provide education on LGBT issues? In Amendment 12, to be inserted after Clause 32, is the sentence,

"the education is appropriate having regard to the age and the religious background of the pupils",

intended to ensure the faith schools can teach LGBT issues while still respecting the faith ethos of a school? I go back to my nun.

I am delighted that issues relating to sex education and PSHE are now being discussed in this Chamber openly and with respect. I again congratulate the Minister on his influence.

Baroness Walmsley: My Lords, my Amendment 12B is in this group. Today is a day of great celebration for me because ever since I came into your Lordships' House, I, along with the noble Baronesses, Lady Massey and Lady Gould, who is not in her place, have campaigned across party for this. I thank the Minister most sincerely for making it a reality for children. They have wanted it and demanded it; I hope they will now get it at a very high quality. The fact that it will be mandatory will mean that teachers will train specifically to give them the skills to deliver this sensitively and with an understanding of the young people.

My amendment would remove subsection (2)(d). It is simply to probe the Government's intentions. The subsection says:

"The regulations must include provision … about the circumstances in which a pupil (or a pupil below a specified age) is to be excused from receiving relationships and sex education or specified elements of that education".

4.30 pm

If the programme of study is designed as the Bill intends it to be, there should be no need for any parent to want to withdraw their child. However, the current situation—and it is hard to believe, I know—is that a parent can withdraw their child from sex education up to the age of 18 if they stay on at school in the sixth form. In this day and age, that is downright ridiculous. I understand that the Government intend to look at that and come back with regulations which bring the situation much more up to date. When they do so, I hope that they will bear in mind that for 25 years we have been signatories to the UN Convention on the Rights of the Child. A proper course of PSHE and relationship and sex education will give children the right to life-saving and life-enhancing information that will enable them to work towards a healthy body, a healthy mind and healthy relationships in their future life. If they have all that, they will become productive members of society.

It is also important that we bear in mind the "best interests of the child" principle, which I think was introduced in 1945. It is in the best interests of the child that they have all the information about these issues that they need to keep them safe and help them to be healthy and happy. Whatever they hear from their parents, they will then be in a position and have the tools to make their own judgments and choices, which is vital.

I will be honest about the fact that I do not feel that parents should have the right to remove children from this life-saving information at all, but I am not pressing

[Baroness Walmsley]
that point today. I want to ensure that the consultation will be wide enough—I hope that I will be able to contribute to it—and that the Government bear in mind those principles to which we are already a signatory and look at examples such as Gillick competence, which relates to children's ability to make decisions for themselves about things such as contraception and the privacy of their medical records. We need to look at the child's ability to understand the issues and make the decisions for themselves. Under the UN Convention on the Rights of the Child, they have a right to do that. This is just a probing amendment. I look forward to hearing what the noble Lord will tell us about the Government's approach to the regulations.

Lord Paddick (LD): My Lords, I have Amendment 12D in this group. I apologise to the House for not having spoken at previous stages of the Bill, but this is a new clause that was introduced in the other place. In fact, I blame the Minister for dragging me into this—his officials, having noted my reference to compulsory sex and relationship education in relation to a debate on online pornography in the Digital Economy Bill, kindly invited me to the meeting on this subject with him.

I want to add my personal support for this major step forward in making sex and relationship education compulsory. In particular, with the proliferation of online pornography, teaching young people not to treat each other as portrayed in online pornography, teaching about connection, respect and love, and most of all, teaching about consent when it comes to sex are becoming increasingly important.

Of course, the proof of the pudding will be in the eating, as other noble Lords have said. I have particular concerns about faith schools being able to teach pupils that same-sex relationships are wrong or sinful, or that engaging in a physical relationship with someone of the same sex is wrong or sinful, as the noble Baroness, Lady Massey of Darwen, has just mentioned.

I accept that there are strongly held beliefs in many faiths about sex generally and sex between people of the same sex in particular, and we have to be sensitive to them. But we also have to be aware of the psychological harm that can be done to young people from across the range of gender and sexual diversity. Bullying of any kind is to be condemned, but bullying based on gender or sexual diversity is particularly damaging. Those who wish to engage in such bullying take encouragement from those in authority who teach that same-sex relationships or sex between people of the same sex is wrong.

My specific concern is that we go from a situation where homosexual sex and relationships are not taught at all—Ofsted reported in 2013 that only 5% of pupils were being taught about such things—to a situation where homosexual sex and relationships are being taught in all schools, but in many schools, in accordance with faith traditions, pupils are told that such relationships are wrong or sinful. Research conducted in 2012 showed that 55% of lesbian, gay and bisexual youth had experienced homophobic bullying in school and 41% of those bullied attempted, or thought about, taking their own lives. Separate research in 2014 showed that of more than 7,000 LGBTQ 16 to 25 year-olds, over half reported mental health issues and 44% had considered ending their lives. I know from bitter personal experience as a young gay man who was a devout Christian that devastating consequences can result from the isolation, the guilt, the embarrassment, the shame and the bullying that emanate from intolerance.

This is a probing amendment to seek reassurance from the Minister that schools cannot use compulsory sex and relationship education to teach a one-sided and condemnatory view of same-sex relationships, including the physical aspects of such relationships. To say that same-sex relationships are not wrong in themselves provided there is no physical aspect to them is neither a realistic nor a humane position. What protection does the Equality Act provide, and what will be contained in regulations to prevent an increase in intolerance of sexual and gender diversity as a result of making sex and relationship education compulsory? The campaigning group Stonewall is repeating the 2012 research to which I referred earlier. This will provide a benchmark against which any adverse impact of these provisions can be measured.

As the Minister alluded to earlier, there are already 200 faith schools working with Stonewall to deliver good-quality, LGBT-inclusive sex and relationship education without undermining the faith ethos of those schools. How will the Government ensure that all faith schools follow this good practice?

I also support my noble friend Lady Walmsley in her concerns about parents' ability to withdraw their children from sex and relationship education. I am concerned that in some faith schools, on the advice of the head teacher, all parents could withdraw all their pupils from these lessons, with the teacher facing an empty classroom.

Lord Hylton (CB): My Lords, I shall speak to government Amendment 12, rather than to any of the amendments to it. The Government and the Minister will, I expect, have seen a recent statement by the Roman Catholic Archbishop of Liverpool, speaking as chairman of the Catholic Education Service. He emphasised that the aim and ambition of Catholic schools has always been,

"to educate the whole person. Our schools have a long track record of educating young people who are prepared for adult life as informed and engaged members of society, and high quality RSE plays an important part of this. We welcome the Government's commitment to improving Relationship and Sex Education in all schools. Catholic schools already teach age-appropriate Relationship and Sex Education in both primary and secondary schools".

I think it is important to emphasise the words, "age-appropriate".

The statement continues:

"This is supported by a Catholic model RSE curriculum which covers the RSE curriculum from nursery all the way through to sixth form".

In addition, the statement welcomes,

"the Government's commitment to protect parental right of withdrawal".

The statement continues, and I support it:

"It is essential that parents fully support the school's approach to these sensitive matters. The experience of Catholic schools is that parental involvement is the basis for providing consistent and high quality RSE at home and at school".

The statement concludes:

"We look forward to working closely with the Government to shape any new guidance to enable Catholic schools to continue to deliver outstanding RSE, in accordance with parents' wishes and Church teaching".

The Lord Bishop of Peterborough: My Lords, I am very happy indeed to support government Amendments 12 and 13 on relationships and sex education and on PSHE. Compulsory provision and statutory guidance are necessary in these areas. The Church of England welcomes this and we very much look forward to the consultation.

We particularly welcome the decision to reverse the name and put "relationships" rather than "sex" at the heart of this policy. This is not about just sex or sex education. It puts sex in its proper context of committed and consensual relationships. But it is also about friendships, resilience, good disagreement and living with difference. It is about tackling bullying, self-image, social media, advertising and so much else. It is about supporting children and preparing them for adult life.

I have listened carefully to the proposers of the amendments to Amendment 12, and to the noble Baroness, Lady Massey. I agreed with a great deal of what they said and would not want to disagree with eminently sensible points, not least about bullying and making children or young people feel that they do not belong or that there is something wrong with them. We oppose homophobia and all such things very strongly from these Benches.

However, I am not sure that those amendments to Amendment 12 are necessary. The Church believes very strongly that all forms of education have to be in co-operation and partnership with parents, faith communities and, indeed, the wider community. Educating children is not a matter just for the state. It has to be in co-operation with parents. Achieving that co-operation, as far as possible, with parents and faith communities is what is going to work in making the education better and, indeed, building up the resilience and the community cohesion that we really need in our society. So I oppose the amendments but not the spirit in which they are offered, nor many of the good comments that have been made in support of them.

I am open, as others in the Church would be, to the Government working through what the appropriate age is. Eighteen does seem a bit old for not allowing children to make their own decisions until then. Those sorts of things need to be thought through in the context of the way that society is developing and young people are developing. But the idea of age-appropriate and religious background-appropriate education is entirely right and proper. Just because some elements in society try to steal children's childhoods from them does not mean that we should collude with that. Children must be allowed to be children and we should not be teaching at primary school or at very young ages what is not necessary or appropriate there.

It is entirely right to be teaching relationships in the primary sector in the way that the Minister described; we support that fully. But we on the Bishops' Benches believe that the Government and the Commons amendments have got this about right and we are very happy to support them.

4.45 pm

Lord Deben (Con): My Lords, there is sometimes a moment for all sides to recognise a chance of real conciliation—and I think that this is it. As a practising Catholic who voted and spoke in favour of same-sex marriage, I hope that I may be in a position to refer to this. The fact is that the Government have brought forward something which can be agreed by all sides in a remarkable way. The amendments ought therefore to be treated in the elegant way in which they have all been presented—in other words, as probing amendments for the Government to say something more about their views.

This is a hugely difficult area because it is not only age-appropriate; there is also the question of it being situation-appropriate, as some young people have such a terrible experience of relationships that no age is young enough to teach them what might happen. I have rarely been as moved as I was when I was a Member of Parliament and used to go to my local youth prison and saw boys who could so easily have been one's own children in a situation where they had done terrible things—but, given their backgrounds, you could not honestly blame them. You could say that they were guilty but you could not blame them for what had happened. I am also enormously impressed by those who overcome that sort of background. They are another group whom we ought always to think about. Schoolteachers have a real problem in trying to deal with all this.

We also have to be careful not to underestimate many of the other important decisions in life. The whole nature of religion and the contribution that religion gives must not be excluded because we are worried about one thing alone. We are very much in danger of moving from an entirely unacceptable position at one end to a position at the other end which excludes a different set of people from proper participation in what the Government seek to do. I therefore very much hope that my noble friend the Minister will take this as an opportunity to say that in our discussions, and in the listening mode which the Government are in, we need to come to an attitude that may last for a long time and stand the test of time. It will of course change because, within that, teachers will learn better how to balance these very real differences because they will be doing it more widely.

I am encouraged both by the statement of the Archbishop of Liverpool, which it was very worthwhile to read out, and the elegant way taken by those with whom one has had strong arguments in the past—the National Secular Society and others. If we can take this moment, capture it and ensure that we get the best out of it, this will be a very special moment for the future of education.

Lord Warner: My Lords, briefly, I congratulate the Government on bringing these amendments forward. They are a very welcome advance and I am extremely supportive of Amendments 12 and 13. All credit to the Minister and his colleagues for having the courage to grasp this nettle after so long and come forward with amendments. So it may seem a little churlish if I add a "but". My "but" relates to Amendment 12B, which was so elegantly spoken to by the noble Baroness,

[LORD WARNER]
Lady Walmsley. I want to enter into the spirit of the way in which she spoke to it to probe the Government a little on the issue of age and the ability to withdraw children from this education.

We have to recognise that there is a need to make some of this compatible with some of the other aspects on which we judge children: for example, the age of criminal responsibility. It would be extremely strange to give people a chance to withdraw their children from this kind of educational opportunity at an age which is older than the age of criminal responsibility, which is based on the principle of doli incapax—children not understanding the implications of what they have done. There are other bits of our social system that need to be taken into account when we write guidance on these issues for children.

We also have to remember that the state does not give parents an absolute right to do whatever they want with their children. The state does step in. It withdraws children from their natural parents when it thinks that they are being abused or that it is not safe for them to stay in the care of their parents. That is based on another principle, well set out in the Children Act 1989: the best interests of the child. We need to balance the principles of the best interests of the child and the willingness of the state to intervene when it thinks a parent is behaving seriously unreasonably and damaging a child. We have to make the rules in this area consistent with rules operating in other areas, such as the age of criminal responsibility.

So I hope that, while the Minister and his department are framing the guidance, they will be able think about these wider issues, including the ability of parents to withdraw their children from this kind of education. It may be that we have to set some point in time where we cannot accept that parents can withdraw their children from this—whatever set of beliefs they happen to hold. At the end of the day it is their children, not they, who are going to have to cope with the world that they are moving into. We have an obligation to think about children and not just about the rights of their parents.

Baroness Tyler of Enfield (LD): My Lords, I rise briefly to lend my support to this important group of amendments. Like the noble Baroness, Lady Massey, I think this is a historic occasion. Many people, including many distinguished noble Lords, have campaigned for this over many years. Like the right reverend Prelate the Bishop of Peterborough, I am very pleased that we are now talking about relationships and sex education in that order. It is something I spoke about in my maiden speech, and I am very pleased to see it introduced.

I shall make two quick points. The first is that, in the considerable number of debates we have recently had in your Lordships' House on children's mental health and during the passage of the Bill, we have heard about the strong link between relationship distress and poor mental health. It seems self-evident that supporting young people to develop relationships skills—conflict resolution, good communications, understanding about respectful relationships, the importance of friendship and family relationships, and expectations about what a healthy relationship looks like and what an abusive relationship looks like and what you need to do about it—is likely to lead to much better mental health and well-being for all young people, which is something I am sure we all want.

My second point is that good-quality relationships and sex education requires good-quality, competent and trained educators. At the moment, very few teachers have been given specific training in this area. On too many occasions the subject is picked up by rather reluctant teachers. Sometimes they are biology teachers, and sometimes they come from other disciplines. If we are to make a reality of this hugely welcome step forward, for which huge credit goes to the Government, it is vital that they look at the training and role of specialist teachers and, where appropriate, the role of specialist voluntary sector providers.

Lord McColl of Dulwich (Con): My Lords, Amendment 12 presents us with significant changes in the law on sex and relationships education that were introduced in another place rather late and with very little scrutiny. The changes were accompanied by a policy statement from the Government. While the Government will no doubt cite many organisations in support, it is Parliament that scrutinises proposals and determines the law, and I find aspects of this particular policy change troubling.

In setting out my specific concerns, it is important to begin by being clear about what makes for good sex and relationships education. The evidence clearly suggests that parents have a key role to play and that we should be working hard to engage them more, not less. It is specifically in this regard that I find the Government's proposals rather troubling.

Before looking at some of the relevant research, however, I want to say that I am not convinced that very much can be achieved by the proposed division between sex and relationships education. It seems to me that often the two subjects are mutually interdependent, and I am not at all convinced that they can really be separated in the way the Government suggest.

With that in mind, I turn to an important article from 2009 in the journal *Paediatric Nursing*, which concludes:

"there is an association between parental communication, parenting style, and adolescent sexual activity and contraception use. Maternal communication has been shown to delay sexual intercourse and increase contraceptive use. Maternal communication has rich potential as an intervention to impact positive adolescent sexual decision making and contraception use".

If we are to engage seriously with parents on relationships and sex education, we need to do so on the basis of a relationship of trust that affords respect. The main message that comes from these proposals, however, is one in which the state seeks to tell parents what to do by removing the right of parental withdrawal from the relationships aspect of SRE. At the moment, parents can withdraw their child from any aspect of teaching under the sex and relationships education guidance. This includes all aspects of relationships education. Moreover, the freedom to withdraw a child from sex education will also be removed if puberty falls, as the departmental policy statement suggests it will, under the wider PSHE topic in primary schools, as there is no proposed parental right of withdrawal from PSHE.

I do not raise these concerns because I want parents to be withdrawing their children from SRE. I do not think the evidence suggests that many parents are using the right of withdrawal to withdraw their children. My concern is that, when we are engaging with SRE, we are engaging with a subject that, more than others, has to be seen as a joint project in which the research confirms that parents have a key role to play. Knowing what I do about human nature, I think the Government's proposals are likely to be read by many parents as a statist land grab in which the underlying message from the state to parents is, "We don't trust you". I think this would be hugely damaging and could result in a big increase in home schooling. I hazard a guess that this will be a huge issue in responses to the Government's consultation.

As a Member of your Lordships' House who is committed to a smaller state, to localism and to choice, I find these proposals troubling. This is the kind of issue that should have been teased out in a proper debate, but it has not been properly debated because these far-reaching changes have been introduced at almost the 12th hour. Moreover, the proposal that everything should effectively be done through regulation means that we will be afforded only one solitary further opportunity for debate, with no amendment.

5 pm

The scale of changes proposed in respect of parents at primary school level is particularly far-reaching. First, the discretion about whether to teach relationship education, which currently governors have in consultation with parents, is removed, as the subject is made mandatory. Secondly, the freedom to withdraw children from relationship education is completely removed by the amendment. Thirdly, the freedom to withdraw a child from sex education will also be removed if puberty falls, as the departmental policy statement suggests it will, under the wider PSHE topic in primary schools, because there is no proposed parental withdrawal from PSHE.

The Government's policy statement also makes clear that, in secondary schools, the parental right of withdrawal from sex education will be up to only a certain age of the child, yet to be determined under subsection (2)(d). The policy statement reads:

"Providing a parent with a blanket right to withdraw their child from sex education is no longer consistent with English caselaw".

It is not clear what this will mean in practice.

The Government say in their policy statement:

"parents should have the right to teach this"—

sex education—

"themselves in a way which is consistent with their values".

I am disappointed that the Government do not recognise that this right should apply to the relationship element of sex education as well as the factual knowledge in both primary and secondary schools. Noble Lords will know that these subjects are sensitive and can be controversial. Parents will have different views on what constitutes a healthy relationship, depending on their culture and religious background. They should be able to exercise their right to have their children educated in line with their religious or philosophical convictions, established through Article 2 of Protocol 1 to the European Convention on Human Rights.

Amendment 12B, tabled by the noble Baroness, Lady Walmsley, would remove the requirement for the regulations to address the question of parents being able to withdraw their child even from sex education. I hope that your Lordships will not support this amendment for all the reasons I have set out. I also have to disagree with the proposed extension of sex education as a mandatory subject in primary schools, as would be required by Amendments 12A and 12E, tabled by the noble Lord, Lord Storey. I hope that the Government will resist those further changes.

I hope that, as the Government draw up their guidance and regulations, they will do four things: first, that they will clarify that the right for parents to withdraw their children from relationships education will in fact continue; secondly, that they will make it clear that sex education cannot be taught under PSHE without a right of withdrawal; thirdly, that they will take steps proactively to engage parents and give them a greater rather than a lesser role in the way that relationship and sex education is taught in our schools; and, fourthly, that if they conclude that they want to change any aspect of primary legislation, they will not do so through secondary legislation but instead introduce such changes through a future education Bill, where they can be properly scrutinised.

The Government need to repair the damage done by sending out to parents the message, "We don't trust you", by replacing that with a different message based not on words but on substantive policy action.

Baroness Butler-Sloss (CB): My Lords, I had not intended to speak, but an issue has been raised that I want to underline. I entirely support government Amendment 12 from the Commons. It seems to me very good sense and I therefore do not support the various amendments to the government amendment. One point in particular comes out from the warning given by the noble Lord, Lord McColl, about trust in parents and what the noble Baroness, Lady Tyler, said about the lack of proper education, with those who do not really know how to teach it in schools.

If Amendment 12 is to work, and I very much hope that it will, the Government must look with great care at the education of those who are going to teach this subject. If the schools continue to have a large number of people who are not properly educated to do so, the point made by the noble Lord, Lord McColl, about the trust of parents will be entirely lost and the benefit of Amendment 12 will itself be lost.

Lord Watson of Invergowrie (Lab): My Lords, we are approaching the final destination of the "Magical Mystery Tour" which has been the Children and Social Work Bill. The Minister is of an age that he will understand the allegory. Indeed, it was 50 years ago this month that that song was recorded. It is not quite as long as that but it is still quite a time since the Bill was introduced to your Lordships' House. Indeed it is sobering to consider the changes to the political landscape in the 11 months since then. David Cameron was Prime Minister, Nicky Morgan was Secretary of State for Education and the Minister himself was assisted on the Front Bench by the noble Baroness, Lady Evans of Bowes Park—all of whom have now departed, although only one is pleased to have done so.

[Lord Watson of Invergowrie]

It would lengthen this debate considerably, and I am not going to do it, if I were to list the various amendments to the Bill secured by opposition parties and Cross-Benchers in your Lordships' House; only one of them required a vote, albeit on the most contentious part of the Bill—the original Clause 15 under the somewhat euphemistically named heading, "Power to test different ways of working". I do not propose to open that for debate this afternoon but, given that the Government have chosen not to reinsert the clauses that were taken out in your Lordships' House on Report, what does the Minister feel has changed between his impassioned speech against deleting the clauses on Report in November and the Government's decision not to attempt to reinsert them?

In relation to Amendment 12F in my name, the intention was to ensure that the Government accepted the recommendation of the Delegated Powers and Regulatory Reform Committee in regard to guidance and regulations. The response from the Minister to the committee chair, the noble Baroness, Lady Fookes, who was on the Woolsack until a few moments ago, was received yesterday by noble Lords. It does and does not meet those recommendations, I would say. Indeed, it indulges in some rather tortuous syntax in doing so. Not all regulations relating to the new provision will be subject to the affirmative procedure. We now know that amendments to existing legislation will be subject to that procedure but that regulations that do not amend primary or secondary legislation will not be. Nevertheless, in what appears to be a confusing—some might say contradictory—statement, the Minister's letter goes on to say: "In practice, the affirmative procedure will apply to all regulations which we will be making to establish the new regime".

It would be most helpful if the Minister would clarify what "in practice" means because either it is affirmative or negative. I am not aware of a halfway house. If it is the Government's intention that what they call the new regime should be in the affirmative procedure then why not just say so? The Minister's letter has just about done enough to satisfy me on Amendment 12F, but it would have been helpful had it been more clearly worded. The Minister stated to noble Lords in his letter of 13 March that he expected the guidance to be published early in 2018. We hope that he will meet that deadline and ensure that it is updated regularly as becomes appropriate.

It goes without saying that we very much welcome the inclusion of Commons Amendments 12 and 13. In my 18 months of facing the Minister at the Dispatch Box, I have on several occasions raised the need for sex and relationships education and personal, social, health and economic education to be formally part of the curriculum—not nearly as often, of course, as my noble friend Lady Massey, whom I was very pleased to hear complimented on her hard work on this over a long period. The response from the Minister was that it was not the availability but the quality of PSHE teaching that mattered and that it was important that all children have access to high-quality teaching—something that the Government did not believe would be achieved simply by statute. There was pressure from noble Lords in all parties and an Education Select Committee report in 2015 was unequivocal in its recommendation. In Scotland, sex and relationships education was already part of the curriculum, yet it seemed that nothing would convince the Government to alter their position on this, although we were always assured that it was "under review"—as all government policy should be at all times.

I have no doubt that a change of Secretary of State played an important part, but it took a cross-party effort and the involvement of the Women and Equalities Select Committee in the other place to build sufficient support and momentum behind the issue. I commend both that committee and Ministers for the fact that this has resulted in the new clauses proposed by Amendments 12 and 13 being inserted in the Bill. The amendments place a duty on the Secretary of State to make relationships and sex education a statutory requirement through regulations and give her power to make personal, social, health and economic education a statutory requirement in all schools. The fact that this includes state-funded and independent schools in all cases is also to be welcomed.

I have some questions for the Minister on the amendments. It is, of course, correct that the provisions will ensure that the education provided to pupils in relationships education and RSE is appropriate to the age of the pupils and their religious background. This issue has been touched on quite a bit in relation to the Equality Act and the noble Lords, Lord Paddick and Lord Storey, and the noble Baroness, Lady Walmsley, all dealt with aspects of it. I echo the comments made by noble Lords in relation to the Roman Catholic Church. The Catholic Education Service has been quite progressive on this matter and has been in touch with noble Lords setting out its clear support for the proposals, which I welcome. However, it is feared that some faith schools may seek to circumvent the legislation by teaching that same-sex relationships are somehow wrong or sinful. I was encouraged by the Minister's comment on the Equality Act in his opening remarks and his assurance that all details will be covered by regulations debated in both Houses. A lot of people will take comfort for having that on the record as this legislation enters the statute book.

Ofsted's role under this legislation will be no less important. Will the Minister give assurances that Ofsted will have the necessary resources—including additional ones if necessary—to allow it to make sure that the new legislation is adhered to? This is particularly important in regard to sexual offences in schools, some 5,000 of which were reported to the police by UK schools over the three-year period to 2015. Of these, 600 were rape, which seems barely credible, but this is what the police report. As we have heard, many boys are learning about sex from online pornography and some schools are failing in their legal obligation to keep girls safe. The Minister will, no doubt, agree that Ofsted must include these issues in its inspections and this should be set out clearly in the inspections handbook. Can he confirm that that is the case?

With the exception of the noble Lord, Lord McColl, noble Lords were broadly, if not completely, behind the Government's amendments. I disagree with the case made by the noble Lord, Lord McColl, although

it was well argued. I do not see this legislation as being in place of parents—it should complement what they are doing. At the moment, parents will be handling sex education in the way they believe is appropriate, but for many it is an extremely difficult subject to tackle. Many noble Lords will have been in that position themselves some years ago and it has not changed. It is essential for schools to ensure that all pupils learn about safety in forming and maintaining relationships, the characteristics of healthy relationships and how relationships may affect physical and mental health and well-being. Research by the charity Barnardo's, which works with victims of sexual exploitation, has revealed that many who were groomed to be sexually exploited were not always aware that they were being manipulated or coerced for sexual purposes. These issues have to be taken into account but they are in areas where many parents fear to tread.

There are many aspects of harm to young people which we hope the new legislation will at least alleviate. However, there must be an ongoing campaign to bring as much information to young people at the earliest appropriate age for their own safety.

5.15 pm

There is also the issue of resources for teacher training on relationships and sex education and PSHE. Other noble Lords have mentioned this point. PSHE used to have career development funding but the Government have cut it so now there is very little in the way of training or development around this. Now that both are to become compulsory, can the Minister say what plans the Government have to ensure that teachers receive the necessary training and are provided with all the necessary resources to maximise the effect of the new provisions? That will take time, of course, but the Government should already have planning in place to prepare for the introduction of RSE and PSHE in the academic year 2019-20.

The Bill is in a much improved condition. We welcome the fact that the Minister and his colleagues in the other place have been willing to listen and to act where the need arose. I thank him and his officials for the considerable number of meetings that have been facilitated since the Bill left the other place, which have been of real value to noble Lords in their understanding of the intentions behind the legislation and how it might work. I also thank my noble friends Lord Hunt and Lady Wheeler, and our legislative and political adviser, Molly Critchley, for their continued hard work on the Bill.

The words that I used in the Third Reading debate in November bear repeating. As the Bill completes its journey, we at this end of Parliament can point to it as a strong example of what we do well in your Lordships' House, and why it is more necessary now than it has ever been.

Lord Nash: My Lords, I am grateful for the many comments that have been made in relation to these amendments. I assure noble Lords that we have considered all the issues that have been raised very carefully. We will continue to do so as we develop the regulations and statutory guidance. The Government are clear that children need to have the knowledge and skills at the right time to help them confidently navigate the modern world.

These amendments are not at all driven by the need to lighten my or my successors' loads by avoiding the necessity of answering regular—I will not say endless—questions from the noble Baroness, Lady Massey, on this subject. I record my gratitude to her for the tireless way in which she has campaigned on it.

The role of parents is central to many of these issues. We are clear that schools have a role in supporting parents to ensure their children develop the knowledge and skills they need to stay safe and happy, hence making the subjects covered by Amendment 12 mandatory. We therefore think it is right that we encourage close working between schools and parents on content and delivery of lessons.

Amendment 12A, in the name of the noble Lord, Lord Storey, seeks to make RSE mandatory in primary schools. I thank the noble Lord for a helpful recent meeting on this. I know that he welcomes the overall proposals made by the Government, as he said today. We want to focus on ensuring that all children can access relationships education at primary school. This will likely include age-appropriate content, online risks such as pornography, particularly in the later stages of primary, and will involve supporting children to learn the building blocks of how to develop mutually respectful relationships both online and offline. This will then provide a solid foundation for RSE at secondary school.

Primary schools will, of course, continue to teach the same as now in the science curriculum. This is a very sensitive issue for many parents, as a number of noble Lords have said, and we need to respect that. Our approach is to trust and encourage schools to engage with parents. This allows schools to take a collective view with parents on whether they would like some elements of sex education to be taught at primary. We know that currently some primary schools teach sex and relationships education in an age-appropriate way. The Government's intention is to preserve the current situation for parents to allow them to excuse their child from any non-science related sex education taught at primary. The right to withdraw would not apply to science teaching, as now. We will engage with the teaching profession and experts, such as the Sex Education Forum and religious groups, to ensure that the guidance clarifies what should be taught to younger pupils to equip them as they begin to make the transition to adulthood. We will also talk to parents so that we can factor in their views about the age-appropriate content they want their children to be taught.

Amendment 12B, in the name of the noble Baroness, Lady Walmsley, seeks to remove the right to withdraw. I thank the noble Baroness for raising the issue. However, we believe that it is important to make appropriate provision for a right for parents to withdraw their child from sex education within RSE. We believe it is right that parents have the option to teach this to their children themselves, in accordance with their values, if they so wish.

We have not provided a right to withdraw from relationships education at primary because this will focus on core concepts of safety and forming healthy relationships that we think all children should be taught. Of course, children in primary school will also

[LORD NASH]
continue to receive the same education in the science curriculum as now, and, as I have said, the right of withdrawal will not apply to that curriculum.

We know that parents can be supportive partners alongside schools in delivering relationships and sex education. That is why we will look to retain the elements of current guidance that encourage schools to actively involve parents when they plan their programmes. We know that in practice, very few parents exercise their right to withdraw, and close working between schools and parents to get the content right is crucial to this.

As we have said in our policy statement to the House, the Secretary of State will consult further to clarify the age at which a young person may have the right to make their own decisions. This is because the current blanket right of parents is inconsistent with English case law, and with the ECHR and the UN Convention on the Rights of the Child. The outcome will be set out in regulations, which will be subject to consultation and debate. I welcome further discussion with the noble Baroness on that point as we move forward, recognising that she has particular expertise in this area.

On Amendments 12C and 12D, in the names of the noble Lords, Lord Storey and Lord Paddick, on removing consideration of religious backgrounds, I appreciate their interest in the topic of teaching that is appropriate to religious backgrounds. We believe it is right that the religious views of parents and children should be respected when teaching about these subjects. However, I reiterate that the religious background point does not allow schools to avoid teaching these subjects; it is about how they teach them. They can teach them in a way that is sensitive to religious background while being compliant with the Equality Act, which of course they must be. Even if a school or individual teacher were to suggest that, within the context of their faith, same-sex relationships or marriage are wrong, they would also be expected to explain that their views are set within a wider context—that beliefs on this subject differ, that the law of the country recognises these relationships and marriages, and that all people should be treated with equal respect. If a school or teacher conveyed their belief in a way that involved discriminating against a particular pupil or group of pupils, this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination.

I am grateful to the right reverend Prelate the Bishop of Peterborough for his comments, and a number of noble Lords also referred to the Catholic Education Service guidance, which sets out that pupils should be taught a broad and balanced RSE programme which provides them with factual information. In secondary schools, this includes teaching about the law in relation to equalities and marriage, including same-sex marriage. It also sets out that pupils should be taught that discriminatory language is unacceptable, including homophobic language, and explains how to challenge it. We believe that it would be inappropriate to refute the rights of parents by teaching about relationships and sex without having regard to the religious background of the pupils. To do so would risk breaching parents' rights to freedom of religion.

However, on what the noble Lord, Lord Paddick, said about bullying, we have supported and funded a number of organisations to help schools drive it out. On his concerns about ensuring good practice and that materials are disseminated widely, we will of course support that endeavour. Our proposals have been welcomed by a number of organisations representing the LGBT communities, including Stonewall, which said:

"This is a huge step forward and a fantastic opportunity to improve inclusion and acceptance in education".

To pick up on a point made so well by my noble friend Lord Deben, the engagement process will be important to ensure that we can agree on an approach that balances all views and interests. We have seen many examples of faith schools already teaching sex education that is both in line with their ethos and inclusive, in compliance with the Equality Act and public sector equality duty. We therefore want to talk to a wide range of stakeholders and learn from existing good practice, and reflect that in the regulations and guidance.

In response to Amendment 12E, in the name of the noble Lord, Lord Storey, on teaching content, I thank him for raising this matter. I agree that the programmes that schools shape and deliver on relationships education and RSE are key. The content of what is taught, and how it is taught, must prepare pupils for the modern world and be age-appropriate. However, I do not agree that we should define the content of the subjects in detail in legislation as, given the nature of these subjects, this would very quickly become out of date. We want schools to be able to respond quickly to changes in society. We also want to give them flexibility to design a programme that meets the particular needs of their pupils. That is why we intend to conduct a thorough and wide-ranging engagement with the subjects, which will consider subject content, school practice and quality of delivery. The aim is to determine the content of the regulations and the statutory guidance, including what level of subject content we should specify.

As I said, that will entail significant involvement of the teaching profession. The department will also engage with, and seek evidence from, a wide range of experts in the field, many of whom I have already referred to. The guidance will provide a clear framework for schools, with core pillars of content, to allow them to design their programmes. Crucially, this approach will still allow expert organisations, such as the PSHE Association, to produce their own high-quality materials for schools to use, as they do at the moment.

In answer to the points made by the noble Baroness, Lady Tyler, the noble and learned Baroness, Lady Butler-Sloss, and the noble Lord, Lord Watson, I completely agree about the importance of training and the use of voluntary organisations, and we will consider this carefully in our considerations in the run-up to delivery.

The noble Lord, Lord Watson, also raised an important point about Ofsted. The chief inspector will of course consider the implications for inspections that arise from the new requirements and the statutory guidance, and will reflect these in future inspections. Ofsted is also seeking to appoint an HMI lead for citizenship

and PSHE. Their role will be to keep abreast of developments in this area and oversee the training of inspectors in the light of the new expectations on schools. On 10 March, HMCI announced that her first major thematic review will be on the curriculum. This will include consideration of PSHE and will inform decisions about follow-up work in this important area.

Amendment 12F in the name of the noble Lord, Lord Watson, is about including the statutory guidance in the regulations and making all regulations subject to the affirmative resolution procedure. I am grateful for the points he made and want to reassure the House that it is government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, this should be achieved using regulations that are subject to parliamentary scrutiny. The purpose of guidance is to aid policy implementation by supplementing legal rules. A vast range of statutory guidance is issued each year and it is important that guidance can be updated rapidly to keep pace with events.

It is my intention to consult fully on any guidance to be issued under these arrangements. I will be very happy to provide copies of the draft guidance to both Houses at that point and to discuss matters with the noble Lord and my noble friend Lord McColl, particularly the four points raised today.

On the parliamentary procedure used for the RSE and PSHE regulations, we absolutely recognise that it would be important for Parliament to scrutinise substantial changes to the existing legislative framework through the affirmative procedure. I therefore reassure noble Lords that our intention is to bring forward a comprehensive set of regulations that would amend existing legislation, set out the new duties and provide for any additional supporting measures. I also confirm that the regulations we will be making to establish the new regime will be subject to the affirmative procedure. On that basis, I hope that the noble Lord is reassured of the role of Parliament in the next important phase.

I conclude by saying again how much I appreciate the amendments that have been tabled and the opportunity they have provided to discuss these issues today. I am grateful for all the contributions from noble Lords in this debate. However, I hope that I have given sufficient—

Lord Elton (Con): Can my noble friend elaborate a little on what he said in reply to my noble friend Lord McColl and the noble and learned Baroness, Lady Butler-Sloss? Training teachers in a subject with which they are not comfortable is not a quick process. The Minister said that the Government would consult on this. Can he tell us what stage this process will have reached when these provisions come into effect? Sex education is not an easy subject for many people and they really should not be pushed into it until they are properly trained.

Lord Nash: My noble friend raises a very good point. Of course, we have to devise the content first, and we need to get on with that so that we can get on with the training. I would be very happy to discuss this further and will write to him with more details.

Having said all that, I hope that I have given sufficient reassurance to convince noble Lords that their amendments are unnecessary and that our proposals as they stand will go far enough in driving improvements, without being overly prescriptive, and strike the right balance. I am delighted to have presented the Commons amendments to the House today. These measures will make a genuinely important contribution to children's safety and their personal development. I hope the House shares my enthusiasm and will support these Commons amendments.

5.30 pm

Lord Storey: My Lords, I thank the Minister for that comprehensive reply. We do share his enthusiasm. What is more, when we on these Benches see that the noble Lord, Lord Nash, is linked to a Bill, we are always joyful because we know that we are getting a Minister who is prepared to listen, compromise and sometimes even accept.

The quality of teaching and CPD is crucial, but it also has to be about sufficient teachers. I was taken by the comment of, I think, the noble Lord, Lord Deben, about stealing childhoods, which I thought was very important. I hope that what we have agreed today will give children and young people the armour they need. I beg leave to withdraw my amendment.

Amendment 12A withdrawn.

Amendments 12B to 12F not moved.

Motion agreed.

Motion on Amendments 13 to 28

Moved by ***Lord Nash***

That this House do agree with the Commons in their Amendments 13 to 28.

13: After Clause 32, insert the following new Clause—

"Other personal, social, health and economic education

(1) The Secretary of State may by regulations make provision requiring personal, social, health and economic education (beyond that required by virtue of section [*Education relating to relationships and sex*]) to be provided—

(a) to pupils of compulsory school age receiving primary education at schools in England;

(b) to pupils receiving secondary education at schools in England.

(2) The regulations may include—

(a) provision requiring the Secretary of State to give guidance to proprietors of schools in relation to the provision of the education;

(b) provision requiring proprietors of schools to have regard to that guidance;

(c) provision requiring proprietors of schools to make statements of policy in relation to the education to be provided, and to make the statements available to parents or other persons;

(d) further provision in connection with the provision of the education.

(3) Before making the regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) The regulations may amend any provision (including provision conferring powers) that is made by or under—

(a) section 342 of the Education Act 1996;

(b) Chapter 4 of Part 5 of the Education Act 1996; (c) Schedule 1 to the Education Act 1996;

(d) Part 6 of the Education Act 2002;

(e) Chapter 1 of Part 4 of the Education and Skills Act 2008;

(f) the Academies Act 2010.

(5) The provision that may be made by regulations under subsection (1) by virtue of section 70 includes, in particular, provision amending, repealing or revoking any provision made by or under any Act or any other instrument or document (whenever passed or made).

(6) Regulations under subsection (1) which amend provision made by or under an Act are subject to the affirmative resolution procedure.

(7) Other regulations under subsection (1) are subject to the negative resolution procedure.

(8) Expressions used in this section, where listed in the left-hand column of the table in section 580 of the Education Act 1996, are to be interpreted in accordance with the provisions of that Act listed in the right-hand column in relation to those expressions.

(9) A power to make provision under this section does not limit any power to make provision of the same kind under another Act."

14: After Clause 38, insert the following new Clause—

"Improvement standards

(1) The Secretary of State may—

(a) determine and publish improvement standards for social workers in England;

(b) carry out assessments of whether people meet improvement standards under paragraph (a).

(2) The Secretary of State may make arrangements for another person to do any or all of those things (and may make payments to that person).

(3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before determining a standard under subsection (1)(a).

(4) In this section "improvement standard" means a professional standard the attainment of which demonstrates particular expertise or specialisation.

(5) Nothing in this section limits anything in section 38."

15: After Clause 41, insert the following new Clause—

"Ensuring adequate provision of social work training

(1) The Secretary of State may take such steps as the Secretary of State considers appropriate—

(a) to ensure that adequate provision is made for social work training, and

(b) to encourage individuals resident in England to undertake social work training.

(2) The power under subsection (1) may, in particular, be used to provide financial or other assistance (subject to any conditions the Secretary of State thinks are appropriate)—

(a) for individuals resident in England to undertake social work training;

(b) for organisations providing social work training.

(3) Functions of the Secretary of State under this section may be exercised by any person, or by employees of any person, authorised to do so by the Secretary of State.

(4) For the purpose of determining—

(a) the terms and effect of an authorisation under subsection (3), and

(b) the effect of so much of any contract made between the Secretary of State and the authorised person as relates to the exercise of the function,

Part 2 of the Deregulation and Contracting Out Act 1994 has effect as if the authorisation were given by virtue of an order under section 69 of that Act; and in subsection (3) "employee" has the same meaning as in that Part.

(5) In this section "social work training" means education or training that is suitable for people who are or wish to become social workers in England."

16: After Clause 41, insert the following new Clause—

"Exercise by Special Health Authority of functions under section (*Ensuring adequate provision of social work training*)

(1) The Secretary of State may direct a Special Health Authority to exercise functions under section (*Ensuring adequate provision of social workers*)(1)(b) so far as relating to the provision of financial or other assistance.

(2) The National Health Service Act 2006 has effect as if—

(a) any direction under subsection (1) were a direction under section 7 of that Act, and

(b) any functions exercisable by the Special Health Authority by virtue of a direction under subsection (1) were exercisable under that section.

(3) Directions under subsection (1)—

(a) must be given by an instrument in writing, and

(b) may be varied or revoked by subsequent directions."

17: Clause 55, page 31, line 10, leave out "after subsection (2ZE) insert" and insert "for subsection (2ZE) substitute"

18: Clause 55, page 31, line 17, at end insert—

"( ) in subsection (2A)(c), for "that section" substitute "section 60";"

19: Clause 55, page 31, line 19, at end insert—

"( ) In Schedule 3 (regulation of health care and associated professions)—

(a) in paragraph 10, for the definitions of "social care work in England", "social care workers in England" and "the social work profession in England" substitute—

""social care work in England" and "social care workers in England" have the meaning given by section 60.";

(b) in paragraph 11(2A)(b), for "members of the social work profession in England" substitute "engaging in social work in England"."

20: After Clause 55, **i**nsert the following new Clause—

"Amendments to do with this Part

Schedule (*Amendments to do with Part 2*) contains further minor and consequential amendments relating to this Part."

21: Clause 56, page 31, line 44, after "England" insert "(but see subsection (2));

(2) A person who is a member of a profession to which section 60(2) of the Health Act 1999 applies is not to be treated as a social worker in England by reason only of carrying out work as an approved mental health professional."

22: Clause 62, page 33, line 12, at end insert—

"(A1) Section (*Placing children in secure accommodation elsewhere in Great Britain*) and paragraphs 2, 4, 5 and 14 of Schedule (*Placing children in secure accommodation elsewhere in Great Britain*) extend to England and Wales and Scotland."

23: Clause 62, page 33, line 13, leave out subsection (1).

24: Clause 62, page 33, line 14, at beginning insert "Except as mentioned in subsection (A1),"

25: Clause 62, page 33, line 15, leave out "enactment" and insert "provision"

26: Clause 62, page 33, line 16, leave out subsection (3) and insert—

"( ) Subject to subsections (A1) and (2), Parts 1 and 2 extend to England and Wales only.

( ) This Part extends to England and Wales, Scotland and Northern Ireland."

27: Clause 63, page 33, line 19, leave out "This Part comes" and insert "The following come"

28: Clause 63, page 33, line 19, at end insert "—

"(a) section (*Placing children in secure accommodation elsewhere in Great Britain*) and Schedule (*Placing children in secure accommodation elsewhere in Great Britain*);

(b) this Part."

Motion agreed.

Motion on Amendment 29

Moved by ***Lord Nash***

That this House do agree with the Commons in their Amendment 29.

29: Clause 64, page 33, line 25, leave out subsection (2)

Lord Nash: My Lords, Commons Amendment 29 simply removes the privilege amendment inserted by this House before the Bill was brought to the other place. Its removal is customary at this point.

Motion agreed.

Motion on Amendments 30 to 33

Moved by ***Lord Nash***

That this House do agree with the Commons in their Amendments 30 to 33.

30: Before Schedule 1, insert the following new Schedule—

"SCHEDULE

PLACING CHILDREN IN SECURE ACCOMMODATION ELSEWHERE IN GREAT BRITAIN

Children Act 1989

1 The Children Act 1989 is amended as follows.

2 (1) Section 25 (use of accommodation in England for restricting liberty of children looked after by English and Welsh local authorities)—

(a) is to extend also to Scotland, and

(b) is amended as follows.

(2) In subsection (1)—

(a) for "or local authority in Wales" substitute "in England or Wales";

(b) after "accommodation in England" insert "or Scotland";

(3) In subsection (2)—

(a) in paragraphs (a)(i) and (ii) and (b), after "secure accommodation in England" insert "or Scotland";

(b) in paragraph (c), for "or local authorities in Wales" substitute "in England or Wales";

(4) After subsection (5) insert—

"(5A) Where a local authority in England or Wales are authorised under this section to keep a child in secure accommodation in Scotland, the person in charge of the accommodation may restrict the child's liberty to the extent that the person considers appropriate, having regard to the terms of any order made by a court under this section."

(5) In subsection (7)—

(a) in paragraph (c), after "secure accommodation in England" insert "or Scotland";

(b) after that paragraph, insert—

"(d) a child may only be placed in secure accommodation that is of a description specified in the regulations (and the description may in particular be framed by reference to whether the accommodation, or the person providing it, has been approved by the Secretary of State or the Scottish Ministers)."

(6) After subsection (8) insert—

"(8A) Sections 168 and 169(1) to (4) of the Children's Hearings (Scotland) Act 2011 (asp 1) (enforcement and absconding) apply in relation to an order under subsection (4) above as they apply in relation to the orders mentioned in section 168(3) or 169(1)(a) of that Act."

3 In paragraph 19(9) of Schedule 2 (restrictions on arrangements for children to live abroad), after "does not apply" insert "—

(a) to a local authority placing a child in secure accommodation in Scotland under section 25, or

(b) ".

Children (Secure Accommodation) Regulations 1991 (S.I. 1991/1505)

4 The Children (Secure Accommodation) Regulations 1991 (S.I. 1991/1505) are amended as follows.

5 In regulation 1—

(a) in the heading, for "and commencement" substitute ", commencement and extent;

(b) the existing text becomes paragraph (1); (c) after that paragraph insert—

"(2) This Regulation and Regulations 10 to 13 extend to England and Wales and Scotland.

(3) Except as provided by paragraph (2), these Regulations extend to England and Wales."

6 In regulation 2(1) (interpretation), in the definition of "children's home", for the words from "means" to the end, substitute "means—

(a) a private children's home, a community home or a voluntary home in England, or

(b) an establishment in Scotland (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Children's Hearings (Scotland) Act 2011, the Children (Scotland) Act 1995 or the Social Work (Scotland) Act 1968".

7 For regulation 3 substitute—

"3 Approval by Secretary of State of secure accommodation in a children's home

(1) Accommodation in a children's home shall not be used as secure accommodation unless—

(a) in the case of accommodation in England, it has been approved by the Secretary of State for that use;

(b) in the case of accommodation in Scotland, it is provided by a service which has been approved by the Scottish Ministers under paragraph 6(b) of Schedule 12 to the Public Services Reform (Scotland) Act 2010.

(2) Approval by the Secretary of State under paragraph (1) may be given subject to any terms and conditions that the Secretary of State thinks fit."

8 In regulation 17 (records), in the words before paragraph (a), after "children's home" insert "in England".

Secure Accommodation (Scotland) Regulations 2013 (S.S.I. 2013 No. 205)

9 The Secure Accommodation (Scotland) Regulations 2013 (S.S.I. 2013 No. 205) are amended as follows.

10 In regulation 5 (maximum period in secure accommodation), after paragraph (2) insert—

"(3) This regulation does not apply in relation to a child placed in secure accommodation in Scotland under section 25 of the Children Act 1989 (which allows accommodation in Scotland to be used for restricting the liberty of children looked after by English and Welsh local authorities)."

11 In regulation 15 (records to be kept by managers of secure accommodation in Scotland), after paragraph (2) insert—

"(3) The managers must provide the Secretary of State or Welsh Ministers, on request, with copies of any records kept under this regulation that relate to a child placed in secure accommodation under section 25 of the Children Act 1989 (which allows local authorities in England or Wales to place children in secure accommodation in Scotland)."

Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013 No. 1465)

12 In Article 7 of the Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013 No. 1465) (compulsory supervision orders and interim compulsory supervision orders), after paragraph (2) insert—

"(3) Where—

(a) a compulsory supervision order or interim compulsory supervision order contains a requirement of the type mentioned in section 83(2)(a) of the 2011 Act and a secure accommodation authorisation (as defined in section 85 of that Act),

(b) the place at which the child is required to reside in accordance with the order is a place in England or Wales, and

(c) by virtue of a decision to consent to the placement of the child in secure accommodation made under article 16, the child is to be placed in secure accommodation within that place, the order is authority for the child to be placed and kept in secure accommodation within that place."

Social Services and Well-being (Wales) Act 2014 (anaw 4)

13 In section 124(9) of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (restrictions on arrangements for children to live outside England and Wales), after "does not apply" insert "—

(a) to a local authority placing a child in secure accommodation in Scotland under section 25 of the Children Act 1989, or

(b) ".

Saving for existing powers

14 The amendments made by this Schedule to provisions of subordinate legislation do not affect the power to make further subordinate legislation amending or revoking the amended provisions."

31: Schedule 3, page 39, line 26, leave out from beginning to "in" in line 27 and insert—

"( ) Section 25 (the Professional Standards Authority for Health and Social Care) is amended as follows.

( ) ."

32: Schedule 3, page 39, line 29, at end insert—

"( ) For subsection (3A) substitute—

"(3A) A reference in an enactment to a body mentioned in subsection (3) is not (unless there is express provision to the contrary) to be read as including—

(a) a reference to Social Work England, or

(b) a reference to the Health and Care Professions Council, or a regulatory body within subsection (3)(j), so far as it has functions relating to social care workers in England."

( ) In subsection (3B) for the definition of "the social work profession in England" and "social care workers in England" substitute—

""social care workers in England" has the meaning given in section 60 of the 1999 Act."

33: After Schedule 3**, i**nsert the following new Schedule—

"Amendments to do with Part 2

Part 1

General amendments

London County Council (General Powers) Act 1920

1 In section 18(e) of the London County Council (General Powers) Act 1920, after "under the Health and Social Work Professions Order 2001" insert "or section 45(1) of the Children and Social Work Act 2017".

Medicines Act 1968

2 In section 58 of the Medicines Act 1968, omit subsection (1ZA).

Video Recordings Act 1984

3 In section 3 of the Video Recordings Act 1984, omit subsection (11A).

London Local Authorities Act 1991

4 In section 4 of the London Local Authorities Act 1991, in paragraph (c) of the definition of "establishment for special treatment", after "under the Health and Social Work Professions Order 2001" insert "or section 45(1) of the Children and Social Work Act 2017".

Value Added Tax Act 1994

5 In Part 2 of Schedule 9 to the Value Added Tax Act 1994, in the Notes to Group 7, omit note (2ZA).

Data Protection Act 1998

6 In section 69(1) of the Data Protection Act 1998, in paragraph (h), omit the words from ", except in so far" to the end.

Care Standards Act 2000

7 The Care Standards Act 2000 is amended as follows.

8 (1) Section 55 is amended as follows.

(2) In subsection (2) as substituted by the Regulation and Inspection of Social Care (Wales) Act 2016, omit paragraph (a).

(3) Until the coming into force of the substitution of subsection (2) by the Regulation and Inspection of Social Care (Wales) Act 2016, the old version has effect as if in paragraph (a) after "social work" there were inserted "in Wales".

(4) In subsection (3) as substituted by the Regulation and Inspection of Social Care (Wales) Act 2016, omit paragraph (k).

9 (1) Section 67 is amended as follows.

(2) Omit subsection (1A).

(3) In subsection (2) as substituted by the Regulation and Inspection of Social Care (Wales) Act 2016—

(a) omit paragraph (a) (including the "and" at the end), and

(b) in paragraph (b), omit "other".

(4) Until the coming into force of the substitution of subsection (2) by the Regulation and Inspection of Social Care (Wales) Act 2016, the old version has effect as if the words from "courses", in the first place it occurs, to "social workers" were omitted.

Health and Social Work Professions Order 2001

10 The Health and Social Work Professions Order 2001 (SI 2002/254) is amended as follows.

11 (1) Article 3 is amended as follows.

(2) In paragraph (5)(b)—

(a) in paragraph (ii), after "registrants or" insert "other";

(b) at end of paragraph (iv) insert "and";

(c) omit paragraphs (vi) and (vii).

(3) Omit paragraph (5AA).

12 In article 6(3)(aa), omit "or social work".

13 In article 7(4), omit "or social work".

14 (1) Article 9 is amended as follows.

(2) Omit paragraph (3A).

(3) In paragraph (8), omit "or social work".

15 (1) Article 10 is amended as follows.

(2) In paragraph (6), omit "or social work".

(3) Omit paragraph (7).

16 In article 11A, omit paragraph (11).

17 (1) Article 12 is amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (b) insert "or";

(b) omit sub-paragraph (d) and the "or" before it.

(3) In paragraph (2)—

(a) at the end of sub-paragraph (a) insert "and";

(b) omit sub-paragraph (c) and the "and" before it.

18 (1) Article 13 is amended as follows. (2) In paragraph (1), omit "or (1B)". (3) Omit paragraph (1B).

19 For the heading of article 13A substitute "Visiting health professionals from relevant European States".

20 Omit article 13B.

21 In article 19(2A)(b), omit "or social work".

22 In article 20, omit the words from "; but the reference" to the end.

23 (1) Article 37 is amended as follows.

(2) In paragraph (1)(aa), omit "or social work". (3) Omit paragraph (1B).

(4) In paragraph (5A)(a), omit the words from "or registered as a social worker" to the end of that sub-paragraph.

(5) In paragraph (8), omit "(other than a hearing on an appeal relating to a social worker in England)".

(6) Omit paragraph (8A).

24 (1) Article 38 is amended as follows. (2) Omit paragraph (1ZA).

(3) In paragraph (4), omit "(subject to paragraph (5))". (4) Omit paragraph (5).

25 In article 39, omit paragraph (1A).

26 In Schedule 1, in paragraph 1A(1)(b), omit paragraph (ia) (but not the "and" at the end).

27 (1) In Schedule 3, paragraph 1 is amended as follows.

(2) In the definition of "visiting health or social work professional from a relevant European state", omit "or social work" in both places.

(3) In the definition of "relevant professions", omit "social workers in England;".

(4) Omit the definition of "social worker in England".

Adoption and Children Act 2002

28 (1) In section 10 of the Adoption and Children Act 2002, in subsection (2), omit ", one of the registers maintained under" substitute "—

(a) the register of social workers in England maintained under section 45 of the Children and Social Work Act 2017,

(b) any register of social care workers in England maintained under an Order in Council under section 60 of the Health Act 1999 or any register maintained under such an Order in Council so far as relating to social care workers in England, or

(c) the register maintained under".

(2) Until the coming into force of the amendment made by sub-paragraph (1), section 10(2) of the Adoption and Children Act 2002 is to have effect as if the reference to the registers mentioned there included a reference to the part of the register maintained under article 5 of the Health and Social Work Professions Order 2001 that relates to social workers in England.

Income Tax (Earnings and Pensions) Act 2003

29 In section 343(2) of the Income Tax (Earning and Pensions) Act 2003, in paragraph 1 of the Table, after sub-paragraph (r) insert—

"(s) the register of social workers in England kept under section 45(1) of the Children and Social Work Act 2017."

National Health Service Act 2006

30 In section 126 of the National Health Service Act 2006, for subsection

(4A) substitute—

"(4A) Subsection (4)(h) does not apply to persons in so far as they are registered as social care workers in England (within the meaning of section 60 of the Health Act 1999)."

National Health Service (Wales) Act 2006

31 In section 80 of the National Health Service (Wales) Act 2006, for subsection (4A) substitute—

"(4A) Subsection (4)(h) does not apply to persons in so far as they are registered as social care workers in England (within the meaning of section 60 of the Health Act 1999)."

Armed Forces Act 2006

32 In section 257(3) of the Armed Forces Act 2006, for paragraph (a) substitute— "(a) Social Work England;".

Safeguarding Vulnerable Groups Act 2006

33 The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

34 In section 41(7), in the table, after entry 10 insert—

"11 The register of social workers in England kept under section 45(1) of the Children and Social Work Act 2017	The registrar appointed under section 45(3)(a) of the Children and Social Work Act 2017 or, in the absence of such an appointment, Social Work England"

35 In Schedule 3, in paragraph 16(4), after paragraph (l) insert— "(m) Social Work England."

Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

36 In section 30A(6) of the Protection of Vulnerable Groups (Scotland) Act 2007—

(a) omit "the social work profession in England or";

(b) for "each of those expressions having the same meaning as in" substitute "within the meaning of"."

Children and Young Persons Act 2008

37 (1) In section 2 of the Children and Young Persons Act 2008, in subsection

(6), for paragraph (a) substitute—

"(a) in the register maintained by Social Work England under section 45(1) of the Children and Social Work Act 2017;".

(2) Until the coming into force of the amendment made by sub-paragraph (1), section 2(6)(a) of the Children and Young Persons Act 2008 is to have effect as if the reference to the register mentioned there were to a register maintained under article 5 of the Health and Social Work Professions Order 2001.

Health and Social Care Act 2012

38 In the Health and Social Care Act 2012 omit sections 213, 215 and 216.

Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2)

39 The Regulation and Inspection of Social Care (Wales) Act 2016 is amended as follows.

40 In section 111(4)(b)—

(a) in the Welsh text, for "Cyngor y Proffesiynau Iechyd a Gofal" substitute "Gwaith Cymdeithasol Lloegr";

(b) in the English text, for "the Health and Care Professions Council" substitute "Social Work England".

41 In section 117(4)(a)—

(a) in the Welsh text, after "Gofal" insert "neu Waith Cymdeithasol Lloegr";

(b) in the English text, after "Council" insert "or Social Work England".

42 In section 119(4)(a)(ii)—

(a) in the Welsh text, for "y Cyngor Proffesiynau Iechyd a Gofal" substitute "Gwaith Cymdeithasol Lloegr";

(b) in the English text, for "the Health and Care Professions Council" substitute "Social Work England".

43 In section 125(5)(a)(ii)—

(a) in the Welsh text, for "y Cyngor Proffesiynau Iechyd a Gofal" substitute "Gwaith Cymdeithasol Lloegr";

(b) in the English text, for "the Health and Care Professions Council" substitute "Social Work England".

44 In section 174(5)(a)(ii)—

(a) in the Welsh text, for "Cyngor y Proffesiynau Iechyd a Gofal" substitute "Gwaith Cymdeithasol Lloegr";

(b) in the English text, for "the Health and Care Professions Council" substitute "Social Work England".

PART 2

RENAMING OF HEALTH AND SOCIAL WORK PROFESSIONS ORDER 2001

45 For the title to the Health and Social Work Professions Order 2001 (SI 2002/254) substitute "Health Professions Order 2001".

46 In article 1(1) of that Order (citation), for "the Health and Social Work Professions Order 2001" substitute "the Health Professions Order 2001".

47 In the following provisions, for "the Health and Social Work Professions Order 2001" substitute "the Health Professions Order 2001"—

(a) section 18(e) of the London County Council (General Powers) Act 1920;

(b) section 3(11) of the Video Recordings Act 1984; (c) 114ZA(4) of the Mental Health Act 1983;

(d) paragraph (E) in the entry for the London County Council (General Powers) Act 1920 in Schedule 2 to the Greater London Council (General Powers) Act 1984;

(e) paragraph (c) of the definition of "establishment for special treatment" in section 4 of the London Local Authorities Act 1991;

(f) item 1(c) in Group 7, in Part 2 of Schedule 9 to the Value Added Tax Act 1994;

(g) section 69(1)(h) of the Data Protection Act 1998; (h) section 60(2)(c) of the Health Act 1999;

(i) sections 25C(8)(h) and 29(1)(j) of the National Health Service Reform and Health Care Professions Act 2002;

(j) section 126(4)(a) of the National Health Service Act 2006;

(k) section 80(4)(a) of the National Health Service (Wales) Act 2006;

(l) entry 10 in the table in section 41(7) of the Safeguarding Vulnerable Groups Act 2006.

48 In the definition of "registered psychologist" in each of the following provisions, for "the Health and Social Work Professions Order 2001" substitute "the Health Professions Order 2001"—

(a) section 307(1) of the Criminal Procedure (Scotland) Act 1995; (b) section 207(6) of the Criminal Justice Act 2003;

(c) section 21(2)(b) of the Criminal Justice (Scotland) Act 2003;

(d) section 25 of the Gender Recognition Act 2004."

Lord Nash: I conclude by thanking all noble Lords across the House for their constructive work on this Bill and for getting it to this point. Today's debate has, as ever, been extremely well informed.

Motion agreed.

Technical and Further Education Bill

Third Reading

5.33 pm

Motion

Moved by ***Lord Nash***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, before the Bill's Third Reading draws to a close, I take this opportunity to thank all those involved for their interest in and engagement with the Bill over the past few months. There have been important contributions on the Bill from all sides of the House, and we have had very well-informed and thoughtful debates on a number of issues that are critical to ensuring the future health of our country's technical and further education sectors. In particular, I thank noble Lords for their efforts to strengthen the areas covered by this legislation, which we will take forward when the Bill and its related policies are implemented. I very much hope that discussions continue with noble Lords about technical and further education. There is much work to be done in this area, so the expertise and wisdom of noble Lords is very welcome.

Yesterday, I met the noble Baronesses, Lady Garden and Lady Watkins, to discuss the failure of private providers and, in particular, the support given to learners affected. I thank them for discussing this issue with me. I also thank the noble Baroness, Lady Wolf, who was unable to attend but who has shared her thoughts with my officials. It is clear from our discussions that this is a matter requiring more detailed consideration before we take a view on what action is necessary. We are already taking steps to improve our monitoring of these providers. However, as I said yesterday, we will do further work to explore the scale of the issue and identify a proportionate response to ensure the right support is provided to learners in the rare instances of failure.

I am afraid there is not time to thank everyone who has been involved in the Bill during its passage through this House, but I would like to mention who I can. First, I thank my noble friends on the Government Benches, and in particular my noble friends Lady Vere and Lady Buscombe, who have provided strong support to the Bill. I also thank my noble friend Lord Baker, particularly for his amendment regarding careers advice in schools. I am grateful to my noble friend Lord Lucas for his in-depth engagement with the Bill, especially with respect to the issues of copyright and intellectual property. I pay tribute to my noble friend Lord Liverpool, whose thoughtful contributions included the important issue of the soft skills that young people need to thrive in the workplace.

I particularly thank the noble Lords, Lord Watson and Lord Storey, who have provided rigorous scrutiny and opposition alongside their colleagues the noble Lords, Lord Hunt and Lord Stevenson, and the noble Baroness, Lady Garden. I thank also the noble Baronesses, Lady Cohen, Lady Donaghy and Lady Morris, and the noble Lords, Lord Young of Norwood Green, Lord Blunkett and Lord Knight, for their thoughtful contributions. While we have disagreed on some issues, I believe we are in broad agreement about the importance of the Bill and all support its ambition to improve technical and further education.

I am grateful also to my friends on the Cross Benches for their thoughtful contributions, including the noble Lord, Lord Aberdare, the noble Earl, Lord Listowel, and the noble Baroness, Lady Watkins. In particular, I thank the noble Baroness, Lady Wolf, for her support on the Bill and her role in developing its underlying policy.

Finally, I thank policy officials and lawyers from the Department for Education and other government departments for their work on the Bill's progress in this House.

It has been a privilege to debate this Bill with noble Lords. It will help pave the way for reforms to technical and further education. It will allow us to create a world-class technical education system that provides all young people with the opportunities they deserve, and let them secure sustained, skilled employment that serves the needs of our country, today and in the future. At the same time, the Bill's further education insolvency regime will ensure that FE colleges are put on a secure financial footing in the long term. I commend the Bill to the House.

Lord Baker of Dorking (Con): My Lords, I want to comment on how the Bill has been handled in this House. When we saw the Bill that came from the Commons, it seemed a very trivial Bill and quite difficult to understand. The words were dry on the page and the opacity was complete: we had no clear idea what the Government were trying to do. However, during the course of the Bill, those with an interest were privileged to have a series of meetings—not just one or two, but several—with officials from the department and with the Ministers themselves, at which we learned a tremendous amount about the Bill and the apprenticeship system that the Government are setting up, which is going to cost £3.5 billion. None of this was obvious when you read the Bill. Those meetings led us to understand how important the Bill was. Therefore, I very much congratulate the department on providing a series of meetings and the Minister on the support he has given us. It is a very good way of handling a Bill in this House and has worked very well.

Lord Young of Norwood Green (Lab): My Lords, I, too, thank the Government for the series of meetings and echo what the noble Lord, Lord Baker, has said.

I was a little disappointed with the letter sent to us on 30 March. The noble Baroness, Lady Vere of Norbiton, promised on 27 March, at col. 391 of *Hansard*, to write about the question of signing of contracts, but the letter does not tell us whether or not this is taking place.

We had a significant debate on the question of transition to new technical qualifications but there is no mention of that in the letter. There is in the new guidance issued for the Institute for Apprenticeships, but that merely says:

"We expect the institute to take into account the Department for Education's development of technical education routes to allow for a smooth transition".

However, the noble Lord promised that there would be more detailed guidance on the question of transition, so I expected at least a reference to it.

I do not wish to prolong the process but it was disappointing that the House of Commons paper 206 gave apprenticeships a bit of a panning. I do not concur with everything it says but some of the points it makes are valid and worthy of the Minister's attention, in particular the distribution of the levy and how we will target apprenticeships in areas where there is a drastic skills shortage—in engineering, construction and IT. I would welcome comment from the Minister on that.

Apart from those few caveats, I, too, welcome the way in which the Bill has been handled.

Baroness Garden of Frognal (LD): My Lords, from the Liberal Democrat Benches I add our thanks to the Minister, the noble Baronesses, Lady Vere and Lady Buscombe, and the Bill team for their engagement, briefings and meetings in the course of the Bill's passage.

We were grateful that the Government accepted the amendment of the noble Lord, Lord Baker, early on, which promised more movement than we subsequently achieved, but we hope that those amendments agreed by the House will be confirmed by the Commons when the Bill returns to it, particularly that of my noble friend Lord Storey on careers advice in FE colleges. We also welcome the movement on private providers and I thank the Minister for the meeting yesterday on that.

Perhaps as a result of the Bill we might hear more about the EBacc including more creative and technical subjects, to promote practical skills in the school timetable. It is surely in order that skills should be raised as early as possible in the schools programme, to open opportunities at an early stage to young people whose enthusiasms lie that way.

As the Minister is aware, we still have considerable concerns that some of the measures in the Bill will damage the chances for the Institute for Apprenticeships and Technical Education to be as effective as it needs to be. Among them is the issue of copyright, which will impede the awarding bodies in giving the wholehearted co-operation they might wish to give. I am grateful that we have a meeting with officials and others to discuss this in greater detail and hope that the Government might find a way forward before the Bill becomes law which does not prevent some of the most expert champions of practical, technical education from playing their full part.

There are other issues, such as single awarding bodies, consortia and certification which we would wish to continue to discuss and monitor. There is a deal of complexity in the model that the Government are proposing, and complexity does not help to promote the skills agenda.

In wishing the institute every success in its ambitious aims, we would also wish to check that it has the framework and the resources to raise the profile and standards of technical work-based achievement. We hope that it will continue to consult and take advice from those who have many years of experience in this sector—employers, awarding bodies, trainers and lecturers—who have ensured brilliant achievements by many people in skills areas. We only have to think of the UK's successes in world skills competitions, for instance, and of some of our great entrepreneurs and leaders who began their careers through a skills-based route to see that we are not starting from scratch.

However, there is a mounting skills gap. In the interests of the country, the community and the individual learners, we have to hope that this Bill and the institute fulfil the high expectations placed upon them.

Once again, I express the thanks of these Benches for the way in which scrutiny has been conducted.

Lord Watson of Invergowrie (Lab): My Lords, I have not written a speech but, if I had, it would have been more or less word for word what the noble Baroness, Lady Garden, has just said. That is probably an embarrassment to her, but there we are.

The Bill is not the heaviest we have dealt with or will deal with, but it has dealt with important matters. We have all recorded our disappointment that so much of it was to do with the insolvency angle, some of which has caused difficulties to further education colleges, bank loans and, potentially, pensions, but they will have to be dealt with down the line.

[Lord Watson of Invergowrie]

The fact that the Institute for Apprenticeships was established a few days ago is a welcome sign. I agree with my noble friend Lord Young that it was disappointing that the letter dated 30 March from the noble Baroness, Lady Vere, did not go into enough detail on what we were looking for in our amendment last week on the institute. However, it will develop and will become the Institute for Apprenticeships and Technical Education in a year's time and we look forward to that.

I will say a word to the Minister which reflects the report to which my noble friend Lord Young referred. The business last week of the House of Commons sub-committee on education is worth reading. I do not agree with all of it but it highlighted the point—which was also raised by these Benches and other noble Lords over the past few weeks—that it is essential that the 3 million target does not allow quantity to trump quality. It is the quality of the apprenticeships that are provided in the years to come that will decide whether or not this is a success. We have to keep banging that drum. I know from what he has said that the Minister believes that as well. We will have to make sure that it happens.

I thank all those involved in the Bill. The Public Bill Office, as ever, has been extremely helpful. The Minister and the noble Baronesses, Lady Vere and Lady Buscombe, have been, if not accommodating in Committee, helpful in the briefings that we have had. The Minister's officials and the meetings they set up have been useful in giving a better understanding of the Bill, its intentions, and how we might work with it or frame amendments to try and change it. I finish by thanking my colleagues, my noble friends Lord Stevenson and Lord Hunt. The Minister has a vast array and army of officials behind him but we have only one person—Dan Stevens, the legislative and political adviser for our team. He has been a tireless worker on what was his first Bill and I can pay him no greater compliment than to say that you would not know it.

Bill passed and returned to the Commons with amendments.

Higher Education and Research Bill

Third Reading

5.48 pm

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

Clause 10: Mandatory transparency condition for certain providers

Amendment 1

Moved by ***Lord Wallace of Tankerness***

1: Clause 10, page 7, line 19, at end insert—

"( ) their age."

Lord Wallace of Tankerness (LD): My Lords, this issue was raised in Committee and on Report and concerns the characteristics which the Office for Students can require of universities seeking registration as higher education providers. On Report I narrowed it down in exchanges with the Minister, saying that we would be prepared to consider solely the question of age, and he agreed that he would look at it. I regret that the Government did not come forward with their own amendments, so I have tabled this one. It is a very short amendment, as will be obvious.

As I have indicated, the importance of this clause is that it will ensure transparency. I acknowledge what the Government have done in the course of the Bill. They have added degree outcomes to the information that is required which will complete, as it were, the student life cycle. The Bill specifies that the information should cover gender, ethnicity and socioeconomic background; this amendment would add age to that list. The reason I have narrowed it down so much is that concerns were expressed on previous occasions that some of the other characteristics, specifically those covered by the Equality Act 2010, involve to a greater or lesser extent an element of self-identification. I do not think that age could be described in that way, given that it is absolutely objective by reference to one's date of birth.

The amendment might be small but it makes an important point. Throughout the debates on this Bill and indeed in other spheres, many noble Lords have stressed the importance of trying to do something to revitalise part-time education. The inclusion of a description of age would give us at least one tool to evaluate the progress that is being made in promoting part-time education. It is estimated that most initial entrants into part-time education are aged between 31 and 60, but between 2007-08 and 2014-15 there was a 60% decrease in that group coming in.

As I have indicated, there is a widespread view that we should encourage part-time education. The Open University has taken a particular interest in this amendment because of the important provision it makes for students studying courses on a part-time basis—I declare an interest as an honorary graduate of the university—and this would be a useful and important tool if it was included in the legislation.

Since our debates on Report the Minister and I have exchanged ideas and wordings, and through the toing and froing, he agreed to reflect on the matter. Of course the Government have promised a consultation by the Office for Students with regard not only to age but also to the other characteristics. Can the Minister give an indication of the likely timescale for the Office for Students to carry out this consultation because it will help universities to understand better how they will be supported in the planning and implementation of the requirements?

Quite simply, this small amendment meets the criterion of not being one of self-description. Perhaps I may also quote from the letter sent by the Minister jointly with Jo Johnson on 22 March. He refers to the duty and states:

"While the Duty itself must remain balanced and proportionate, it is clear that greater transparency on characteristics such as age is desirable to support equality of opportunity through widening participation".

So the Government themselves think that this is desirable. The amendment does not run into some of the difficulties

encountered in the earlier amendments. I am not holding my breath that the Minister will respond positively, but I shall listen to him with great care. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I support the noble and learned Lord, Lord Wallace of Tankerness, in his amendment. We tabled a similar amendment, although one that was slightly broader in context, both in Committee and on Report, so we have a continuing interest in this area. We have chosen not to support this amendment at this time, but I do not think that one should read anything into that—rather, I hope that discussions of which I am aware that are being conducted outside your Lordships' House will have matured to a point where there may be some news that might bring a conclusion to this matter.

One of the main purposes of the Bill, at least as outlined in the White Paper which preceded it, is that it is intended to improve social mobility. That is an admirable aim and one which we fully support. One of the things about social mobility is that it is supported by a number of legislative arrangements, one of which is the Equality Act 2010 which brings into play a series of protected characteristics that define and encapsulate the issues around the need for social mobility in particular groups. It is important that we should have regard to this in all aspects of our public life, and it is therefore very important that new Bills which come forward should be built on that foundation. It is therefore rather surprising that the information requirements which are part of the amendment and focus on the need for transparency conditions that will be organised by the Office for Students—or as we prefer to call it, the office for higher education—do not include all the protected characteristics. It is only with considerable reluctance that the Government are prepared to concede that age is an important part of this area, and I hope that the Minister will confirm that when he comes to respond.

There are other values in having a confident sector that is able to publish information around all the protected characteristics. It will give students of all types and varieties the chance to judge whether a particular institution or institutions more generally are appropriate for them, given their protected characteristics, and of course it will be vital in terms of trying to formulate policy. For all these reasons, it is important that the Minister should reassure the noble and learned Lord, Lord Wallace of Tankerness, about his concerns around age as a matter that must be one of the transparency conditions, and of course subject to the consultation it is hoped that some direction will be given to the office for higher education, also known as the Office for Students, that it is something which should be taken into account. Perhaps the Minister can also reassure me that it is not impossible that in future years, work can be done to gather information around the protected characteristics, which will be important for all the reasons I have given.

Baroness O'Neill of Bengarve (CB): My Lords, I am not against collecting information because it is always interesting, but I would regret seeking information under all the protected characteristics set out in this Bill, among other reasons because I do not think asking intending students whether they are pregnant is a good idea. Age has the advantage, as the noble and learned Lord, Lord Wallace, said, that it is quite objective; people know how old they are. However, one characteristic which is not in the list of protected characteristics is socioeconomic background. I think that it is separate from the socioeconomic one and it depends on the utility of the information for the purposes at hand. The noble and learned Lord, Lord Wallace, has made the case that it is useful because of the decline in participation rates among older students. I do not think we know the significance of that decline. It has happened in an age group of whom many more have had the opportunity to participate in higher education when they were younger, and it is in that context that I would be uncertain whether it is of tremendous informational value. I am not against the amendment but I do not believe that it will yield very much additional information.

Viscount Younger of Leckie (Con): My Lords, the transparency duty has generated much debate in both Houses and I am pleased to note that there is an appetite for further transparency to be brought to higher education as a whole. Indeed, this Bill and our accompanying reforms will mean that more information than ever before is published and made available to students. I thank the noble and learned Lord, Lord Wallace, for his engagement with the Bill. Let me assure him that I have reflected carefully on the comments he made in Committee, including those of adding attainment as one of the life cycle points in the transparency duty. We did respond to his suggestion and I was pleased to table an amendment on Report which will require higher education providers to publish data on attainment broken down by gender, ethnicity and socioeconomic background, something which the noble Baroness, Lady O'Neill, has just referred to. This will mean that the whole student life cycle is covered by the transparency duty and will support its focus on equality of opportunity.

I would like to take a moment to reassure the noble and learned Lord, Lord Wallace, about the consultation. We will be setting out our expectations for the consultation in our first guidance to the Office for Students. That guidance will be issued before the OfS comes into being in April 2018, so there is no question but that it is definitely a priority.

Let me also make the important point that the transparency duty is focused on widening participation. We have been at pains to balance the need for greater transparency on admissions and performance against the robustness of the available data and burdens on providers. This means that we have prioritised those areas where a renewed emphasis on widening participation will have the most impact. However, we have continued to listen and respond. The noble and learned Lord tabled further amendments on Report and I was grateful for the further opportunity to discuss this important issue. I was delighted to make a firm commitment in response to the points raised, which I will reiterate.

6 pm

We will ask the OfS to consult on what other information should be published by institutions in the

[Viscount Younger of Leckie]
interest of widening access and participation. While the duty must remain balanced and proportionate, it is clear that greater transparency on characteristics such as age is desirable to support equality of opportunity through widening participation.

The noble and learned Lord has made a good case for the inclusion of age as a characteristic and I am sympathetic to his aims. Although I cannot pre-empt the consultation, I am prepared to say from the Dispatch Box that we fully anticipate that age will be part of the information the OfS will ask institutions to publish. In addition to age, we will also ask the OfS to consult on whether information on the other protected characteristics should also be published by providers, in line with the comments that the noble and learned Lord and other Peers so helpfully made at earlier stages. I also reassure noble Lords that we will ask the OfS to consult on whether information on the other protected characteristics should also be published by providers in line with the comments the noble and learned Lord so helpfully made. This means that we would balance the need for greater transparency with being mindful of the comparability of the data and burdens on providers.

The consultation will not be limited to the protected characteristics. In this way, a much broader range of potential information can be considered, as the noble and learned Lord has previously called for. Universities will be expected to respond to the outcome of the consultation as part of their access and participation plan arrangements. It is precisely because we have listened to the points on other characteristics that are also important that I do not believe it is right that we introduce one further characteristic at this stage. Many noble Lords, including the noble and learned Lord, Lord Wallace, my noble friend Lord Lucas, the noble Earl, Lord Listowel, the noble Lord, Lord Stevenson, and the noble Baroness, Lady Garden, have spoken on this. Given the good cases that have been made for numerous other characteristics, introducing just this one at this stage could suggest that we are prioritising mature learners over other groups of students for whom noble Lords have so eloquently argued, such as care leavers or disabled students. That is not the case.

We have listened and committed to look at what other information we would like providers to publish through a consultation by the OfS. We believe that this must be looked at in the round rather than in a piecemeal fashion. Through the consultation, all stakeholders will be able to have their voices heard. Let us allow the consultation to run and ensure that all these characteristics are given equal consideration. However, we fully anticipate that age will be part of the information that the OfS asks institutions to publish through their access and participation arrangements.

I hope I have reassured the noble and learned Lord that we have listened very carefully throughout the passage of the Bill and have responded with not only an amendment to the Bill, but a clear commitment to consult on what other information we would expect providers to publish. I value the contributions that noble Lords have made on this and it is clear that there are many characteristics to consider through the consultation. In the light of my reassurances that this consultation is expected to include age, I respectfully ask the noble and learned Lord to withdraw his amendment.

Lord Wallace of Tankerness: My Lords, I thank the noble Lord, Lord Stevenson, and the noble Baroness, Lady O'Neill, for their contributions. The fact that my amendment is limited to age in no way detracts from some of the other characteristics, as the Minister has said. I am grateful to him for his response. I listened carefully to what he said. I am still slightly puzzled as to why we cannot add this to the legislation at the outset. It would not be adding on after the Bill hits the statute book; it would be there for the Office for Students from the very beginning. I heard the Minster indicate that he fully anticipates that age will be part of the information that the OfS will ask institutions to publish, as well as indicating that it will be asked to consult on some of the other characteristics.

In the light of that anticipation, which we will do our utmost to remind the Minister of and continue to monitor, it would be somewhat churlish to press this matter. I therefore beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 39: Duty to monitor etc the provision of arrangements for student transfers

Amendment 2

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

2: Clause 39, page 23, line 19, leave out "and the extent to which those arrangements" and insert ",

(aa) must monitor the extent to which the arrangements monitored under paragraph (a)"

Viscount Younger of Leckie: My Lords, this group of minor and technical amendments simply clarifies the drafting of the Bill, ensuring that it is consistent across the board. It also contains an amendment that I committed on Report to bring forward at Third Reading. I do have longer speaking notes, but I intend to keep this very short—so if noble Lords have any questions I would be happy to address them in my closing remarks. In the meantime, I beg to move.

Amendment 2 agreed.

Amendment 3

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

3: Clause 39, page 23, line 23, leave out "paragraph (a)" and insert "paragraphs (a) and (aa)"

Amendment 3 agreed.

Clause 58: Revocation of authorisation to use "university" title

Amendment 4

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

4: Clause 58, page 40, line 19, leave out "it" and insert "the OfS"

Amendment 4 agreed.

Clause 78: Power to require information or advice from the OfS

Amendment 5

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

5: Clause 78, page 53, line 6, leave out "or" and insert "and"

Amendment 5 agreed.

Clause 83: Meaning of "English higher education provider" etc

Amendments 6 and 7

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

6: Clause 83, page 55, line 24, at end insert—

"( ) section 11(9) (mandatory fee limit condition for certain providers),"

7: Clause 83, page 55, line 26, at end insert—

"( ) section 33(5)(b) (content of an access and participation plan: equality of opportunity), and"

Amendments 6 and 7 agreed.

Clause 119: Pre-commencement consultation

Amendment 8

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

8: Clause 119, page 76, line 26, at end insert—

"(3A) Where the OfS has a consultation function involving registered higher education providers, references to registered higher education providers in the provisions describing the consultees are to be read as references to English higher education providers—

(a) for the purposes of applying subsection (2) at any time when there are no registered higher education providers, and

(b) for the purposes of applying subsection (3) in relation to anything done under subsection (2) in reliance upon paragraph (a) of this subsection.

(3B) For the purposes of subsection (3A), "a consultation function involving registered higher education providers" is a function of consulting—

(a) registered higher education providers (whether generally or a description of such providers), or

(b) persons with a connection (however described) to such providers.

(3C) In subsections (3A) and (3B), "English higher education provider" and "registered higher education provider" have the same meaning as in Part 1 (see sections 83 and 85)."

Amendment 8 agreed.

Schedule 4: Assessing higher education: designated body

Amendment 9

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

9: Schedule 4, page 96, line 14, leave out "Part 1 of"

Amendment 9 agreed.

Schedule 5: Powers of entry and search etc

Amendment 10

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

10: Schedule 5, page 98, line 43, at end insert "and that all the requirements for the grant specified in this Schedule are met,"

Lord Mackay of Clashfern (Con): My Lords, this amendment has a rather interesting history. It arose from my reaction in Committee to an amendment in the name of the noble Baroness, Lady Brown, in connection with this schedule, which contains a power of search that is absolutely new to the academic community. It therefore required very careful consideration, which the noble Baroness's amendment provided. In addition, she pointed out that this power had created anxiety in the academic community, as noble Lords might expect. Apart from what it might achieve, one thing is certain: if it were ever carried out, it would do very serious damage to the reputation of a higher education provider whose premises were the subject of a search.

Having listened to this, I suggested that it might be a good idea for the magistrate granting the warrant to indicate that he or she was satisfied that the conditions had been applied and satisfied. These conditions are extremely strong and very useful. When the point was raised by the noble Baroness, Lady Brown, my noble friend the Minister read out the conditions and said that they would certainly be satisfied, and that that was implied in the statutory provision.

After raising in response to that the idea that the magistrate might indicate by signature that he or she had been satisfied that the conditions had been met, I quite quickly received a letter to say that the idea of a separate signature was unheard of and that it would be a quite startling innovation. Well, the search warrant itself was something of an innovation, so I was not particularly disturbed by that—but I thought that I had better meet that and deal with it by suggesting an amendment to the form of the warrant specified in statute and put into the warrant that the magistrate was satisfied that the conditions for the grant set out in the schedule had been met.

Noble Lords who are interested will remember that ultimately this came to Report, when my noble friend Lord Young of Cookham dealt with the amendment. In the course of his observations he referred to two statutes that were supposed to indicate a form of warrant that would exclude my idea. Needless to say, I examined both of those and neither of them seemed to support the proposition for which they were cited. Eventually, my noble friend kindly agreed that the Government would consider the matter further—which is why it is competent for me to raise it at Third Reading. I had permission, as it were.

Since Report, I have had a meeting with the Minister—this time, the noble Viscount, Lord Younger of Leckie—officials from the Department for Education as well as, and this is the vital information, an official from Her Majesty's courts service. It was not clear from the previous meeting exactly what the objection was to my amendment. It was thought that his department was carrying out an operation to simplify all warrants and

[LORD MACKAY OF CLASHFERN]
make them pretty well the same. It turned out at the meeting that these were related to the criminal procedure and the operations of the committee concerned with the revision of criminal procedure matters. I continued to think that this was not a criminal matter and therefore did not preclude what I wanted.

I was fairly insistent that this should happen, so we had a meeting this afternoon. It transpires that the idea of it being unheard of to have a separate signature is without foundation, because the criminal procedure committee and the Lord Chief Justice, who is no doubt an implement of that, have approved a form of warrant in criminal procedures which includes at the end of the application a space for the magistrate to sign to the effect that he or she has granted a warrant and to give the reasons for it.

It is apparent that this is not a criminal warrant; it is much more general than that. The official from the courts service kindly gave me a copy today of the form of warrant in criminal matters. It refers to the Criminal Procedure Rules and the Police and Criminal Evidence Act 1984, but it also says:

"Use this form ONLY for an application for a search warrant under a power to which sections 15 & 16 of the Police and Criminal Evidence Act 1984 … apply, other than section 8".

There is a different form for Section 8. So whatever you say about the form, it does not seem expressly to apply to one type of warrant. The official undertook to confirm whether this procedure applies generally as a matter of practice to other warrants—and he rather thought that it did.

I would be content if this form of warrant or something like it was agreed to be applied to the warrants under Schedule 5 to the Act, because it is a form of what I originally suggested. If that is correct, it is a perfectly reasonable way of allaying the concern of the academic community that the warrant would be too readily granted and that the very strict conditions laid down in the schedule might not be fully understood by the magistrate who had the obligation in connection with the warrant.

I think it right that I should move my amendment but explain that, in light of the rather tortuous history that it has had, I would be content if the Minister confirmed that the practice of magistrates' courts generally in relation to all the warrants that they deal with is to contain in the application a form for the signature of the magistrate confirming that he or she has issued the warrant for the reasons that are summarised.

6.15 pm

It seems a little odd—but odd things happen—that the reason for the decision should be appended to the application, because the application is from somebody other than the magistrate. But that seems to be the form that has been accommodated for criminal procedure, and I suppose that there is no reason why the slightly less formal way of doing it than I suggested would not be appropriate for civil procedure as well. You would think that the reasons for the judgment would normally be in the judgment issued rather than appended to the application for the judgment—but, as I say, strange things happen. So if the Minister is able to say that, as a matter of general practice, warrants issued under this provision as well as under other civil provisions are subject to the procedure which requires a signature on the application form by the magistrate giving the reasons for which he or she has granted the application, I will be content. I beg to move.

Baroness Brown of Cambridge (CB): My Lords, I support the amendment proposed by the noble and learned Lord, Lord Mackay. As a former vice-chancellor of a university that, early in my tenure, did not always get its returns on student numbers to HEFCE correct, and was therefore subject to some stern discussions with the team at HEFCE and some refunding of income to it, I feel that Schedule 5 sounds potentially rather threatening—and I know that that is how others in the sector feel. While I recognise that such powers would be used only in exceptional circumstances, the addition proposed by the noble and learned Lord, Lord Mackay, would help provide reassurance to the sector that the greatest care and attention to detail would be applied if and when such powers needed to be invoked.

Lord Stevenson of Balmacara: My Lords, it is otiose to add very much to what was a wonderful account of the ramifications that one can get into when one moves to question some of the wording in the schedules to some of our more complex Bills. As a guide, the noble and learned Lord has been a wonderful education for a higher education specialist such as me. To have gone through a higher education Bill and then to have learned something right at the very end is a touch of magic—a bit of fairy dust that will sprinkle down across all of us. All we now need is for the noble Viscount to stand up and measure up to the relatively low but still quite precise hurdle that has been set for him. He is an elegant, small chap; he has light feet; he has had a brilliant career in dealing with difficult questions that we have thrown at him across the Dispatch Box. I am sure that this is well within his capabilities. He would be strongly advised, given the rather glowering face behind him, to do it right this time.

Viscount Younger of Leckie: My Lords, with that introduction, how can one fail? I thank another noble and learned Lord—this time, my noble and learned friend Lord Mackay—for his helpful and astute contributions on this issue both in Committee and on Report. We are very grateful for the expertise that he brings to bear. As my noble and learned friend said, this amendment has had an interesting history and has done the rounds, but, on a serious note, let me offer my apologies if the department's letters to him on this issue have misunderstood his area of concern.

I shall briefly reiterate why the powers to enter and inspect higher education providers, set out in Schedule 5, are needed. These powers will allow suspected breaches of registration and funding conditions which are considered by a magistrate to be, to quote directly from Schedule 5,

"sufficiently serious to justify entering premises",

such as financial irregularity, to be tackled swiftly and effectively through the new power of entry. This will safeguard the interests of students and the taxpayer, and protect the reputation of the sector. As the NAO

said in its 2014 report on alternative providers, at the moment the department has no rights of access to providers, and this affects the extent to which it can investigate.

We agree that it is vital, of course, that strong safeguards are in place to ensure that these powers are used appropriately. As set out in Schedule 5 as drafted, a magistrate would need to be satisfied that four tests were met before granting a warrant: first, that reasonable grounds existed for suspecting a breach of a condition of funding or registration; secondly, that the suspected breach was sufficiently serious to justify entering the premises; thirdly, that entry to the premises was necessary to determine whether the breach was taking place; and fourthly, 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, first, that entry must be at a reasonable hour, and secondly, that the premises may be searched only to the extent that is reasonably required to determine whether there is or has been a breach.

I believe that the thinking of the Government and that of my noble and learned friend is very largely aligned in relation to these safeguards. I fully understand that this amendment does not seek in any way to alter the conditions which must be met for a warrant to be granted, or prevent warrants being granted where they otherwise would have been. Rather, as my noble and learned friend has set out, the amendment makes a small change to the powers so that the search warrant to enter a higher education provider must state that all the conditions for grant of the warrant specified in Schedule 5 have been met. I am grateful for my noble and learned friend's valuable contribution and have discussed this with him outside the Chamber and reflected on this matter very carefully. As he said, he spoke with my honourable friend in the other place, Jo Johnson, on this matter today, and with officials from HM Courts and Tribunals Service. I hope that these conversations were helpful. However, the Government remain of the view that this schedule should stand as drafted, as we believe that a requirement to state that the conditions have been met would not provide an extra legal safeguard.

We agree that it is imperative that the conditions in the schedule are fully met before any warrant is granted. However, we believe that this is already the effect of the Bill as drafted, specifically paragraph 1 of Schedule 5. Furthermore, paragraph 3(1)(f) already provides that the warrant must, as far as possible, identify the funding or registration condition breach which is suspected. We understand that, in the past, magistrates may have taken an insufficiently robust approach towards scrutinising warrant applications but, as I have impressed upon my noble and learned friend, the position is markedly different now: the specifics of applications are carefully scrutinised and it is not uncommon for warrants to be refused. I should acknowledge to my noble and learned friend that there may have been a misunderstanding as to the requirement for a magistrate to certify that the statutory requirements for the issue of a search warrant have been met. I want to reassure him that a magistrate will be required to set out the reasons for their decisions in writing, and to add their signature to their reasons. I accept that this may be described as a certificate.

I want to go into a little more detail, bearing in mind the comments of my noble and learned friend. He asked whether an application under Schedule 5 is within the ambit of the criminal procedure rules. The criminal procedures apply to a magistrates' court,

"when dealing with a criminal cause or matter".

Although an application for a warrant under Schedule 5 can be granted only where the breach under investigation is sufficiently serious, there is no requirement that the investigation must relate to possible breaches of the criminal law. However, in the absence of any specific guidance to the contrary, it is the practice of magistrates' courts to deal with applications for a warrant to enter premises in accordance with the CPR and the criminal practice directions and using the prescribed form of application and warrant. Magistrates' courts do not seek to make fine distinctions as to whether an application is civil or criminal. It is the nature of the application that is important.

As I said earlier, I can confirm that a magistrate will sign a separate form which certifies that the statutory criteria are met. In addition, of course, the magistrate will sign the warrant. With that reassurance, with the extra detail that I have set out and the reasons we believe this amendment is not necessary, I respectfully ask my noble and learned friend to withdraw his amendment.

Lord Mackay of Clashfern: My Lords, I am extremely happy because the purpose of my original intervention has been fully met by the description that my noble friend has given of the practice of the court. It is a little odd that the form is to be used only for criminal matters, but practice sometimes overcomes that. I am constrained to add a personal note. When I came to politics rather late in life, I had a very skilled, shrewd and experienced person to guide me. He was operating in a very hostile atmosphere and I gathered from him that if you could do anything to allay the concerns of those who were concerned about your activities, so long as it did not alter your own position it was wise to do so. I have used that criterion for most of my time in these offices. The person to whom I owe this tuition was the father of my noble and learned friend. I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Schedule 6: English higher education information: designated body

Amendment 11

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

11: Schedule 6, page 105, line 29, leave out "Part 1 of"

Amendment 11 agreed.

6.26 pm

Motion

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

That the Bill do now pass.

Viscount Younger of Leckie: My Lords, before the Bill does, I hope, indeed pass, I want to say a few words. At this milestone in the Bill's passage, I, along with my colleague, the Minister in the other place, would like to take a moment—and I hope that noble Lords will indulge me as I use this term one last time—to reflect, and perhaps I should say reflect carefully, on how far it has come since being introduced to this House last November.

The Bill is the most significant piece of legislation that the higher education sector has seen in 25 years. As is fitting for such an important piece of legislation, we have heard powerful speeches from distinguished noble Lords, many of whom have held respected posts in our world-class higher education and research institutions, on key aspects of the Bill. For example, the importance of protecting institutional autonomy has been an area on which we have reached agreement. The amendments on this issue that were brought forward by noble Lords on Report, which the Government supported, were welcomed across these Benches. The Government listened carefully and responded on this issue, as we did on many others. I believe that the Bill is better as a result of this reflection. I look forward to continued discussions on the changes that the Lords is sending to the Commons, but I am truly grateful for the extensive debate, discussion and consideration of all aspects of this important piece of legislation from all sides of the House.

I express particular gratitude for the constructive engagement of numerous noble Lords. Before I forget, I want to thank my noble and learned friend Lord Mackay for his very kind words about my father. It was moving and I am very grateful. I start by thanking noble Lords opposite, particularly the noble Lords, Lord Stevenson, Lord Watson and Lord Mendelsohn, who have led the Bill from the Opposition Benches. The noble Baroness, Lady Garden, and the noble Lords, Lord Storey and Lord Addington, played a key role for the Liberal Democrats. A wealth of experience has been brought to bear from the Cross Benches: to name just a few, I thank the noble Lords, Lord Kerslake, Lord Lisvane and Lord Krebs, and the noble Baronesses, Lady Brown, Lady Wolf in particular, Lady O'Neill, who is in her place today, and Lady Deech. I also thank the right reverend Prelates the Bishops of Durham, Portsmouth and Chester. Of course, I thank my noble friends behind me: my noble and learned friend Lord Mackay, who I have mentioned already, and my noble friends Lord Lucas and Lord Selborne. Above all, I pay tribute to my noble friend Lord Willetts, who may or may not be in his place—I do not have eyes in the back of my head, I am afraid—whose higher education White Paper in 2011 paved the way for the reforms outlined in the Bill.

Finally, I thank my colleagues—my noble friends Lady Goldie, Lord Prior and Lord Young—for their admirable support throughout the passage of the Bill so far; I stress "so far" because there is a little way to go. I also thank the officials in the Department for Education and the Department for Business, Energy and Industrial Strategy, along with officials in the Home Office, the Cabinet Office and the Ministry of Justice who have supported the Bill. I particularly thank the officials in the higher education and research teams and the Bill team. Having mentioned all those departments, I think the Bill has been a great example of how departments can work together effectively. Once again, this House has demonstrated the value of the scrutiny it adds to the legislative process. While we are by no means at the end-point of the Bill, as I have said, I thank all those involved in reaching this significant milestone.

Lord Stevenson of Balmacara: My Lords, I gather from the Public Bill Office that the Bill may have broken all records for the number of amendments tabled during its passage. That is an indication of the interest it generated across the House, which allowed the House to play a full and important role, as just mentioned by the Minister, as we scrutinised every clause and, indeed, virtually every line.

The Minister was kind to say that he felt that the Bill had been improved in this process. Ministers do not always feel that way about Bills that have been torn to pieces and not always put back together in the form that they originally liked. He is right that there were things we could do with the Bill to make it, within the context of its overall shape and form, slightly better and more accommodating of the needs of the sector it was intending to regulate. As the Minister says, there is further to go and perhaps it will change again, but we have certainly made a lot of progress. My noble friend Lord Watson said earlier on another Bill that the work we had done here is what we do best. It is something your Lordships' House should continue to do.

I add my thanks to those expressed by the Minister, starting with him and his colleagues—the noble Lords, Lord Young and Lord Prior, and the noble Baroness, Lady Goldie, who all contributed to various areas within the Bill—for their unfailing courtesy and willingness to meet and, of course, to write. We have the epistolary Minister in front of us, who writes letters almost as easily as he breathes. We benefited a lot from those because they were very detailed and gave us a lot of information. We also appreciate, as has been mentioned, the substantial involvement of the Minister for Universities and Science in the other place, who, unusually, is not here today but has been seen around as we have discussed the Bill.

I also thank the Bill team. They were very good at organising meetings and often anticipated what we needed. But they also produced some very helpful factsheets, which have not been mentioned but I found very useful. These were necessary, because for those not involved in higher education it was a bit difficult to get down into the detail of the Bill. The factsheets were very useful in exemplifying what was meant by the various regulatory frameworks and what the architecture would do in practice, and we found them very helpful.

My Front-Bench team was superb. I am grateful to my noble friends Lord Watson and Lord Mendelsohn, who covered large areas of the Bill and obtained many of the concessions now in it. Our legislative assistant, Molly Critchley—we have only one—was extraordinary and superb and kept us going with grids and other materials so necessary for an effective Opposition, as well as dealing with the Public Bill Office and all those amendments. We are very grateful for its work as well in that respect.

One of the greatest pleasures of the Bill has been the experience of working closely with the other groups in the House. We quickly discovered that our views on the Bill were shared by the Liberal Democrats and a substantial number of Cross-Benchers, and indeed some Members on the Government Benches. We found that by meeting regularly and sharing intelligence about what Ministers were saying in bilateral meetings, we could make better progress than perhaps would otherwise have been the case. As I approach the end of my current spell of active Front-Bench responsibilities in your Lordships' House, the close working relationship we built up over the Bill is one of the memories I will cherish the most.

Baroness Garden of Frognal (LD): My Lords, I add the thanks of the Liberal Democrat Benches to the Ministers—the noble Viscount, Lord Younger of Leckie, the noble Lords, Lord Prior of Brampton and Lord Young, and the noble Baroness, Lady Goldie—who have given such detailed contributions throughout some very tough debates on the Bill. I echo the appreciation expressed by the noble Lord, Lord Stevenson, to the Bill team for their engagement, briefings and meetings—and, indeed, their patience—in the course of the Bill.

We are most grateful that the Government have accepted and introduced so many amendments to the Bill, and we live in hope that the amendments agreed by this House will be confirmed by the Commons when the Bill returns to them. These include amendments on the issue of international students, on which the noble Lord, Lord Patten of Barnes, has a compelling article in today's *Guardian*; to the teaching excellence framework; on safeguards for the quality of new providers; and on encouraging students to vote. We look forward to hearing the progress of my noble friend Lord Addington's proposals for guidance for disabled students, and we hope that the Bill more generally will offer more opportunity to adult and part-time students.

Across the House we have all understood the need for teaching in universities to be accorded the same regard as research, but have sought ways which would encourage, rather than brand, institutions. We have seen it as imperative to maintain the worldwide respect of the UK's higher education, while addressing any areas of shortcoming. I hope that the amended Bill will ensure that both teaching and research continue to flourish and offer learners—young, adult and, indeed, old—opportunities to develop and progress. We wish the ill-named Office for Students and the better-named UKRI every success, in the interests of the country, international collaboration and the individuals who work and achieve within our higher education sector.

I thank my noble friend Lord Storey for his tireless support and invaluable contributions on this and the Technical and Further Education Bill, and Elizabeth Plummer in our Whips' Office, who provided us with immensely useful briefings. As the noble Lord, Lord Stevenson, said, we have certainly benefited from close co-operation with the Labour Benches and the Cross Benches, as well as those on the Government Benches who shared some of our concerns. Collaboratively, we have left the Bill much better than how it reached us. Once again, I express the thanks of these Benches for the way in which scrutiny has been conducted, and the hope that the final Bill may reflect the wide-ranging expertise and contributions of your Lordships' House.

Baroness Brown of Cambridge: My Lords, I, too, will say a few words of thanks on my behalf and on behalf of my noble friends Lady Wolf and Lord Kerslake, who apologise that they are unable to be here today. As we have heard, the Cross Benches have played a significant role in scrutinising and revising the Bill, leading on four major amendments that were approved on Report, and championing many of the important changes that the Government have delivered through their amendments.

I thank the Government for listening and engaging with so many noble Lords from across the House. I particularly thank the Ministers—the noble Viscount, Lord Younger, the noble Lord, Lord Prior, and the noble Baroness, Lady Goldie—for their numerous responses. I have been hugely impressed by their stamina under enormous pressure and very long hours, and their numerous meetings and letters, which have been very helpful in developing a shared understanding of how to regulate and support a successful higher education system.

Most of all, I acknowledge the Bill team, with whom we have had some great, fun, controversial and heated meetings. They are really hard-working and committed civil servants. They have worked some very long and unsocial hours to support the passage of the Bill through your Lordships' House and they deserve huge credit for that. All these efforts have contributed to what I am very pleased to hear we all agree—and I know the sector agrees—is now a much stronger Bill.

Bill passed and returned to the Commons with amendments.

Brexit: European Union-derived Rights

Motion to Resolve

6.39 pm

Moved by ***Baroness Hayter of Kentish Town***

That a Minister of the Crown do report to this House by the end of this Session on the progress made towards ensuring that qualifying non-United Kingdom European Economic Area nationals and their family members are able to retain their fundamental European Union-derived rights after the United Kingdom has left the European Union.

Baroness Hayter of Kentish Town (Lab): My Lords, in moving this Motion I shall not go through all the arguments which led to a majority of 102 when we discussed this issue before. It is clear that the House felt that neither EU citizens here nor UK citizens abroad should pay the penalty of our withdrawal. We said that we would continue to make the case.

As Sadiq Khan said of London, where a third of the EEA nationals—some 1 million—live, Europeans who live and work in London are Londoners and should be given "a cast-iron guarantee" of their right to stay post-Brexit. These Europeans work in every part of our community. As the unions such as Unison

[Baroness Hayter of Kentish Town]
have said, clarity is needed as early as possible because any decrease in the number of EU citizens working here would have a huge impact on our public services, especially in health and social care. One in 15 nurses in England is European, although already the number registering is declining to only a quarter of those in the same period of 2015. We have also lost twice as many doctors as in 2015. The RCP and the BMA blame this on the lack of assurances for EU nationals.

In social care, Europeans comprise 6% of the English workforce—some 84,000—of whom 90% do not have UK citizenship. We should remember that of the 3 million EU citizens only 10% are married to British nationals, which gives them some hope of being able to stay. Other concerns arise for those whose spouses are non-EU. In academia, at the Francis Crick Institute—he of course won his Nobel Prize for the double helix with that immigrant Mr Watson—44% of its staff and 56% of its post-docs are from the EU.

I want to make three points today: on transparency of negotiations; on urgency; and on the EU 27's priorities. On the first, we have already seen that there is going to be no secrecy. Predictably, we saw the Tusk letter on TV before the ink had dried so our Motion will not expose any secrets. It will simply allow what is in the public domain to be discussed in your Lordships' House.

Secondly, on urgency people really cannot put their lives on hold for two years while awaiting the outcome of talks. They need to know now whether to take jobs and choose schools for their children, or make plans to leave. We are seeing European citizens turned away by mortgage lenders because of uncertainty over whether they can stay, while some employers are asking proof of permanent residency before workers get more than a fixed-term contract. Certainty is also needed for business. The British Chambers of Commerce has called on the Prime Minister to confirm that EU residents can remain after Brexit, with its director-general pointing out that some firms are already losing staff due to the avoidable uncertainty. The CBI president has said that its number one issue was to tell all 3 million EU workers that they can stay, or else their exodus will bring business to a halt. Likewise techUK, which is reliant on EU entrepreneurs, wants confirmation that EU citizens will be able to stay.

Thirdly, there is the stance of the EU 27. As Joseph Muscat, Malta's Prime Minister and the EU's chair, has said, the two sides need to remain friends. We can help if we meet their priorities wherever possible; the position of our respective nationals is one such area. Their chief negotiator Michel Barnier wants negotiations to begin by removing the uncertainty over the rights of citizens in each other's countries. For the European Parliament's Brexit lead, Guy Verhofstadt, it is an absolute priority and needs to be the first issue in the negotiations. He says that citizens should not become bargaining chips. In Malta, Donald Tusk prioritised people caught up in this process as the first duty, stressing the need to settle the status of EU citizens in the UK. The EU's draft guidelines highlight reciprocal guarantees as a priority for the negotiations.

6.45 pm

Meanwhile, a helpful Politico survey of the wish list of each of the 27 showed, for example, Austria putting the rights of its 25,000 citizens here as the top priority, as did Bulgaria for its 60,000 citizens. The future of 80,000 Latvians is key to their Government's Brexit strategy. It is the first item for Romania, for Slovakia with its 75,000 Slovaks and for Lithuania's 200,000 citizens, who are 8% of its population. Budapest wants a mechanism that would give automaticity to renewing the work permits of Hungarians while Warsaw's main concern—admittedly, alongside money—is the 800,000 Poles. Even in Spain, where alone among the 27, more Brits live there than its citizens live here, Madrid favours a quick reciprocal deal.

Evidence that we take these issues seriously will help our negotiations—not if forced by a vote in the House but rather as a willing gesture from the Government. How much better it would be as a signal to those 27, and to provide comfort to the 3 million, for the Government to accept our request, which is simply to report back on how the issue is unfolding.

The Motion in the name of my noble friend Lady Smith seeks to get the Government off a bit of a hook. It was Mrs May who promised a vote at the end of the process but with little thought, it appears, as to its legal status. Our amendment, moved so effectively by the noble Lord, Lord Pannick, had a majority of 98 but with 634 Peers voting—the highest ever in any Division in your Lordships' House throughout its long history. The Government should have heeded that but it was overturned in the Commons, on the grounds that it was not a matter that needs to be in the Bill. Perhaps not, but it is a matter for now because without legal clarity we risk being in a difficult position in 18 months' time when the promised vote comes before us in both Houses.

I am in no position to judge the opinion of the three knights or the warning of the noble and learned Lord, Lord Hope, at Second Reading, nor to answer the question of my noble friend Lord Grocott: what happens if the two Houses disagree? But I know that I would not want to be the Minister steering this through its final stages without robust legal certainty. So our advice is not to leave this until we are actively giving serious consideration to the draft withdrawal agreement, when our concentration will be on that. Let us set up a parliamentary route as to how the Houses will vote ahead of the European Parliament's consent vote to ensure that the Commons have the veto, not us, and to give legal certainty to the vote. It cannot be right for the European Parliament's vote to be entrenched in law but ours to be merely on the Prime Minister's words, with no legislative back-up.

Neither Motion this evening requires any new government position. We are taking the Government's policy on both issues. In her letter to Donald Tusk, Theresa May wrote that,

"we should aim to strike an early agreement about",

EU citizens' rights. It was also her decision that there would be a vote in both Houses on the outcome of the negotiation. We seek simply to ensure that this House,

and in one case also the Commons, is involved in the discussion of how the Government implement their stated plans. I beg to move.

Viscount Hailsham (Con): My Lords, I rise in support of both Motions. I very much hope that they will prove acceptable to my noble friend on the Front Bench and if he is able to accept them, or at least not oppose them, I will be very grateful to him.

I want to make two brief points as to the first Motion. First, as drafted, the Motion before your Lordships' House does not address the position of UK citizens in European Union countries. That clearly needs to be addressed—I am sure that it will be—and the Government need to be overt about that. Secondly, the obligation to report does not extend beyond the end of this Session. While I am not in possession of any privy information, I suspect that will come quite soon. I therefore hope that with regard to the first Motion, the Government will treat it as an obligation to report as regards UK citizens abroad as well as EU citizens here and that the obligation will extend on a continuing basis beyond the end of the Session.

I now turn to the second Motion. I agree with what the noble Baroness said, but perhaps the House will forgive me if I remind it of what I said about the referendum because it is relevant to this Motion. I never believed that the referendum was an authority to leave the EU, whatever the terms, whatever the outcome, whatever the prejudice. I think it was an instruction to the Government to negotiate the best terms that could be secured for withdrawal and then to come back. The question that then arises is: who makes the decision about the desirability of the outcome, whether there is an agreement or no agreement? In a representative democracy, the answer to that question has to be Parliament and nowhere else—not the Government, but Parliament. This matter was debated very fully in Committee and on Report. The noble Lord, Lord Pannick, made a very distinguished contribution to the debate. In that debate, very proper questions were highlighted, most notably regarding the relationship between the two Houses and, perhaps more importantly, how the primacy of the House of Commons could be entrenched. A proper Joint Committee of the kind proposed by the noble Baroness is precisely the way to address these kinds of questions.

I shall identify just two questions for further reflection. What would happen if, in the opinion of Parliament, remaining in the European Union was preferable to leaving, whether because of an inadequate agreement or because of no agreement? That question has to be addressed because it may happen, and we need to ask ourselves what will happen if Parliament is of that view. The second question overlaps, but it is different. What happens if Parliament senses that there is a real shift in public opinion in favour of remaining within the European Union? That is also a possibility. I very much hope that the Select Committee will address it because if there has been a serious shift in public opinion in favour of remaining in the European Union, we must have a second referendum. That needs to be addressed by the Committee.

I support these two Motions. I very much hope that your Lordships accept them and that my noble friend does not oppose them, and I hope that the Joint Committee may consider addressing some of the questions which I have taken the liberty of identifying.

Lord Oates (LD): My Lords, I support the Motions tabled by the noble Baronesses, Lady Hayter and Lady Smith, because I support any attempt to raise the critical issues that they highlight. I would have preferred to insist on the amendments on these matters during the passage of the Brexit Bill because that would have underlined how seriously we took them—but we are where we are and I am pleased that at least we have another opportunity to highlight these two crucial issues.

The first is the nature of the vote that will happen at the end of the negotiating process. As Liberal Democrats, we believe that the final terms should be subject to the agreement of the public—not least because so many of the commitments made during the referendum campaign have been broken. I agree with the noble Viscount, Lord Hailsham, that if Parliament were to decide that we could not leave on the terms offered, there would have to be some way of consulting the public. To that extent I am sorry that the Motion of the noble Baroness, Lady Smith of Basildon, refers only to votes in Parliament—but I understand why, given the position of the Labour Party. I therefore support the Motion in the terms set out because a Joint Committee could play a very useful role in casting light on how to go forward on this matter.

I also strongly support the Motion moved by the noble Baroness, Lady Hayter of Kentish Town, on the rights of EU and EEA citizens. Again I echo the noble Viscount, Lord Hailsham, in hoping that it can be taken to include UK citizens in the EU, because they are a critical part of our concerns. Nine months after the referendum campaign in which a categorical commitment was given by the official Vote Leave campaign that the rights of EU citizens in the UK would be guaranteed, millions of them are still living in anxiety and fear. It is a shame that noble Lords of the Brexit persuasion who often sit on the Privy Council Bench are not in their place, because it is important to remember just how categorical the statement was. The campaign stated:

> "There will be no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present".

That was the guarantee given by the official Leave campaign. The failure of the Government and, in particular, the Brexit Ministers who supported Vote Leave, to honour an undertaking that they made should be a matter of the deepest shame to each and every one of them. It is therefore important that the Government tell us what they are doing in this respect. This betrayal is causing misery to millions of EU citizens in our country. Not only that, the failure of the Government to take the moral lead suggested by the noble Lord, Lord Cormack, months ago is compounding the anxiety of UK citizens in the EU, who had fervently urged the Government to make a unilateral guarantee as the most effective means to

[Lord Oates]
protect their rights. Instead, the lives of all these people are about to become enmeshed in the negotiating process, which could go on for who knows how long. These are the circumstances that the House of Commons Exiting the European Union Committee described as "unconscionable"—and it seems that they are rapidly coming to pass.

Notwithstanding the opposition of the Government to the cross-party amendment passed in this House, I hoped that they might have used the triggering of Article 50 as an opportunity to take a moral lead and announce a unilateral guarantee to EU citizens in accordance with the unanimous recommendations of your Lordships' EU Justice Sub-Committee and the House of Commons Exiting the European Union Committee. I admit that it was a slim hope, but it has been dashed.

In the absence of that sort of announcement, I hope that the Minister can answer a number of key questions either today or when he reports back under the terms of the Motion. First, even if the Government refuse to grant rights unilaterally to EU citizens, as I and many people in all parties and on both the remain and the leave sides of the argument believe they should, why will they not set out the rights that they intend to grant if such rights are reciprocated? That would go a long way to reassure people—both EU citizens here and British citizens in the EU—about their intentions.

Secondly, do the Government intend to establish a fast-track process to ensure that the granting of such rights can be effectively and efficiently administered? As Committees of this House and elsewhere have pointed out, the indefinite leave to remain system simply could not do it. Finally, will the Minister take this opportunity to state from the Dispatch Box that no EU or EEA citizen resident in the UK will be denied the right to remain in the UK on the basis of a requirement to produce evidence of comprehensive sickness insurance—something many EU citizens were unaware was required or, if they knew it was required, understood, as does the EU Commission, that the requirement was met by their right to access treatment under the NHS?

I hope that the Minister will address those issues today, in contrast to the Government's failure to do so during the Brexit Bill. If he did so, he would allay the fear of many of us that the Government in fact have no plan at all, and that the couple of derisory paragraphs included in the White Paper on the issue of citizens' rights were less a calculated insult to the millions of people whose lives are being thrown into turmoil by the Brexit vote than an admission that the Government have no real idea of what they intend.

I support both resolutions today. While the resolutions in themselves cannot produce results—that is for the Government—they are important because they again give a voice to these issues. We can only hope that at some point the Government will listen and, on the issue of EU citizens, do the right thing.

7 pm

Lord Kerr of Kinlochard (CB): My Lords, I support both Motions. On the first Motion from the noble Baroness, Lady Hayter, I can be very brief. I will start with a quote:

> "I think it is absolutely right to issue the strongest possible reassurance to EU nationals in this country, not just for moral or humanitarian reasons, but for very, very sound economic reasons as well. They are welcome, they are necessary, they are a vital part of our society, and I will passionately support this motion tonight".—[*Official Report*, Commons, 6/7/16; col. 939.]

That was said by Boris Johnson. The Motion he was passionately supporting asked the Government to,

> "commit today that EU nationals living in the UK shall have the right to remain".

He was right, for once. I worry that by letting this question get tied up in the negotiation we risk to years of uncertainty for both sets of people—their nationals here and our nationals there.

The European Council's draft guidelines say:

> "Negotiations under Article 50 … will be conducted as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately".

That is ominous. Yes, President Tusk and Monsieur Barnier have picked out citizens' rights as a priority first-phase issue, and, yes, the Prime Minister suggested aiming to strike an early agreement. But it could still be held up behind other first-phase issues such as the money issue—settling the bills—on which negotiations will inevitably be protracted and unpleasant. It is a serious sequencing error to let a win/win common-interest negotiation be held up by a win/lose, zero-sum negotiation—but it could happen.

It could also still be averted—even now—if, before 29 April, before the European Council approves these guidelines, the Government were to do the decent, moral and economically sensible thing, as recommended by the Foreign Secretary on 6 July last year. The Government should be announcing now that those non-UK EU citizens living here will retain the right to do so, and that we expect our partners to follow suit. My answer to the noble Viscount, Lord Hailsham, is that they would. It is a win/win, and our partners see that, too. We should take the issue off the table right now.

On the second Motion, from the noble Baroness, Lady Smith, my particular concern about the amendment that we passed by such a large majority, and which the Commons rejected, was the risk that there would be no deal. My concern was that the Government have as yet given absolutely no commitment, oral or written, that in the event of no deal there would be a meaningful vote in the House of Commons. Indeed, the last time we addressed this question, last week, the noble Lord, Lord Bridges, appeared to be saying that there would be no vote because there would be no deal to vote on. A situation in which there was no deal would be the situation in which we would most need to have a vote.

In the last week, I think the risk of no deal has grown slightly. I had put it at about 30% and it is probably now a little higher than that—not because of Gibraltar and silly interventions from here; not because of the reference to Gibraltar in the European Council

draft guidelines, which was absolutely predictable; not because of the absence of any reference to it in the Prime Minister's letter, since any reference would not have made the slightest difference, so that criticism of her letter is invalid; nor even because of the unfortunate perception that her letter contained a threat to withdraw co-operation against crime and terrorism if we failed to get a good deal on trade. Any such threat would have been seriously counterproductive and would have suggested a dangerously transactional approach to questions of security—but I believe our partners accept that the drafting infelicity was unintentional.

The reason for my concern is a bigger one: the mismatch between the Prime Minister's bland assertion in her Statement last Wednesday that there would be a phased process of implementation and her insistence that in two years' time:

"We will take control of our own laws and bring an end to the jurisdiction of the European Court of Justice in Britain".—[*Official Report*, Commons, 29/3/17; col. 252.]

Unsurprisingly, the draft European Council guidelines state:

"Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply".

I do not find anything surprising in that; it is what I would have expected the European Council to be advised to agree, and what it will agree. But it means that, in the transition or implementation phase, the ECJ's writ will still run in this country—and, presumably, that the European Union's resistance to our cherry-picking of the acquis would apply to an interim phase just as much as to a permanent position. So, despite the great repeal Bill and despite losing our votes in the Council and the Parliament, we would still be applying all EU laws during the transitional phase. That is not exactly what Mr Davis told the other place and is quite a climbdown from Mrs May. Therefore, the risk of the Government walking out has grown.

That is why it really is troubling that the Government are giving no commitment to a meaningful vote in the Commons in the event that the Government decide to throw in the towel and walk out with no deal or no transition deal. With all due respect to the Prime Minister, "No deal is better than a bad deal" is plain wrong, and Mr Johnson was wrong to say that to leave with no deal would be "perfectly okay". The Commons Brexit committee's report, the CBI and the IoD are all correct in saying that no deal would be a disaster. If the Government were to head for the cliff edge, Parliament must be given the chance to require them to think again—to seek an extension of the negotiations or to consult the country. That is the principal reason why I strongly support the Motion from the noble Baroness, Lady Smith. Parliament needs to work out how best to ensure that it gets its say on the emerging outcome of the negotiations, particularly if it does not match Mrs May's aspirations, and particularly if the outcome is no deal—and Parliament needs to work out how to do so in good time, before the die is cast.

Lord Campbell-Savours (Lab): My Lords, I shall be brief. I have a simple question for the Minister: what happens if there is a blockage in the negotiations on these matters in the wider European Union? In principle, is it possible for the UK to enter into bilateral agreements with 27 individual nation states offering rights to national residency in the UK in return for reciprocal rights for UK citizens living in the Union? The advantage of bilaterals if we hit a stalemate would be that any state opposing such concessions at the time of final settlement of these matters could find their own citizens' rights in the UK in jeopardy and subject to review. It would have the effect of moving the debate to the capitals of obstructive states in the circumstances of a blockage in the negotiations. I wonder if the Minister might be able to help us with that very simple question.

Lord Cormack (Con): My Lords, like the proverbial Irishman, I would not have started from here. We have to be careful that we do not continually refight the same battles, but that does not mean that we cannot repeatedly restate the same principles.

I remain of the same view that I did the day after the referendum, 24 June last year. I deeply regret the result, and I thought that the first and most positive thing that we could and should do would be to guarantee the rights of EU nationals in this country—I was a week ahead of Boris Johnson. We would have taken the moral high ground; we would have lost nothing; we would have made an extremely important gesture, which I believe would have been reciprocated. My noble friend Lord Bridges, who will be replying to this debate, knows very well that that has been my view throughout, and I have repeated it in this Chamber on a number of occasions.

However, as someone said a few moments ago, we are where we are. What is now crucial—my noble friend Lord Hailsham made this point—is to ensure that we guarantee as soon as possible the right of EU nationals. I am confident that there would be reciprocation. We do not want to let this drag on for two years.

Uncertainty was referred to by the noble Baroness, Lady Hayter, in her admirable opening speech. We all know from our personal lives that nothing is more mentally debilitating than uncertainty. Whether it is concern over a loved one with illness or over a job, if we have uncertainty, we cannot plan ahead, look forward with confidence or aspire. Every human being has the human right to all those things. I very much hope that, when my noble friend comes to wind up, he will be able not only to state his personal agreement but to say that the Government will indeed report back to Parliament and that he will do all in his power—I am sure that he has great negotiating skills—to bring this uncertainty for 3 million human beings in our country to an early and a hopeful end.

I also find myself in agreement with the Motion spoken to persuasively by the noble Baroness, Lady Hayter. We have said these things before in innumerable debates, but the cry from those who did not think that they would win, but did, was, "We want to take back control". Control where? In a parliamentary democracy, control can lie in only one place, and that is Parliament—particularly in the House which has supreme power, the elected House, but, to a degree, in your Lordships' House, too.

We must never forget that the single, cardinal principle of our democracy is that government is accountable to Parliament, and Parliament is accountable to the

[Lord Cormack]
electorate. It is crucial that we have not only discursive debates—which, in a sense, is what we are having tonight—but debates with real purpose and real votes at the end of them. That is not because I want in any way to circumscribe the freedom of those who will be negotiating on our behalf, but because I want them to be answerable to us and, particularly, to the other place.

7.15 pm

It is a good idea that there be a Joint Committee; there are many precedents. One thing that has disappointed me in the more than six years that I have been in your Lordships' House is that there is not more co-operation between the two Houses. I sat on one or two Joint Committees myself when I was in the other place. I felt that they were good to have but that there were not enough of them. In the most important journey that our nation has taken since the war, where we do not yet have an agreed destination, still less a route map to get us there, it is crucial that we work with our colleagues in the other place. I believe that this suggestion is both practical and sensible, and I very much hope that it will be adopted.

I conclude on another note. During recent debates and exchanges on the Floor of your Lordships' House, there has been a degree of fractiousness that is not typical of our debates. It is understandable, because those who won have become, if I may say so, increasingly triumphalist, and those of us who lost have perhaps become increasingly disappointed. We have to try to put that disappointment behind us for the sake of our country, which has known greater perils in the past and has come through them. I think it is incumbent on each and every one of us to try to temper our language and not indulge in inflammatory rhetoric of any sort, but to know that we should have one common aim and purpose. That is to ensure that our country, when all this negotiating is over, is not in an appreciably worse and weaker position than it is at the moment.

There is a real danger of that. I do not think that many of those on the leave side— I talk to a lot of them—thought that there would be quite so much to unravel. Certainly, outside your Lordships' House and in the country, many of those I have talked to in my native county of Lincolnshire and the county that I had the honour of representing for 40 years in the other place, Staffordshire, did not realise how much had to be undone. The unpicking of almost half a century of history while ensuring that we do not go back is incredibly difficult.

I have the honour to sit on the Home Affairs Sub-Committee of the EU Committee of your Lordships' House. We have recently been taking evidence on the European arrest warrant. What becomes increasingly obvious from our sessions is that the whole struggle is to try to maintain a sort of status quo.

We are beginning a long journey. I hope that we can be together on this, and I congratulate the noble Baroness on introducing the Motion tonight.

Lord Taverne (LD): My Lords, I start by thanking the Library for its most helpful analysis of the issues and arguments we are discussing today.

I believe that few things can be more important than the proposed task of the Joint Committee to clarify the options for the promised vote in Parliament on the outcome of the negotiations. At the moment, I submit, the offered choice is meaningless. What are the possible outcomes?

The Government are confident that they will establish a new relationship with the EU which retains for us the benefits of the single market and the customs union but without remaining members of either, without commitment to the freedom of the movement of labour, without continuing to make the present level of contributions to the European budget and without accepting the jurisdiction of the European Court of Justice. With great respect to the Prime Minister, this is perhaps a somewhat overoptimistic scenario. There have been no suggestions from the 27 that they are willing to make any such concessions to a non-member, granting us a special status far more favourable than that granted to any other nation.

Of course, if the Government did succeed in negotiating such a new relationship, Parliament would no doubt be very willing to accept the deal. But if they did not succeed, outside the customs union and the single market, our exporters would face tariff and non-tariff barriers and the high costs and delays of border controls. Our service industry would lose its rights to operate in Europe and we would be bound by regulations in whose formulation we would have no say. In fact, we would be no better off than if there were no deal.

What would Parliament then vote for? It could accept the bad deal, I suppose, because it said that the vote of the people in the referendum must still be obeyed. It could reject the deal and tell the Government to go back and negotiate a better one—some hope. In practice, the choice on offer would be meaningless. Rejecting a bad deal means no deal—WTO terms.

The real alternative would be to withdraw the Article 50 notice, as the noble Lord, Lord Kerr, and indeed, Mr Jean-Claude Piris, the former head of the legal services to the European Council, have told us we are perfectly entitled to do. The Article 50 notice is of an intention to leave. An intention is not a decision. Only the member state can decide to give the notice and therefore only the member state can decide whether to withdraw it. That seems a very convincing argument. But remain is not an option that the Government will allow. Some time ago, Donald Tusk told us that the final choice would be between a hard Brexit and remain. I think he was right.

But the option of remain is not available at present. Now, the anti-European wing of the Conservative Party, including several very distinguished Members of this House, are all for hard breakfast—I mean Brexit. They are not worrying about Parliament having no choice. They favour the WTO route because they predict that, once we have cast off the shackles of the European Union, we can exploit a glorious bonanza of free trade deals with the rest of the world. They may be right: there has never been a more uncertain time.

But it seems at least as likely that we are now in the calm before a storm, that in the Trump era of "America first" the world is likely to be one of protectionism,

not free trade, and that a hard Brexit—indeed, even the prospect of one—will in due course lead to a further fall in sterling, a rise in inflation, a flood rather than a trickle of corporate emigration, and a serious decline in living standards. It seems far from inconceivable, as the noble Viscount, Lord Hailsham, said, that many of those who voted leave will then decide that this is not what they voted for and there will be a major shift in the public mood.

The Government have decreed that the Brexit vote is sacrosanct and irreversible. Autocracies and dictatorships forbid people to change their minds. It is the essence of democracy that they may do so if circumstances change, and the verdict of a referendum is no more sacrosanct than that of a general election in which people vote—unlike the vote in June—after detailed manifestos from the parties.

This principle is highly relevant to this Motion. The proposed Joint Committee is to review the options of what Parliament can vote for. The Government's so-called concession, to let Parliament have the final say, limits them in a way that makes the choice meaningless as it stands. I hope that Parliament will at least agree that there must be a real choice at the end of the negotiations, and that people should be able to exercise their democratic right to change their mind if circumstances change and their hopes are dashed.

Lord Pannick (CB): My Lords, it is a pleasure to attend the latest meeting of the House of Lords Brexit club. The agenda bears a striking resemblance to our last meeting on 13 March, but there is a reason for that—the issues on the agenda were not satisfactorily resolved when we last met.

I want briefly to comment on the second Motion. We all agree, I think, that at some stage in the next two years the Government are going to reach a deal with our EU partners, or they will decide that we will leave the EU with no agreement. The Prime Minister, we all agree, has promised that an agreement would be put to a vote in both Houses. The Prime Minister has made no promise—there is no undertaking if there is no agreement—but noble Lords from the government side and from all around the House told this House that it was inevitable in practice that a decision to leave the EU with no agreement would be put to a vote in Parliament.

A number of difficult questions were posed by noble Lords as to the procedures that will be adopted when we come to the crunch point and when Parliament is asked to vote. I certainly was unable to answer those difficult questions and, more importantly, the Minister, with all his expertise, experience, wisdom and foresight, was unable to answer those difficult questions. Surely on a matter of such significance to the future of the United Kingdom we would all benefit from some mature consideration—before we come to the beginning of the end game—by a Joint Committee which can assist this House and the other place, the Government, the Opposition and all Back-Benchers.

Baroness Lister of Burtersett (Lab): My Lords, being a member of the Brexit club, I support both the Motions but will speak to just the first one.

The Prime Minister's welcome assurance to President Tusk, that,

"We should always put our citizens first",

will, I hope, as she stated, act as a guiding principle in the negotiations and the legislative programme stemming from the repeal Bill. I hope, too, that this principle will embrace the rights that our citizens enjoy—broader human, equality and environmental rights as well as employment rights to which the Government have committed to safeguarding.

As we have already heard, the first Motion concerns the rights of our fellow EU citizens who have made the UK their home, and also has implications for UK citizens living elsewhere in the EU. We know from the many emails we have received how insecure they now feel and also how insecure many of their loved ones who are British citizens feel. We have heard from my noble friend Lady Hayter and the noble Lord, Lord Cormack, what it means to have that sense of insecurity.

7.30 pm

As well as insecurity about their future, there is another aspect, which I do not think was mentioned during the debates on the relevant amendments to the Article 50 Bill but which was raised by the EU Committee's excellent report on acquired rights. The committee expressed the fear that,

"Question marks about the rights of EU nationals to live in the UK may be fuelling xenophobic sentiment".

So long as this uncertainty about their status remains, the danger is that they are seen as second-class citizens—the foreign other—rather than as our fellow workers and neighbours, contributing to this country. It is therefore right and proper that resolution of their situation is a priority in the negotiations, and I hope that the first Motion will be accepted as supportive of the Government's own goal in achieving this.

It has been suggested that the xenophobia unleashed by the referendum result arose in part from the threat that some people have felt to their identity in the face of rapid EU migration in some areas of the country. As I said at Second Reading of the Article 50 Bill, I and many others have felt the loss of European citizenship as a blow to our identity. Since then, there has been talk of some form of associate European citizenship which would, at the very least, enable us to still call ourselves European citizens if we so wish and to move freely within the EU, with appropriate rights for EU citizens wanting to visit the UK. This has been proposed by Guy Verhofstadt, the European Parliament's Brexit representative, and has been the subject of a new European citizens' initiative. The President of the European Commission has said that he has not shut the door to the idea. I hope that our Government will, likewise, keep an open mind. Would it not represent a tangible expression of the "deep and special partnership", to which the Prime Minister and Brexit Secretary have frequently referred in recent days? I would welcome the Minister's thoughts on this idea.

Last week, the Brexit Minister stated on the "Today" programme that he sees it as a "moral duty" to give EU citizens in the UK certainty and to take away any anxiety they have about their situation. I hope and trust that the Government will accept this Motion in recognition of that moral duty.

Baroness Smith of Newnham (LD): My Lords, it is frequently suggested that any noble Lord who starts a speech with, "I shall be brief", will drone on for many minutes. However, I do propose to be brief in speaking in favour of the Motion proposed by the noble Baroness, Lady Hayter. As the noble Lord, Lord Cormack, said earlier, so much has already been said and we should not keep refighting the same battles. I therefore have just one question for the Minister. On more than one occasion during the passage of the EU withdrawal Bill, the noble Baroness, Lady Symons, and I said that the nature of EU negotiations is that nothing is agreed until everything is agreed. That is what the European Union has now said. In light of last week's statement from the EU—not just from people like me—how do Her Majesty's Government envisage giving certainty to EU nationals who are currently resident in the United Kingdom? The Prime Minister's frequently stated hope is that the issue can be dealt with early on in the procedure but it is absolutely clear that this is not going to happen if everything has to be agreed at the end. Another two years of uncertainty is clearly wrong.

Lord Lea of Crondall (Lab): My Lords, the noble Baroness, Lady Smith of Newnham, has raised a key question for the Minister to respond to. The principle of nothing being agreed until everything is agreed is now questionable. There is a contradiction on the reciprocity and simultaneity of citizenship and rights in a document to which Mr Tusk and Mr Barnier are both party. Paragraph 2 states that,

"nothing is agreed until everything is agreed",

but paragraph 8 states that:

"Agreeing reciprocal guarantees to settle the status and situations at the date of withdrawal of EU and UK citizens, and their families, affected by the United Kingdom's withdrawal from the Union will be a matter of priority for the negotiations".

On the issue of process, one has to conclude that there is confusion about the timescale, not only in the British Government but also—dare I say it—in Brussels. If there is confusion in Brussels, do we write a public letter saying, "Your statement says x, y, z; we say a, b, c"? Is there a protocol that has not been agreed about how these negotiations must be conducted in secret? You cannot have things being agreed ad hoc without some clarity and transparency so that we can all have a look at them. I agree with both Motions, but it is not just a question of nothing happening until the end of two years. I agree with the noble Baroness, Lady Smith of Newnham, who made the same point.

Lord Judd (Lab): My Lords, two issues have concerned me throughout recent developments. The first is that this is not a hypothetical or theoretical question. Already in industry, commerce, the university world and other aspects of life, planning is being disrupted by uncertainty about the future availability of personnel. There is an urgent, administrative, economic reason to resolve this issue. Secondly, I am disturbed because, in the very good secondary education which I was fortunate to have, I came to understand the importance of citizenship in a modern civilised society. Many people who have established themselves in this country and who saw a future for themselves and their family here have been sustained by the concept that they had European citizenship. Speaking with knowledge from my own family, people who went to live or establish themselves elsewhere in the European Union had the same concept of citizenship. By our unilateral action in removing ourselves from the European Community we are depriving these people of citizenship. According to the education which I was privileged to receive, that is a very serious matter indeed. On those grounds it is, therefore, essential to resolve this issue rapidly.

In his very good speech, the noble Lord, Lord Cormack, put the issue of the arrangements very well. We were being told constantly that there was going to be a return of power to our own society. But in our society power lies in Parliament. As he said, Ministers are accountable to Parliament and Parliament is accountable to the people. It therefore behoves us to make it very clear and certain—not least to ourselves—what the procedures will be by which we thoroughly review progress. It is not just a case of saying, "We should review progress and we have to have some arrangements". We have to have very clear arrangements for how we will review progress.

I have been around in Parliament now, in one way or another, for 39 years. There is a way in which we, as it were, adopt a procedure which will satisfy us, our consciences and our approach to the public that we have a procedure. I say to all my colleagues—to my friends on both sides of the House—that we are not playing games. If we have this procedure, we must take it very seriously indeed. We must not have a situation in which debate is rushed, truncated or rationed. There has to be an opportunity to debate and deliberate fully so that we can reassure the public on these matters. I am absolutely certain that if we are to be a parliamentary democracy—I sometimes wonder about this—we have no alternative than the resolutions that are put before us.

There is another thing which I know does not go down well with a lot of people. I totally accept that we in Parliament framed the arrangements for the referendum. I know that we had no threshold of our own volition, but I find it very difficult when I am constantly being told that the will of the people has been expressed. I do not know what this means. A majority voted in favour of the broad position, but there was certainly not a majority of the electorate positively in favour of this position. I am not suggesting that we do other than accept what we did, and we have to live with the results. Having said that, it seems to me to increase even more the moral and real responsibility of Parliament to look to the interests of the whole population in evaluating what is proposed in the negotiations. It is not just a case of the interests of the people who won the referendum but the interests of the whole people. We have that responsibility.

Lord Berkeley of Knighton (CB): My Lords, my first point echoes nicely the noble Lord, Lord Judd, in that a prime example of the uncertainty facing EU nationals is to be found in the world of music and other artistic institutions and places of learning. Many professional and visiting professional posts are filled, vitally, by artists from the EU. They enrich our lives immeasurably. Indeed, this artistic intercourse—it is true of the world of science too—is absolutely vital to intellectual exchange, innovation and excellence. I understand that

the Minister will not be able to unravel this this evening, he will be glad to hear me say. However, like the noble Lord, Lord Judd, I would be grateful if the Government placed high in their priorities the concept of giving some kind of lead to our great institutions of learning, so that they can fill these professorial posts with people of the quality that our country needs and deserves.

Baroness Wheatcroft (Con): My Lords—

Noble Lords: Lord Rooker!

Lord Rooker (Lab): No, it is the turn of the Conservatives.

7.45 pm

Baroness Wheatcroft: I thank the noble Lord. We are a very friendly Brexit club here.

I speak in support of both these Motions, which seem to me very moderate and reasonable. I know that my noble friend Lord Bridges is a very reasonable and moderate man and I hope that he will have no difficulty accepting them. However, perhaps it will encourage him a little more to know that, as regards the first Motion, my postbag has been full of letters and emails from UK citizens resident in Europe. They unanimously do not want to be used as bargaining chips. They want us to do the decent thing and to do it now because they know the damaging uncertainty that they are going through, and they would like people who come to the UK not to have to cope with that uncertainty. The wonderful thing is that this would also be enlightened self-interest on our part because, as even the Minister for leaving the EU has said, we need these people to stay. Already that is less attractive for them than it was, not just because of the changed climate but because of what Brexit has done to the pound. Those who want to send money back to the countries they come from are already finding that that is much tougher than it was. In the agriculture industry, for instance, wages are already having to go up, and food prices will therefore go up too. Therefore, we should do the decent thing, do it quickly and keep those people we need living here.

Secondly, having a Joint Committee is a very sensible thing to do. We need to be clear about what the vote is and when it is. A vote simply on the proposition, "Accept this deal or we are out of Europe without a deal" would be a travesty of parliamentary democracy and certainly would not amount to taking back control. I wonder whether the Select Committee might look at what we need to know before it is possible to vote on any deal, or no deal. Perhaps the Minister could tell us, for instance, when we might be clearer about what the border in Ireland might be, because for the people living in Ireland there is as much uncertainty as there is for EU citizens living in the UK.

Lord Rooker: My Lords, I support both the Motions but want to address the second one, or what is behind it: in other words, the role of Parliament.

I have much in common with the Minister. I was a remainer and I accept the vote count of 23 June. Indeed, there are not really two sides anymore but the language of contest is still used. It is because I am a democrat that I accept the vote count and it is because I am a democrat that I accept the rule of law. Parliament is sovereign, not the Government, and it is Parliament's role to protect the rule of law. As such, it has to be Parliament's role to consider and judge the terms of fundamental changes to our way of life. Governments come and go via Parliament, or in this case through an ill-thought-out advisory referendum held for more purposes than just to remain or leave the EU.

It is in my view more important to protect Parliament than the Government. A Joint Committee would help considerably in this respect. In fact, the Supreme Court case in some ways helped in respect of protecting the rule of law, and at some point will probably need to do so again. When the people voted on 23 June, it was simple—leave or remain. They knew that the Government's view was to remain, as set out in the booklet sent to every home in the country. They knew then that the Government had abandoned the idea of an advisory referendum and that the decision would be implemented. They also knew that there was a set of rules around the decision, to the extent, for example, that it was not the Government who drafted the question but the Electoral Commission. They knew that there were rules about the funding of the two strands of opinion. Parliament had set out those rules so there was confidence. However, in the last couple of months, any informed person has to be concerned by the extensive reporting by Carole Cadwalladr in the *Observer* of 26 February and 2 April, to refer to just two of the very long articles. I have never met nor had contact with Ms Cadwalladr, but I contacted the Electoral Commission in February following the first of the three-page articles and received this response on 8 March:

"I can confirm the Electoral Commission has begun an assessment in respect of Leave.EU's spending return at the EU Referendum to determine whether or not there are potential offences under the law that require investigation. Our assessment is focused on whether any donation—including services—was made by Cambridge Analytica or Goddard Gunster to Leave.EU; whether those donations, if any, were from a permissible source and whether Leave.EU spending return was complete. Given the high public interest in the returns submitted by campaigners, the Commission will announce the outcome of its assessment in due course".

I suspect that that response will be made public to others.

Accepting the vote count of 23 June, therefore, we need Parliament to play a key role, as via these proposed Motions. There must be concern that the major donor to Leave.EU is now quoted as saying:

"I don't give a monkey's what the Electoral Commission says",

and:

"We were … cleverer than the regulators and the politicians. Of course we were".

To me, that is an admission of "cheating"—that they were cleverer than the regulator, the Electoral Commission. The self-confessed cheat Mr Banks is planning to unseat "bad MPs", via an unregistered organisation. Therefore, Parliament itself is now under threat from dark money, as we have not yet passed the legislation introducing unexplained wealth orders—I suspect that he will be the first candidate for one of those.

Passing these two Motions will send a signal to those who threaten democracy with secret funds and by cheating election regulators. Indeed, it is a wake-up

[LORD ROOKER]
call which, if we fail to answer it, will put Parliament, not the Government, in peril. When I hear a Brexit extremist raise these concerns, I will know the battle of the referendum is over and the battle for Parliament has begun.

Lord Bilimoria (CB): My Lords, following the noble Lord, Lord Rooker, the important part about these two Motions is that they say that once again, Parliament should be at the heart of everything. Let us not forget that straight after the referendum, the Prime Minister and the Government wanted to bypass Parliament altogether.

On so-called independence day, 29 March, I was on a radio programme following Nigel Farage and Alex Salmond battling it out. Nigel Farage said, "This is independence day—the day we got our country back". We never lost our country. Philip Hammond said that,

"we can't cherry pick. We can't have our cake and eat it".

The irony is that we had our cake and were able to eat it too—we had the best of both worlds.

What nobody mentions, and people overlook, is: why the promised rush into triggering Article 50 by 31 March of this year? It is a self-imposed deadline. The answer is very simple: the Prime Minister wants this two-year process to be over, to put it to bed so that she can go into the next election and get re-elected. In every other way, this timing is madness. We have the French and German elections coming up, and we will lose six months of these two years when Europe will be completely distracted. Why rush into it now and try to bypass Parliament altogether?

If you look at the letter that was written, it very clearly admits how complex these negotiations will be. I believe that the letter also shows that the British people have been completely misled. The Conservative Party manifesto very clearly stated that staying in the single market was a priority. Now the Prime Minister, from her Lancaster House speech and then on 29 March, has said that we will not stay in the single market. Had the British people known this and been told this by the leave campaign, many would not have voted to leave. In fact, if British businesses—small, medium and large—had been told, "You vote to leave and you will be leaving the single market", they would not have done.

What about these 3 million people and their rights? What about the fact that our unemployment is less than 5%—what would we do without these 3 million people? We would have a labour shortage in this country. We are up against it. We need Parliament to be involved because this is not a balanced negotiation. We are one against 27, against the European Commission, against the European Council, and against the European Parliament. Therefore, getting this done in two years, with the bureaucracy that exists in Europe, and dealing with all these countries, will be very difficult.

What about the rights of these European Union nationals? How many of them are there? By the way, on this figure of 3.2 million, we do not know the exact figure. Why? I came back from a short visit to India this morning and came through the passport checks. You scan your passport when you come into the country, but when you leave this country, nobody checks your passport. Every single passport, European Union or not, should be scanned in and scanned out. Then we would know who is in this country, and these European Union citizens, for example, would be able to say, "I've stayed here for five years—I've got the right to stay regardless". Why will the Government not bring in those visible extra checks? That would give us security over our borders—and we are not in Schengen.

Now we have the European Union's chief Brexit negotiator, Michel Barnier, saying that he has told a delegation of EU citizens that he wants to have an agreement in principle to secure the future of EU citizens in the UK and UK citizens throughout Europe by the end of the year. However, he had to admit that it would be late 2018 before he could strike a deal with the UK. Can the Minister tell us why we cannot do this quicker?

We hear that record numbers of EU citizens quit working in the NHS last year. Can he confirm that? As we have heard before, EU nationals are being denied mortgages because of this. The Institute of Directors said just yesterday, very clearly, that a guarantee for EU citizens after Brexit would reduce uncertainty for IoD members. Allie Renison of the IoD said:

"Just under 40 per cent of our members employ EU nationals. You'd be surprised about the amount of nervousness that is genuinely giving to a lot of these employees".

This is a human issue.

The House of Commons Exiting the European Union Committee has not been spoken about much here. Its report has just been released, in which it said:

"Sadiq Khan told us that uncertainty over the rights of one million Londoners who are EU citizens is feeding into uncertainty in business recruitment".

The committee clearly said:

"The status of EU nationals in the UK and UK nationals living elsewhere in the EU cannot be left unresolved until the end of the two-year period for negotiations".

It urges the Government to sort this out now and says:

"We note that, to date, Ministers have not taken this step. The debate around whether 'no deal is better than a bad deal' has focussed on the trade aspects of the future relationship. If the negotiations were to end prematurely without an agreement on rights for the 4 million, this could put them in an uncertain position".

The committee's recommendation is very clear. There should be,

"a stand-alone and separate deal which is otherwise not dependent on any other exit or future trade deal being agreed to between the parties".

Will the Minister agree with this?

I conclude with the whole concept of "no deal is better than a bad deal". This is absolutely ridiculous. It is now clear that the Government have said that it is unsubstantiated—they have not even done the homework. Looking at the report prepared by the Select Committee, there is such complexity: the timescale for reaching agreement, Gibraltar has suddenly come up, there is a potential exit payment, securing a free trade agreement, the customs union, free trade agreements with countries outside the European Union, and co-operating in the fight against crime and terrorism is now being used as a bargaining chip, which is hugely irresponsible. How can we as a country even think of doing that? There is also immigration and consultation with devolved

Administrations, we have the Scotland issue, the Northern Ireland border and the Republic of Ireland, and minimising disruption when we leave the EU.

Sir Simon Fraser has just said that transitional agreements will almost definitely be necessary. Once again, it is crucial that these two Motions be agreed. He has said clearly that we will reach a cliff edge. In fact, a number of EU diplomats have now said that the Government,

"fears the economy could be left in 'havoc' if Britain left without agreeing any preferential access".

Does the Minister agree?

The noble Lord, Lord Kerr, spoke about Boris Johnson saying that it will be "perfectly okay" if we leave, and David Davis admitted that the Government had not assessed what "no deal" means. Michel Barnier—this is not fear-mongering—said that no deal would have,

"severe consequences for our people and our economies. It would … leave the UK worse off".

I support these two Motions in the name of the noble Baronesses, Lady Hayter and Lady Smith. The last point is about 16 and 17 year-olds who were not allowed to vote last year. By the time we come to 2019, these individuals will have the right to vote, and almost 100% of them will want to reverse this decision. People will be allowed to change their minds; the public might change their mind, having seen that the Brexiteers' emperor has no clothes. We are watching a train crash in slow motion.

8 pm

Lord Morris of Handsworth (Lab): My Lords, like other noble Lords, I support both Motions in the names of my noble friends Lady Smith and Lady Hayter. Like an overwhelming number of UK nationals, I am at heart a European and I care about all European citizens. To that end, I think that we have to confront what I call the "people issue". We must do so as a matter of some urgency and stop treating UK and indeed EU citizens as bargaining chips.

The Prime Minister does not seem to understand that, just by saying that no deal is better than a bad deal, she has shattered the lives of thousands. That statement has created uncertainty and fear for thousands throughout the European Union on both sides of the debate, and her letter to Donald Tusk has not given them any confidence. Saying that we should,

"aim to strike an early agreement about their rights",

does not fill anyone with any sense of confidence, or indeed suggest any urgency.

As well as affecting the lives of EU nationals here in Britain and British nationals in Europe—their jobs, their housing, their children's schools, and their social and family lives—the uncertainty has started to impact on all of us. Two years might seem a very long time, but the reality is that time is not on our side.

Following the referendum, there began a trickle of EU nationals leaving their jobs and homes in the United Kingdom in fear of the future. That trickle has now become a flood. The Royal College of Nursing has reported a fall of 92% in the number of EU nationals registering as nurses in England since the referendum in June. It has blamed the haemorrhaging of foreign staff on the failure of the Government to provide EU nationals in the UK with any security about their future. Over 17,000 EU nationals in the NHS left in 2016, compared with 13,000 in 2015. Many were doctors and nurses. The Royal College of Physicians and the British Medical Association blamed the rise on the Prime Minister's lack of assurances about the position of EU nationals resident in the UK.

A survey of members of the Food and Drink Federation at the end of last year found that their EU employees felt "unwanted and uncomfortable". The Royal Institution of Chartered Surveyors says that the construction industry could lose more than 175,000 employees. It has cited projects that could be at risk, such as the HS2 rail link. The construction industry reports that its dependence on overseas workers could make it difficult to tackle Britain's housing shortage if there were to be an exodus of EU workers. Although farmers have been able to recruit enough seasonal workers for this summer, whereas a job previously attracted 10 applicants, this year it attracted only three or, at the most, four. By delaying positive action now, some sectors of the economy will be heading for disaster because of a shortage of labour.

In the meantime, in mainland Europe British families are worried about possible retaliation at what may happen to EU nationals, and they fear for their homes and families outside the UK. For the Prime Minister, they may be no more than negotiating capital, but, for many Europeans, this is an issue that will determine the future life chances of individuals and families for generations to come.

In a recent debate, the Minister was robust in saying that EU citizens living in Britain could apply to stay. However, with due respect to the Minister, that statement was somewhat disingenuous. The Minister knows perfectly well that there is a qualitative difference between the right to apply and the right to stay. In his statement, he offered only the right to apply. Anyone has a right to apply, but it is the outcome which counts and which is important. I will not burden this House and this debate with the requirements of the right to apply. I say no more than the form is 85 pages long.

In my previous contribution on this issue, I said that this was not a political game: that people on both sides of the channel could not be left in limbo. We must urgently give an unequivocal guarantee to EU nationals that they and their families have a right to stay and ensure that reciprocal arrangements are made on behalf of British nationals throughout the EU.

The Prime Minister, in her letter to the President of the EU, had an opportunity to resolve the bilateral status of all the people affected by our departure—but she missed the opportunity. As we have seen over Gibraltar, it would appear that our Prime Minister now never misses an opportunity to miss an opportunity. But missing the opportunity is not without consequences. Already one section of the Tory party is saying that Spain should be treated in the same way as we dealt with the Falkland Islands. That cannot be on the agenda of this debate.

[Lord Morris of Handsworth]

So today I wholeheartedly support the proposal of my noble friend Lady Hayter to resolve that a Minister reports to this House at the end of this Session on progress towards securing what I call the "people issue". I hope, for the sake of millions of our fellow Europeans, that when that report is made it will bring some comfort and, most importantly, security, and that they will be able to continue their lives in the country of their choice.

Viscount Waverley (CB): My Lords, I believe that the noble Baroness, Lady Hayter, has touched a raw nerve. I refer to a concern and, in doing so, declare that I fall into that bracket. I originally referred to this matter in the form of a Written Question on 4 July last, asking what steps the Government had taken,

"to bring UK law into line with the European Court of Justice ruling C-127/08 on the implementation of Directive 2004/38/EC and the rights of non-EU spouses of EU citizens to move freely in the EU".

The case concerned the ability of a Colombian lady to enter the United Kingdom with no visa impediment.

A response came through from government, in effect saying that United Kingdom law relating to the rights of EU nationals and their family members—this is the key point—to enter and reside in the UK is fully compliant with the decision of the ECJ, to which I referred earlier. I refer to this again as, while in no way doubting the Government, I am not actually sure that this is working in practice. Will the Minister, at his convenience, look at this and confirm that non-EU spouses and family are able to enter the UK without any condition?

Lord Hope of Craighead (CB): My Lords, I should like to say just a few words in support of the Motion in the name of the noble Baroness, Lady Smith of Basildon, to which the noble Baroness, Lady Hayter of Kentish Town, spoke.

I want to stress one word that comes towards the end of the Motion, and that is the word "before". It is used in a phrase that sets out that among the matters to be looked at by the Joint Committee will be the taking of votes before any agreement is considered by the European Parliament. The timing is very important. The point is made in answer to points made on several occasions in our debates on the notification of withdrawal Bill, with reference to the curiously worded enactment already on our statute book, the Constitutional Reform and Governance Act.

At the end of the whole process, assuming that an agreement is reached and approved by the European Parliament, there will have been created by that agreement a treaty which we in Parliament will be required to ratify. It was suggested that that was enough to satisfy the constitutional requirements of approval by Parliament. The point that the noble Baronesses are making, which is absolutely right, is that the time for Parliament to express its wishes is before the agreement is reached to be put before the European Parliament. It is too late once we are presented with a completed agreement in the form of a treaty that we are being asked simply to approve. So this Motion is very carefully worded and, in my respectful submission, very correctly worded to address that point. The issues must be considered before the agreement is handed over to the European Parliament.

The same point arises in regard to a point that is not mentioned in the Motion but which was very properly raised by the noble Baroness, Lady Hayter: the need for legal certainty. I touched on this at Second Reading and do not wish to repeat all that I said then. However, the point I made is that there is a need for parliamentary authority for the making of the agreement itself by the Prime Minister, because it is the Prime Minister who will eventually conclude the agreement on our behalf that is to be handed over to the European Parliament.

The guidance as to how one achieves legal certainty is to be found in the decision of the UK Supreme Court in the case of Miller. It does not need to be repeated, but that decision looked for legislative underpinning for the authority to enter into that agreement. Again, the timing is critical. That is required before the agreement is entered into and before it is handed over to the European Parliament. I stress the word "before" because it identifies a critical point in what will become, at the end of the process, a very important issue of timing, as one event follows another.

Perhaps it is a reason also to stress a point made by the noble Baroness, Lady Hayter, that the sooner legal certainty is achieved, the better. I suggest that the worst thing of all would be to leave the search for legal certainty until near the end of the process, when things will become more and more urgent. The sooner it is sorted out, and sorted out in the correct way, the better. Therefore, I support both Motions—but in particular the second because of its careful wording.

8.15 pm

Baroness Ludford (LD): My Lords, I note that the route of resolution is that chosen by the Opposition to "pursue in other ways" the interests of EU citizens and parliamentary control, rather than voting, as far as possible, those guarantees into legislation three weeks ago. These Benches were reproached by the Opposition on 13 March for falsely raising people's hopes when we know that the Government will not change their mind. I respectfully point out that a section in an Act would have been more persuasive even than a resolution initiated by Her Majesty's Opposition.

None the less, the cause of guarantees for EU and British citizens and their families is one for which I am more than ready once more to speak up. I concur wholeheartedly with the remarks of everyone who has spoken. In particular, the noble Lord, Lord Cormack, made a very effective point that there is nothing more mentally debilitating than uncertainty, as did the noble Baroness, Lady Wheatcroft, who said that a guarantee for EU citizens would be enlightened self-interest, as well as morally right.

The point has been very well made that EU migrants make a vital and positive economic and social contribution to the UK. That is indeed why Ministers have said over recent weeks that there will not be a reduction in EU workers in various major sectors of the economy, representing over one-third of EU nationals currently

employed. This is going to make life quite difficult for the Government as they try to square their Brexit promise of immigration cuts with the needs of the economy. I am confident that we will end with the continuation of a large amount of inward migration from the EU but without having the rights pertaining to membership of the single market, including the rights of EU citizens of free movement across the rest of the EU.

The economic realities ought, in all justice, to lead the Government to make life easier for EU free movers already here. The way to do that is to put their minds at rest. There are many months—maybe 18 months—before any Brexit deal becomes clearer or, worse, the cliff-edge scenario reappears. Every day of delay, every hour, perpetuates an economic and moral scandal for which there is no justification. A unilateral announcement by the Government that all rights of EU citizens, acquired and in the process of acquisition, would be guaranteed is essential.

It is unclear why the Home Office has been making life such a misery for applicants for proof—which they do not need—of permanent residence rights. However, it has been doing so, to the extent of rejecting people with the peremptory injunction "make arrangements to leave". The infamous 85-page form and requirements that, in the words of one person, make acquiring Catholic sainthood look simple, have made life very difficult indeed.

The European Commission, as we know, takes the view that a requirement for so-called comprehensive sickness insurance is a breach of EU law for people who are entitled to use the National Health Service. Infringement proceedings are said to be ongoing and the Minister may wish to comment on that, but the practical question is why have the UK Government allowed EEA citizens to use the NHS continuously without ever once, until now, telling them that they needed to have, what has been interpreted as, in practice, private medical insurance? Many people have lived here for decades and the authorities have never asked them for it.

Let me quote from a student about the difficulties this raises. He writes that,

"to avoid the risk of deportation I was forced to incur the expense of £50 per month for private medical coverage. In the absence of a clear instruction of what 'comprehensive' means, I had to buy an expensive package, which I will (hopefully) most likely never use. As a student, I don't have to tell you the kind of unnecessary burden that this is on my budget … it feels like I'm being forced to pay a tax to a corporation—like a gift given to private insurers by the Tories"—

his words—

"considering that the pool of students seeking insurance will invariably be young, low risk and low cost",

for insurance companies. He asks me, and I am asking the Minister, whether the noble Lord can clarify on behalf of the Government what is meant by "comprehensive" in the phrase "comprehensive sickness insurance"? People are having to buy expensive policies because there is no clarity on exactly what is needed. That could at least help mitigate the cost.

Could the Government also tell us whether they are going to introduce a new, less bureaucratic route than that currently operated by the Home Office—something which is a more light-touch mechanism, some kind of conversion, to indefinite leave to remain? That would be fully justified by the history of EU-acquired rights.

On the other resolution, many commentators last week praised the less strident tone of the Prime Minister's Article 50 notification letter to President Tusk and the accompanying Statement to the House compared to her January speech, such as the absence of the "no deal is better than a bad deal" threat. However, that phrase was repeated in the White Paper the next day on the great repeal Bill and so the threat of hard Brexit is not dead. Indeed, the noble Lord, Lord Kerr, made an interesting prediction of the odds—I do not know which way it is; I am not a gambling person—and the prospect having got more likely. Hence the need for the amendment to the Article 50 Bill, tabled originally by the noble Lord, Lord Pannick, and which became Motion B1 at ping pong.

The Liberal Democrats remain of the view that a political promise, in the words of the noble Lord, Lord Pannick, made by the Prime Minister in good faith is no substitute for an obligation in an Act of Parliament. That obligation should enshrine the need for parliamentary approval of withdrawal, future relations and a no deal scenario. That is why we pushed it to the vote on the central question of who is the master, Ministers or Parliament?

We did not succeed in that legislation and so I welcome the suggestion in the Motion of a Joint Committee. I would like to know the progress on discussions. I believe there have been attempts to get closer liaison between our own EU Select Committee and the Brexit Committee in the other place, including at staff level, but I am not aware where that has got to. Our EU Select Committee last year proposed a new specific European Union withdrawal committee but I do not think that has made any obvious progress. Perhaps the noble Baroness will tell us what prospects there are for a Joint Committee.

We on these Benches will support anything which makes a reality of the parliamentary control which is vital and on which the Government have proven reluctant in the past nine months. We need that to happen, even if it is through a resolution rather than legislation.

Baroness Smith of Basildon (Lab): My Lords, this has been an interesting and somewhat unusual debate. By my reckoning, I am the 21st speaker in the proceedings this evening and I am the 21st Peer to speak in favour of both of the Motions before the House. I do not know why the Government Benches are so empty of supporters who might have opposed them, but I am delighted to have such overwhelming support from noble Lords. Perhaps I should be grateful that all those who support these Motions are not here to speak in favour of them, because perhaps then Brexit really would mean breakfast.

When we debated the Brexit Bill previously, these were the two key issues that your Lordships' House voted on with significant majorities in favour, in one case with a majority of 98 and in the other a majority of 102. I take issue with some of the comments made by the noble Baroness, Lady Ludford, who has said that the Liberal Democrats wanted them in statute. The entire House wanted that, and that is why we voted

[Baroness Smith of Basildon]
with such large majorities: to put them in statute. It remains our view that they would have been better in statute, but I have to say to the noble Baroness—noble Lords will understand this—that once the House of Commons had rejected the proposals for the second time, all we could have done was send them back and perhaps delayed the Bill by a few hours. A few people might have missed their train home, but what would that have achieved? In fact, before the dust had settled, as my noble friend Lady Hayter said at this Dispatch Box, we said that we would look at other ways to return to these issues. That is the correct way to proceed. If you lose a vote, you do not give up and walk away. You look for other routes because these matters are far too important to be decided in a debating society or on who can win the last vote. We knew that we were not going to win the vote, but we also knew that we would return to these issues, and we will never give up on them.

When we last debated these matters, the Government were insistent that they wanted what they called a clean Bill—as if these two amendments, with their overwhelming support in your Lordships' House, would have made it a dirty Bill. They would not, and I think that that was a mistake on the Government's part. But we move on, and I think the point made by the noble Lord, Lord Cormack, was important. He said that it is not just about principles, but about putting principles into practice. The only reason I got involved in politics and the only reason I accepted a place in your Lordships' House—I am sure that I speak for many others—is that I want to make a difference. If we cannot make a difference, there is little point in just talking about issues. That is why we are bringing these two amendments back to the House tonight.

As my noble friend Lady Hayter said, we are not asking for anything from the Government that they have not already committed to doing. They have said already that they will give priority to EU nationals, and by extension to UK nationals living in other countries in the EU. That is an important priority. They have also said that they want a final vote on this issue in both Houses. What we are seeking to do tonight is bring some clarity to that, so let us look at the two issues.

On EU nationals, I am grateful to the noble Viscount, Lord Hailsham, for making the point that we are talking about a reciprocal arrangement for our nationals as well. The Government have said that it is a top priority. It had a large majority in your Lordships' House and the Government have been clear about the importance of the matter. Concern is gathering pace. My noble friend Lord Morris described some of the issues in the construction industry, which will mean that the Government cannot meet their housing targets. We have already heard about the issues developing in the National Health Service and how the number of nurses coming to this country is falling dramatically. These Motions would provide a mechanism, an opportunity, for the Government to report back to your Lordships' House. We are not expecting an immediate resolution. We are not asking the Government to come back before the House rises with absolute plans about how this can be achieved, but we need an assurance that when they say this is a priority, they are putting it into practice and are already in discussions about the way forward.

I still think that the Government have made a mistake by putting this issue into the negotiations. The noble Baroness, Lady Smith of Newnham, quoted my noble friend Lady Symons of Vernham Dean who spoke from her own experience of international negotiations. She said that when you put things on the table for negotiation, nothing is agreed until everything is agreed. That clearly cannot be allowed to continue in the case of EU nationals. I loved hearing the noble Lord, Lord Kerr, quote Boris Johnson; rarely can there have been so much agreement among noble Lords with his comments, to the effect that this is a moral, economic and practical obligation. I hope the Government understand that we are bringing this forward now because it is a matter of urgency and because damage can follow if their plans are not clear.

On the second Motion, tabled in my name, we have had a useful and interesting debate. We had a similar debate when we voted in favour of the amendments to the Bill. Again, a large majority was rejected by the Government and by the House of Commons. The White Paper, reinforced by Statements from the Prime Minister and the Secretary of State, said that there should be a final vote in Parliament, but, as has been outlined by the noble Lords, Lord Pannick and Lord Kerr, and others, the questions remain: when and how?

8.30 pm

There are three issues here. Concerns were expressed in your Lordships' House that the Prime Minister's own words, which were used in the resolution we brought before your Lordships' House before, lack clarity on how this is to be achieved. As they stand, they brought into question whether your Lordships' House will have a veto. It was quite clear that nobody in this place or the other place thought that was appropriate. Clarification is needed in the wording to ensure the primacy of the Commons.

The noble and learned Lord, Lord Hope, both tonight and in his Second Reading speech, made it clear that there needs to be some legislative authority to conclude the deal. That has to be put in statute. Why should the European Parliament have it in statute and not the UK Parliament? That seems a somewhat strange position for a Government who say that they want to leave the EU to retain sovereignty for the British Parliament, yet do not give it the same rights as the European Parliament.

My third point is crucial. As the noble Lord, Lord Kerr, reminded us, whether it is deal or no deal, Parliament should have a say. There are different ways of looking at this. The way I look at it is to say that we should be helpful to and co-operate with the Government. There is a way forward here. We can employ, on a completely cross-party basis across both Houses of Parliament, the best of the skills and experience of this Parliament to focus on providing advice to the Prime Minister and to Parliament on how this can be achieved in a practical, workable manner.

The Prime Minister obviously has to focus on the negotiations. Surely it makes sense for Parliament to do the heavy lifting in looking at this and getting

it right. If we do not, we will not, as my noble friend Lady Hayter made clear, have robust legal certainty around the process and the vote at the end. The Prime Minister and the Secretary of State speak of parliamentary engagement. This is an opportunity to use that engagement to make good use of Parliament's time and expertise. Also, support for this approach will show that the Government take Parliament seriously, will do so throughout the process and will make use of its skills and experience in the national interest.

The Government cannot be seen to swerve this, because it goes to the heart of what Parliament is about and of the national interest. When we debated the Statement earlier this week and we talked about the six tests Keir Starmer and the Labour Party have set for the Government, I set out a seventh test, which we called honesty. That test is that if the Prime Minister can do a good deal for this country she should say so, but equally, if she has concerns or is less than satisfied with the arrangements on offer, she must also say so.

Both Motions are proposed in the true spirit of parliamentary engagement and involvement in the national interest on two crucial issues. The timing of these issues is different because there is an immediate urgency on EU nationals. We have to recognise that the problems are here now and the concerns are being raised now. If we fail to act, the damage to our economy will be huge, in addition to the moral issues and the concerns being raised for individuals. It would be helpful as we progress to have regular updates. The Government reporting back soon to say, "This is the approach we intend to take", would show that they are upholding their promise to make this a key priority. It would be a move towards certainty, showing that the intention is to achieve that certainty, and that the making of arrangements will not be left until the end of the two-year period.

On a meaningful vote, we understand the concerns and issues that have been raised. We have time to work this out and the best way to use it is through the expertise and experience of Parliament. As my noble friend Lady Hayter made clear, we are not asking for the Government to take a new position on this; we are asking that they live up to their words and say that they believe in genuine parliamentary engagement. That is the process by which, over the next two years, Parliament will be involved.

I see the empty Benches behind the Minister, apart from a few notable and welcome exceptions. The Government should not oppose these Motions tonight but embrace both their spirit and intent. If they are passed, we look forward to early discussions with the Government on their implementation.

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, I am grateful to all those who have contributed in what the noble Lord, Lord Pannick, christened this great "Brexit club", of which we are all part. I thank the noble Lord, Lord Pannick, and my noble friend Lady Wheatcroft for their kind compliments. They must understand and know me very well to know that flattery gets them everywhere with me. Therefore, I will certainly try to be as reasonable as possible towards these Motions. Both Motions touch on important issues that we have discussed previously in this House and no doubt shall rightly discuss again.

The Motion in the name of the noble Baroness, Lady Hayter, is on a matter we all want to see resolved as soon as possible: the future status of UK nationals in the EU and of EU nationals in the UK—the noble Lord, Lord Morris, made a passionate speech, as did the noble Lord, Lord Bilimoria, about the need to do so. We all want to secure the future status of UK nationals in the EU and of EU nationals in the UK.

I shall not detain your Lordships by going over the rationale behind the Government's approach to this issue—we debated that at length the other day—other than to repeat that we wish to see the status of both UK and EU nationals resolved at the same time and as early as possible in the negotiations. The only circumstances in which this would not be possible would be if the status of UK nationals was not protected.

As your Lordships will know, the Prime Minister again highlighted the Government's wish for this issue to be an early priority in the negotiations in her letter to trigger Article 50. As the noble Baroness, Lady Hayter, quite rightly said, this sentiment has been shared by many across Europe. She quoted Guy Verhofstadt, who has said that the issue of EU citizens' rights after exit should be addressed,

"before we talk about anything else".

The Swedish EU Affairs Minister has suggested much the same thing, saying:

"I am happy to say that the UK side and the EU side agree very much on the need to find a good solution".

She continued:

"I am convinced that a solution will be found for them".

As President Donald Tusk said on Friday,

"Our duty is to minimise the uncertainty and disruption caused by the UK decision to withdraw from the EU for our citizens, businesses and Member States".

The Prime Minister of Malta followed that up by saying:

"The guidelines show that the first priority is settling issues relating to citizens—we need to ensure our citizens in the UK and British citizens in the EU are not used as bargaining chips by any side. There is a wide-ranging commitment to settle this as soon as possible".

So the omens are good.

We are absolutely clear that we want to reach an agreement on this issue so that we can give people the certainty which so many of your Lordships have spoken about as soon as possible after the negotiations begin and reach a position where we can address the points raised by the noble Lord, Lord Oates.

The noble Lord, Lord Kerr, raised an interesting point—the noble Lord, Lord Lea, and the noble Baroness, Lady Smith, raised it, too—as to whether we might be able to reach an agreement on this before the end of the two years, given the approach of "nothing is agreed until everything is agreed". There are a number of different ways in which such an agreement could be reached. I hope your Lordships will forgive me if I stick to the words used so far by my right honourable friend the Secretary of State, who suggested that this might come in an exchange of letters between ourselves,

[Lord Bridges of Headley]
the member states, the Commission and the Council. I am sorry, but I am not going to go beyond that point at the Dispatch Box now.

As to the point that the noble Lord, Lord Campbell-Savours, made—another good point—as to whether some form of bilateral relationships might be struck, all I would say, and I hope noble Lords will forgive me if I choose my words very carefully, is that the European Commission has made it very clear that there will be no separate negotiations between individual member states and the UK.

The substance of the Motion, however, is that the Government should make a Statement to this House and the other place before Parliament prorogues at the end of this Session. I am absolutely clear that if there is anything to report to Parliament on this issue, the Government will do so as soon as possible. As my noble friend Lord Hailsham so rightly said, it is in everyone's interests that we do so. Having made seven Statements to Parliament since my department was established—about one every three and a half weeks that the House is sitting—I believe that we have made a clear commitment to report to Parliament.

I also point out gently that the European Commission will only get the guidelines for its negotiating position formally adopted on 29 April. After that, the Commission will need to agree on a mandate for its negotiating position. That too is likely to take some time, so I gently argue that committing to make a Statement before the end of this Session might—and I put it no more strongly—simply raise expectations as to what we might say, as this clearly will be at a time when, at best, we would expect negotiations to be just beginning. I stress that this should not be read as a sign that the Government are doing nothing to prosecute and press our case in this period; for in the next few weeks, while the EU agrees upon its proposed guidelines, Ministers will continue to meet our European colleagues right across Europe to discuss our agenda to create a new partnership.

As I have said, we will stress that agreeing on the future status of EU nationals should and must be a priority for the negotiations. This debate has once again reinforced the concern and focus that Parliament rightly has on this issue, and I assure noble Lords that it is a concern and focus that the Government utterly share. However, in the spirit of reasonableness, I simply question whether it is necessary to pass this Motion, given our clear willingness and commitment to keep this House and the other place updated, and our wish to focus now on making a success of negotiations which will begin shortly. Finally, I point out that the Prime Minister will certainly be updating Parliament in the usual way, with a Statement to be repeated in this House following her attendance at the next European Council on 22 June.

On the second Motion, standing in the name of the noble Baroness, Lady Smith, I will be brief. The Government's position on the issue overall is clear that there will be a vote of both Houses on the final agreement and we expect and intend this to happen before the European Parliament votes on the agreement. This vote will be either to accept the final agreement or to leave the EU with no agreement. As for what would happen if this House were to reject the agreement, as put forward in the Motion by the Government, then of course the Government would respect the Lords' decision.

The noble Lord, Lord Kerr, raised the issue of what happens if no deal is reached with the European Union. As I have said on many occasions, and as the Prime Minister has made clear, we want to reach an agreement with the European Union and the Government are confident that the UK can do so, but in the event of there being no deal at all, as I have also said before, it is very hard to see what meaningful vote could be given. In the absence of any agreement, I have absolutely no doubt that there would be further Statements to this House. Furthermore, one needs to bear in mind the other means by which we are going to be keeping Parliament informed on the process as it goes along.

As for the view that some have expressed, including the noble Baroness, Lady Hayter, and the noble and learned Lord, Lord Hope, that we need further legislative cover for our withdrawal so as to protect the Government from further legal challenge, I simply say that the Government's position is that the requirements of the Miller judgment are entirely fulfilled by the recent Bill passed by this House and the other place. The Supreme Court ruled that, because withdrawal from the EU involves removing a source of domestic law in the United Kingdom, and because of the far-reaching effects of the European Communities Act, the authority of primary legislation was needed before the Government could decide to give notice under Article 50. The Supreme Court did not rule that anything further was required to satisfy our constitutional requirements.

So bearing in mind the importance of these issues—as my noble friend Lord Hailsham implored me, I am trying to be very reasonable—while the Government do not think there is any compelling reason or need for a Joint Committee to be set up, whether your Lordships wish to do so and whether the other place agrees is a matter for Parliament.

8.45 pm

Baroness Hayter of Kentish Town: I thank the Minister, who we all think is young, handsome, brilliant and intelligent—so he will vote with us. There are really only two issues: certainty and a degree of urgency.

On the first—in the words of my noble friend Lord Morris, the people issue—there is some urgency. They need something now. If the noble Lord, Lord Kerr, is right and there is even a 30% risk of no deal, there are some really serious issues. If there is no deal, what happens to the idea of reciprocity that the Prime Minister wants? That is why we need continuous updates. We need to know what the Government's thinking and preparations are, and their plans for that. This is not a secret. It should be open and it should engage us all.

On the second issue, I think—and brains much better than mine say—that we need legal certainty. But should the Government be right on that—that we do not, that everything is tickety-boo at the moment—this Joint Committee will find out because it will have taken advice and it will say, "We were wrong. The noble Lord, Lord Bridges, was right and we do not

need it". I would trust that Joint Committee to find out if that was the case and report back to us. The urgency of that case, as was said by others, is that we really do not want to muddle our discussion about how the vote takes place and what it means at the point we are actually discussing the agreement that we have, because people might then use the procedure to muddle the discussion about the core issue. We do not want that.

As the Minister knows, there is support all around the House. I hope that we will agree these two Motions but, even more, I hope the Government will respect the will of the House and will move to implement both of them if they find favour with your Lordships. I beg to move.

Motion agreed.

Brexit: Joint Committee

Motion to Approve

Moved by ***Baroness Smith of Basildon***

That it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the terms and options for any votes in Parliament on the outcome of the negotiations on the United Kingdom's withdrawal from the European Union, including how any such votes be taken before any agreement is considered by the European Parliament; and that the Joint Committee do report by 31 October 2017.

Motion agreed.

House adjourned at 8.47 pm.