Vol. 782
No. 136

Wednesday
5 April 2017

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2017-04-05

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

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

House of Lords

Wednesday 5 April 2017

3 pm

Prayers—read by the Lord Bishop of Peterborough.

NHS and Adult Social Care
Question

3.06 pm

Asked by ***Lord Patel***

To ask Her Majesty's Government what is their assessment of the long-term sustainability of the National Health Service and adult social care.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, the NHS and adult social care systems face unprecedented challenges due to an ageing, growing population and rising expectations. Making these systems sustainable for the long term depends on changing the way that services are delivered, with much greater emphasis on integration and keeping people well and independent for longer, as set out in the *NHS Five Year Forward View* and delivery plan.

Lord Patel (CB): I was hoping that the Minister might thank us for the brilliant and well-written report published today. It is, following a great deal of difficulty, a consensus report from all sides of this House, including the Spiritual Benches, and I hope that it will be met with political consensus when the politicians have had time to digest it. It has identified some key threats to the long-term sustainability of health and social care, and I shall allude to just one of them: if we do not get a long-term settlement for social care funding, healthcare will continue to suffer. The report makes some good suggestions, including how individuals who can afford it can make a contribution to funding the long-term sustainability of social care. I hope that the Minister will take that on board when he devises the Green Paper on social care.

Lord O'Shaughnessy: I thank the noble Lord for that. I did not want to get ahead of myself but I thank him and all members of the committee for their work in putting together this document. I appreciate that it is an incredibly thorough and important piece of work, and I am also grateful to have received an embargoed copy of it yesterday. I will of course look carefully at all the recommendations and respond properly in due course. I am sure that we will also have an opportunity for a longer debate.

The noble Lord specifically asked about social care, and I completely agree with the priority attached to it in the report. He will know that the Government have committed more money in the short term to support social care, with £2 billion more having been announced at the Budget. But I know that his emphasis and the emphasis of his committee was on long-term reform. He is quite right to point out that the Green Paper is a very important opportunity to take a broad perspective and to put the system on a sustainable long-term footing.

Lord Hunt of Kings Heath (Lab): My Lords, I too commend the noble Lord and his committee for a thorough report, which I endorse and on which I hope we can have a full debate in due course. On the future of long-term care, the noble Lord will know that before the 2010 election Andy Burnham, as Secretary of State for Health, made some very striking proposals for its funding. I wonder whether the Minister regrets that David Cameron and other Conservative leaders at the time condemned this as a "death tax" and put back the search for consensus on the funding of social care for many, many years.

Lord O'Shaughnessy: The so-called "death tax", to use the noble Lord's words—

Noble Lords: Oh!

Lord O'Shaughnessy: Those were the words just repeated by the noble Lord. The so-called "death tax" was a percentage levy on all estates, regardless of the use of social care systems. The proposals that the coalition Government came forward with—the Dilnot proposals—were about capping amounts and therefore were much more responsive to the amounts being spent. The Chancellor has recently recommitted us to not looking at that proposal but we will, through the Green Paper, seek to put the social care system on a sustainable basis and, of course, seek consensus wherever we can.

Baroness Walmsley (LD): My Lords, does the Minister recognise the logic of the committee's criticism of the cuts to public health funding? Will he go back and commit himself to promoting the prevention agenda and good health agenda, not just in his own department but across government, because so many other departments have an effect on the health of the nation?

Lord O'Shaughnessy: The noble Baroness is quite right about the importance of public health. It is worth pointing out that it is not just an issue of money. This country was the first in Europe to act on cigarette packaging, to introduce a soft drinks industry levy and to develop a childhood obesity plan. As we have talked about previously, if you look at the risky behaviours displayed by young people, you will see good evidence that this approach is working.

Baroness Redfern (Con): My Lords, as the population ages and the financial pressures on the health and care system increase, evidence tells us of the need to be better at providing proactive, preventive care to ensure that people can live independent, fulfilling lives for

[Baroness Redfern]
longer. Will the Minister do all he can in expressing these concerns and look at ways to address, as a priority, the uptake of innovation and technology, together with data sharing across the NHS, to emphasise the need to develop a credible strategy?

Lord O'Shaughnessy: I thank my noble friend for that and for her contribution to the work of the committee. She speaks with great experience and authority from her role in running a local authority. She is quite right that technology offers huge opportunities. The key is to make sure that the NHS and social care systems see technology as an opportunity to improve productivity rather than as providing an additional cost. That is why we are taking a variety of actions through the life sciences industrial strategy, the accelerated access review and other routes to make sure that technology is improving outcomes.

Baroness Campbell of Surbiton (CB): My Lords, the current social care narrative is dominated by the lack of residential homes and home care services for older people. Given that working-age disabled adults make up one-third of those reliant on social care, is it not time that we had a more comprehensive government social care strategy that reflects the diverse needs of all service users, and to work with disabled people to produce it?

Lord O'Shaughnessy: The noble Baroness makes an incredibly important point. Despite the ageing population, the fastest-growing part of the adult social care budget is, I think, for adults with learning difficulties. She is quite right that there needs to be a comprehensive approach. That is why additional funding is going in to support not just older people but working-age adults too.

Baroness Blackstone (Lab): My Lords, I declare an interest as the chair of the board of Great Ormond Street Hospital. I was also a member of the Select Committee. I want to pick up on what the Minister said just now about public health—which, if I may say so, I thought was rather complacent. The public health budget has been cut year after year over the past decade. Will he give the House an assurance that this budget will not only be protected but enhanced? Unless that is done, the terrible crisis we have in obesity will not be prevented, and many other areas of public health such as smoking, drugs and alcohol will not be addressed properly.

Lord O'Shaughnessy: The budget for all health services has been set out now for the spending review period until 2021. I completely agree with the noble Baroness about the importance of these kinds of activities. We are, of course, moving to a system where local authorities are able to retain their business rates. They have primary responsibility for the delivery of much of the public health services and we are trying to put them on a long-term financial basis so that they will be able to continue with the kind of work she has highlighted.

Local Authorities: Relationship Support Services

Question

3.15 pm

Asked by ***Baroness Tyler of Enfield***

To ask Her Majesty's Government what progress they are making in assessing the bids submitted by local authorities for the Department for Work and Pensions Local Family Offer programme funding for relationship support services; and when local authorities which have submitted bids will be notified of the outcome.

Baroness Tyler of Enfield (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as vice-president of the charity Relate.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, 11 local authorities bid for the local family offer funding in December 2016. They were notified in January that their bids were successful. Each area has now been offered £50,000 to deliver the local family offer, including a new role as advocates, as we support more areas to integrate action to reduce parental conflict.

Baroness Tyler of Enfield: I thank the Minister for his Answer and I am grateful for that explanation. Could the Minister explain how the local family rollout relates to the new programme announced by the Secretary of State yesterday of £30 million to support parents in workless households experiencing relationship distress and to the promised funding across the lifetime of this Parliament of £70 million for relationship support, which I hope will be available for everyone who needs it, not only parents in workless households?

Lord Henley: My Lords, the noble Baroness has highlighted three different aspects of work we are doing in the Department for Work and Pensions, but the work goes across all parts of government. She is right to highlight the different sums of money involved in the three schemes. The one we are discussing today is a small-scale scheme designed to offer a degree of help to local authorities to access expertise and evidence in order to drive forward various local strategies. I hope that will feed into all the other programmes as well but, as I say, that particular programme is a small-scale one to help those 11 local authorities.

Baroness Lister of Burtersett (Lab): My Lords, we know that money, or lack of it, can be an important factor in parental conflict. Given the announcement made yesterday, about which we have just heard, that the Government's aim is to reduce parental conflict in workless families, can the Minister tell us what assessment they have made of the impact of benefit cuts, including

the ongoing freeze in benefits, on parental conflict in families who are already struggling, and will be struggling all the more with the impact of these cuts?

Lord Henley: My Lords, anyone who has been involved in family matters will know that money is one of the major causes of conflict in parental disputes, and that can be true at all levels of income. I do not accept that the changes and reforms we have made to the benefit system, which will continue to roll out this year, are making any difference in this respect.

The Earl of Listowel (CB): My Lords, is the Minister aware that at the beginning of this decade the OECD found that one-fifth of children in this country were growing up without a father, compared with a quarter of children in the United States and one in seven children in Germany? We were performing poorly against our European neighbours. I welcome the funding that the Government are introducing. Does he agree that it is hugely important that children see their parents in harmony together and that, as far as possible, their fathers stay in contact with them and stay in their lives? Do the Government plan to put additional funding into this area in the future?

Lord Henley: My Lords, I agree with most of what the noble Earl says. How much the Government can do to solve all these problems is another matter. However, there are things that we can do and that is why I was grateful for the opportunity to respond to this Question and just deal with this one small scheme. As I say, other things can be done—that is why we published our policy paper, *Improving lives: Helping Workless Families*, yesterday—and we will continue to see where we can help in all areas.

The Lord Bishop of St Albans: My Lords, perhaps I may build on the response just given by the Minister. The Government can only do so much and we certainly need to see joined-up thinking and action if we are going to help these families. What are Her Majesty's Government doing to ensure that when local authorities bid for funding for the local family offers, they are working collaboratively with grass-roots organisations—charities, churches and so on—which are already seeking to build up relationship capacity in families?

Lord Henley: My Lords, I cannot give precise details of what consideration was taken when assessing the bids, but I am fairly sure that the degree of co-operation that local authorities want to build with such organisations is a factor which would be taken into account.

Baroness Manzoor (Con): My Lords, I welcome the Government's commitment to continue with the troubled families programme, although there were some difficulties with it. Can my noble friend tell us how the outcome of that programme is to be monitored so that it delivers what it is meant to do?

Lord Henley: I am grateful to my noble friend for that question and I can give her an assurance that we will be evaluating phase one of the programme, which has been completed, and then phase two, about which I have just given details. We aim to publish an evaluation of phase one later in the summer, whenever that might be, and in due course we will consider an evaluation of phase two.

Baroness Sherlock (Lab): My Lords, I should like to return to the answer given by the Minister to my noble friend Lady Lister. Perhaps he should go back to his own paper entitled *Improving Lives: Helping Workless Families*, which came out yesterday. Paragraph 33 cites evidence that problem debt and financial burdens can put pressure on relationships. It attributes those issues to persistent low income and income shocks. Will he think again not only about the damage that has been done by cutting £12 billion off social security for those out of work? Also, given that this is aimed at workless families, if the DWP wants to get them back into work, why is the department persisting in cutting in-work benefits, the very things that make work pay? Before the Minister tells us more about the living wage, perhaps I may remind him of what he knows already. Most of the living wage for the poorest people goes straight back to the Treasury in taxes and lower benefits. Will the department look again at its strategy and make work pay?

Lord Henley: There is no need for the noble Baroness to try to answer my question because I will answer it in my own way.

Noble Lords: Oh!

Lord Henley: The noble Baroness wanted to answer my question. She can practise those things as long as she likes. Perhaps I may remind her just how high the rates of employment are. Employment is the best route out of poverty for all households, and certainly the best route out of poverty for households with children. Since 2010 we have seen a decline of some 590,000 children in families that are workless.

Technical Education

Question

3.22 pm

Tabled by ***Lord Farmer***

To ask Her Majesty's Government, in the light of the Budget announcement that new T-Levels will be introduced to give parity of esteem for technical education, how they intend to ensure that young people also have the interpersonal skills required to succeed in the workplace.

Baroness Eaton (Con): My Lords, on behalf of my noble friend Lord Farmer, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, at the heart of the new T-level is a recognition

[Lord Nash]
that we must do more to prepare young people for skilled employment. The content of T-levels will be determined by employers and industry professionals. They will identify the skills, knowledge and behaviour that are required for specific occupations, as well as the transferable and interpersonal skills that are vital for all employment and career progression. All young people taking the T-level will also undertake a work placement where they will be able to develop core workplace skills.

Baroness Eaton: I thank my noble friend for that Answer. Interpersonal skills are vital, but so too are the supportive relationships which can hone them. What are Her Majesty's Government doing to ensure that young people, including care leavers and young offenders leaving prison, who are often bereft of such skills, can enter the world of work with a network of supportive relationships behind them?

Lord Nash: My Lords, through the Children and Social Work Bill we are extending the opportunity for support from a personal adviser to all care leavers to the age of 25. We have introduced the "staying put" arrangements, which allow care leavers to continue with their foster parents until they reach the age of 21. We are also piloting the "staying close" scheme for those leaving residential care, and introducing compulsory relationship education in primary schools and a duty on secondary schools to teach relationship and sex education. Together with the MoJ and a partnership led by Achievement for All, we are improving support for young offenders with special educational needs.

Baroness Garden of Frognal (LD): My Lords, what encouragement can the Government offer to employers to engage more with schools and colleges, and what support can they give to schools and colleges to make time for employers to set out not only the technical skills, but the employability skills that are so necessary for future careers, and which mean that young people leave education ready for work?

Lord Nash: The noble Baroness makes an extremely good point. The Government welcome the engagement of the business and professional communities with the school system in any way that works for them. We want that door to be wide open because it is absolutely clear that the more engagement students have with the world of work, the more likely they are to engage in their studies. This is why we have invested nearly £100 million in the Careers & Enterprise Company to work with other organisations such as Business in the Community, Make the Grade and Inspiring the Future, in order to ensure that this connection between the world of work and schools is close.

Baroness Corston (Lab): My Lords, I had the privilege to chair your Lordships' Social Mobility Committee, of which the noble Lord, Lord Farmer, was a member. One of the recommendations we made was that young people should have life skills education at school, but the Government did not accept it. In our evidence sessions with employers, we found that they unanimously valued life skills education, which helps young people to be ready for work. Problem solving, co-operating with others, timekeeping and making persuasive phone calls all used to have GCSE equivalence until 2010, when the right honourable Michael Gove abolished it with a stroke.

Lord Nash: I agree entirely with the noble Baroness that what are sometimes called essential life skills are vital. As this House knows and I think welcomes, we are introducing a power for the Secretary of State to introduce a duty on secondary schools to teach PSHE. We will be engaging widely on what the contents of PSHE should be. I believe that a lot of the essential life skills to which the noble Baroness refers should be included in that.

Lord Baker of Dorking (Con): My Lords, is the Minister aware that the employability record of the students who go to the 44 university technical colleges is the best in the country? Last July we had 1,300 leavers, and only five joined the ranks of the unemployed. That cannot be matched by any other schools in the country. Some 44% went to universities, 32% into apprenticeships and the rest to jobs or further education. As these colleges get support from right across the political spectrum, I hope he agrees that we should have many more of them.

Lord Nash: I pay tribute to my noble friend's pioneering work on university technical colleges. I am fully aware of the statistics to which he refers because he has told me about them on many occasions. I am delighted they are so good.

Lord Watson of Invergowrie (Lab): My Lords, the money announced in the Budget for T-levels was welcome, even though it will not be fully developed until 2022. We already have tech levels, a TechBac and a tech bacc, so it seems the DfE will need good interpersonal skills to create a separate identity for T-levels. Interpersonal skills are surely important in the workplace for young people, no matter whether they took the technical or the academic route. Does the Minister agree that the introduction of compulsory relationship education, agreed in your Lordships' House yesterday in the Children and Social Work Bill, offers an opportunity for schools to do more to build interpersonal skills for life from an early age?

Lord Nash: I agree entirely—it is so important to develop these skills. The noble Baroness referred to some, such as teamwork and communication. Self-management is also very important.

Lord Laming (CB): My Lords, I am sure the Minister will understand how much the House supported the Bill as it passed through the House last evening, particularly the section on relationships to which the noble Lord just referred. Mention has been made of young people who are particularly vulnerable to exploitation or to the dreadful things that can come their way online. The Government are going to introduce

a strategy document. Will the Minister assure the House that emphasis will be given in it to the most vulnerable children in our society?

Lord Nash: I agree entirely with the noble Lord. We have to be particularly sensitive to those vulnerable young children, and I can give that assurance.

HS2 and CH2M

Question

3.30 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government whether they intend to hold an inquiry into the proposed contractual arrangements between HS2 and CH2M.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the Government will not be holding an inquiry, as this is a matter for HS2 Ltd. HS2 Ltd has undertaken a thorough review in light of the queries raised. Decisions on any further steps are a matter for the board of HS2 Ltd and may include increased scrutiny of compliance by bidders with HS2's requirements with respect to conflicts of interest, particularly for HS2's higher-value or higher-risk procurements.

Baroness Randerson (LD): My Lords, I fear that that Answer sounds a touch complacent on the Government's part. This is a depressing indictment of HS2's working practices. In view of a number of problems recently at HS2, is the Minister still confident that the first phase of HS2 will be completed within budget and on time? Can he confirm that the Government are still fully committed to phases 2a and 2b?

Lord Ahmad of Wimbledon: I cannot agree with the premise of the noble Baroness's initial comments. When issues came to the fore, HS2's due processes were followed and CH2M took a decision which I think we all regard as the right one at that time. The Government are absolutely committed to HS2 in all its stages—she referred particularly to stages 2a and 2b. We remain on course also to deliver on the hybrid Bill by 2019.

Lord Framlingham (Con): My Lords, given the deep and growing concern about this ridiculously expensive and unnecessary project, will the Minister commit today to making sure that it is subject to the most scrupulous transparency so that we can all see, as it progresses, just how expensive, how complicated and how ridiculous it is?

Lord Ahmad of Wimbledon: I acknowledge that my noble friend has not been the biggest fan of this project. As I am sure noble Lords will acknowledge, this underwent full scrutiny during the passage of the Bill in both the House of Commons and in particular in your Lordships' House. My noble friend referred to transparency. I am sure that he will acknowledge that many elements of the business contracts awarded are of a confidential nature and that it would be totally inappropriate to require that they were all fully transparent.

Lord Berkeley (Lab): My Lords, why have the Government allowed this potential conflict of interest to fester for so many months? The two senior civil servants in the department left last week. I still have not had an answer to evidence that I submitted to the noble Lord and other Ministers that the cost of phase 1 will be about double what the Government say it is. Are the Government, HS2 and the Minister's officials really committed to getting the governance right, the costs right and the programme right, or is this the start of rats leaving a sinking ship, which I hope it is not?

Lord Ahmad of Wimbledon: To continue with transport analogies, HS2 remains on track, so there are no sinking ships. The noble Lord referred to two senior civil servants within the DfT. One is the Permanent Secretary, who has a new role at the Home Office; I am sure that the noble Lord will appreciate that there is a long recruitment process. The other was the director-general of HS2, who is taking up a post at Oxford University. We wish them both well in their new roles.

Lord Bradshaw (LD): My Lords, might the Minister turn his attention to Crossrail? It is a major infrastructure project. There are many such infrastructure projects, including HS2. The Crossrail management team has stayed the same all the way through the project and it looks as if it is going to be delivered as it was planned. Other infrastructure schemes have suffered changes of personnel and changes of consultant throughout their life. Will the Government look at making the people who start projects stay with them so that we can judge their performance?

Lord Ahmad of Wimbledon: Let me assure the noble Lord on the subject of Crossrail. The fact that it is delivering on time, the management is in place and it is on budget has nothing to do with the fact that I am the Crossrail Minister. On the point he raises about large infrastructure projects, of course he is right: we want a sustained level of continuity in management for all large infrastructure projects. That is an important part of the delivery of all projects and I note his concern in that respect.

Lord Rosser (Lab): As I understand it, in January of this year it was announced that the European managing director of the global engineering company CH2M, which is mentioned in this Question, would be the new chief executive of HS2. Last month in a Written Answer, the Minister said that there were 84 CH2M people located in HS2 Ltd offices, with 37 CH2M staff on secondment to HS2. In view of this, how many of the other bidders had similarly close connections of this kind with HS2 at the time decisions were made on which bid should be accepted for the phase 2b development contract? Can the Minister confirm—I think he has half said it, but I am not entirely sure—that the Government are satisfied, in the light of what I

[Lord Rosser]
have said, that the procurement process up to the time that HS2 said in February that CH2M would become its phase 2 development partner was run in accordance with and in the spirit of the laid-down guidelines, standards and requirements with which HS2 is presumably expected by the Government to comply?

Lord Ahmad of Wimbledon: The short answer to the second part of the noble Lord's question is yes. In terms of the specifics—the other bidders and the numbers involved—I will write to him.

Lord Campbell-Savours (Lab): Does that mean that we will be told whether Bechtel had people inside HS2 as well?

Lord Ahmad of Wimbledon: I am sure that the noble Lord raises that question as he is aware of other bidders. Again, I am sure he will respect the confidentiality of the allocation and award of the DP contract, which has still to be made. As I said, I will take back the questions of the noble Lord, Lord Rosser, and ensure that other noble Lords who are interested are accorded a reply.

Lord Foulkes of Cumnock (Lab): My Lords, is it right that the business case for HS2 was based on it being extended to Scotland? When is that going to happen?

Lord Ahmad of Wimbledon: As the noble Lord is aware, Scotland will benefit. Indeed, the first phase and phases 2a and 2b will be of net benefit, so I can assure him that when he travels from London to Scotland he will arrive in good time; indeed, quickly.

Syria: Chemical Weapons

Private Notice Question

3.37 pm

Asked by ***Baroness Northover***

To ask Her Majesty's Government how they are intending to respond to the chemical attack seemingly carried out by the Syrian Government on civilians in the town of Khan Sheikhoun.

Baroness Northover (LD): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we are appalled by reports of a chemical weapons attack in Idlib. We condemn the use of chemical weapons in all circumstances. If proven, this will again show the Syrian regime's barbarism. Britain and France have called an emergency UN Security Council meeting for later today. We have circulated a draft resolution condemning the attack and urging a swift and thorough investigation. We welcome the investigation by the Organisation for the Prohibition of Chemical Weapons.

Baroness Northover: My Lords, I thank the noble Baroness for that response. It is appalling to see terrible pictures once more of men, women and children in agony from what seems to be a further chemical attack in Syria. Chemical weapons were rightly banned after the First World War, nearly a century ago. Does the noble Baroness agree that we need to have a credible investigation into what happened in Syria? If it turns out to be sarin from the regime's stocks, what actions will be taken to ensure that this time there is full destruction of all Syria's chemical weapons?

Baroness Anelay of St Johns: Like the noble Baroness, I deplore events that cause such suffering. She is right to point to the action by the international community over the years to try to ensure that such vile use of chemical weapons cannot happen. It is essential that we work together to prevent these events. At 3 pm British time I understand that the debate at the United Nations should have started—I cannot confirm that because I have been here and so unable to see it. We will have to wait to see the decisions on what actions to take. I entirely agree with the noble Baroness that there must be a thorough and credible investigation.

Lord Collins of Highbury (Lab): My Lords, the key point that the Foreign Secretary made was that all the evidence points to the Assad regime. We have also heard from the Prime Minister, who called for the Organisation for the Prohibition of Chemical Weapons to conduct an investigation. Of course, it has been gathering evidence for some time on the use of chemical weapons in Syria. I welcome the Government's intention to raise the matter at the Security Council—but, as the Minister has told the House on many occasions, it is sometimes difficult to reach a consensus in the Security Council. Can she tell us what the Government will do if there is a failure to reach consensus? Will we take it up in the full UN General Assembly? The most important point—I know she shares this view—is that the people responsible must understand that they will be held fully accountable.

Baroness Anelay of St Johns: My Lords, the noble Lord is right. My right honourable friend the Foreign Secretary said a short while ago in Brussels:

"I would like to see those culpable pay a price".

I do not want to predict the result of today's debate. It is predicted not to conclude until around 6 pm or 7 pm. It is clear that we have to try to ensure that nobody will vote against the resolution. In the past, Russia and China have done so. I hope that they will think very carefully today before they take any action other than to support the resolution before the United Nations.

Lord Alton of Liverpool (CB): My Lords, in welcoming the swift response of Her Majesty's Government and the reply that the Minister has just given to the Question put by the noble Baroness, Lady Northover, perhaps I might press the Government further on the use of chemical weapons. We have now seen chemical weapons used twice in Syria, but they have also been used, allegedly, in Darfur by the regime of President Omar

al-Bashir. We have seen a chemical weapons attack using a toxic nerve agent in an international airport in Kuala Lumpur. Does this not all point to a climate of impunity in which those responsible do not believe that they will be brought to justice? In pursuing the point that the noble Lord, Lord Collins, has just made, will we be pressing also for a referral to the International Criminal Court of all those responsible for war crimes, crimes against humanity and genocide?

Baroness Anelay of St Johns: My thoughts today are very much concentrated on the children and other civilians who suffered yesterday in Idlib. The noble Lord will be aware of my previous answers on this issue, to the effect that in the international field we bring cases before the International Criminal Court when we are able to do so, with the agreement of the Security Council. With regard to Syria, there have been more than two occasions when the regime has been proven to use chemical weapons—there have been three. The proof has been gained by the OCPW-UN Joint Investigative Mechanism, and there are further investigations afoot.

Viscount Hailsham (Con): My Lords, does my noble friend agree that the recent use of chemical weapons in Syria—assuming, of course, that the Assad regime is responsible—flows in part from the failure of the United States to use military action after Assad's initial action in 2013? Does this not demonstrate the importance in foreign affairs of not promising or threatening that which you are not prepared to do? I express the hope that President Trump observes that principle in the context of his relations with North Korea.

Baroness Anelay of St Johns: My Lords, a principle that we should all follow is to consider carefully before we commit. All political parties in all countries sometimes fall short of that objective. Today we are working together as one with the United States to try to ensure that the United Nations can agree that we should put pressure on Syria, including from Russia, to ensure that these vile events should not happen, whoever commits them.

The Lord Bishop of Peterborough: My Lords, as the most reverend Primate the Archbishop of Canterbury said yesterday, we on these Benches mourn with the people of Idlib and we pray for justice and an end to violence. However, if and when peace is finally secured in the region, the scale of suffering and damage experienced by the people of Syria over the past six years will demand enormous and costly international effort if Syria is to be rebuilt. Will Her Majesty's Government commit not just to supporting the people of Syria in the short term but to supporting the decades-long process of restoration that will inevitably be needed once the present crisis is over?

Baroness Anelay of St Johns: I welcome the right reverend Prelate's question and I certainly give that commitment. At the moment my right honourable friend the Foreign Secretary is in Brussels at the Syria conference, where the objective is to get the international community not only to deliver on the commitments it made in London last year but to take those further, for the long-term support of the region.

Lord Campbell of Pittenweem (LD): My Lords, it is axiomatic that if these events came about as a result of deliberate action, they constitute a war crime. Will the Minister bear in mind that, even if they were not deliberate, they constitute a war crime, since they came about because of the indiscriminate bombing of civilians?

Baroness Anelay of St Johns: The noble Lord is absolutely right.

Lord West of Spithead (Lab): My Lords, there was no military benefit to the Assad regime from using chemical weapons in this circumstance—it did not help militarily—and there is no political benefit. Is there some internal dynamic that we do not understand within Syria? I cannot see any reason otherwise why these weapons would be used.

Baroness Anelay of St Johns: My Lords, who indeed can get into the mind of somebody who—it has been proven in the past—on at least three occasions used chemical weapons on his own people? We should all remember that the conflict started because there were those who wanted to see democracy in Syria.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree with the sentiments of the great human rights activist Andrei Sakharov, who said that there will be no progress on human rights until we are even-handed in condemnation? Having said that, does she further agree that the indiscriminate bombing of civilians in Mosul should be equally condemned? For survivors and for the relatives of those killed and maimed, it is equally bad.

Baroness Anelay of St Johns: My Lords, where action is taken purposely to bomb civilians it is a war crime and something that we would condemn. I would mention, with regard to Mosul, that I am aware of the recognition there that the Iraqi forces have taken every step they could to avoid hitting civilians, against an enemy that uses civilians as human shields.

Lord Cormack (Con): My Lords, is there not a case now for trying to talk to the Syrian regime? We have broken off all relations and refused to recognise the regime from the outset of the civil war. As we are not in a position to end this, would it not make a great deal of sense at least to have some diplomatic contact?

Baroness Anelay of St Johns: No, my Lords, because when we have engaged before we have been let down. Clear action by the regime has shown that we are right not to have diplomatic relations. What we are right to do and what we will continue to do—I give my absolute assurance to my noble friend—is to seek the path of political agreement through the Geneva talks. That is the only way forward to achieve peace.

Health Service Medical Supplies (Costs) Bill

Commons Reason

3.48 pm

Motion A

Moved by ***Lord O'Shaughnessy***

That this House do not insist on its Amendment 3 to which the Commons have disagreed for their Reason 3A.

Commons Reason

3A: Because it would not always be appropriate to use the powers conferred on the Secretary of State to control the price of medicines and other medical supplies to promote and support the growth of the life sciences sector, and those powers cannot be exercised to ensure that patients have access to medicines and treatments.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, before I address the specifics of the Motion I would like to remind the House of the wider policy context in which this Bill sits. In their approach to medicines and the life sciences industry, the Government have three objectives: to make sure that patients have access to the most effective treatments; to secure value for money for the NHS and for the taxpayer; and to encourage innovations that save lives. That is the overall role of government and, indeed, these are the three objectives that I have to balance in my ministerial portfolio.

We must remember that the Bill is about only that middle objective: securing value for money. It is not the appropriate vehicle for fulfilling the other objectives that government has in this area, as important as they are. That is why we have tabled Motion A and oppose the amendment put forward by the noble Lord, Lord Warner. I do not downplay the importance of patient access to innovative medicines or the importance of a strong life sciences industry in this country—quite the opposite—but achieving these objectives is best done through other means, and I will return to this point a little later.

As noble Lords on all sides of the House have agreed, the Bill plays a vital role in delivering better value for money for the NHS and for taxpayers. NHS spending on medicines is second only to spending on staffing costs, with a spend of over £15 billion during 2015-16. In 2015-16, total spend on medicines grew by 7%, more than twice the growth rate of the overall NHS budget. The Bill helps us to tackle some particular issues which have contributed to this rising spending. It will allow us to align our statutory scheme for the control of prices of branded medicines more closely with our voluntary scheme, it gives us stronger powers to set the prices of unbranded generic medicines if companies charge unwarranted prices in the absence of competition, and it allows us to secure better information with which to operate our pricing schemes, reimburse community pharmacies and make sure that the supply chain is delivering good value for money.

As a result of close and welcome scrutiny by your Lordships, significant improvements have been made to the Bill and 23 government amendments have been proposed. I am grateful to the work of all noble Lords who contributed to those changes. That work has been acknowledged by Members of the other place, who accepted all the amendments put to them, with the exception of Amendment 3, to which we return today.

While the Bill represents an important part of our strategy to deliver value for money, we are engaged in a substantial and transformative programme of work to support the life sciences and improve access to medicines. Following the publication of the industrial strategy Green Paper in January, we are working with industry and the NHS to develop a new strategy for the long-term success of life sciences in the UK. This work is being led by Professor Sir John Bell, and its aim is for the UK to be the global home of clinical research and medical innovation, with huge benefits to the UK economy and NHS patients.

I expect the life sciences industrial strategy to be published by late spring, to be followed by discussions on an ambitious sector deal that we aim to conclude this summer. The emerging strategy is focusing on six pillars: science; growth; skills; regulation; digital and data; and NHS uptake. I want to reflect for a moment on these themes.

On the science base, the UK is a world leader in this area, and the Government are supporting it by investing more than £1 billion a year in health and care research through the National Institute for Health Research, including 20 new biomedical research centres and 23 clinical research facilities for experimental medicine, to help to speed up the translation of scientific advances for the benefit of patients. The 2016 Autumn Statement announced £4 billion additional investment in R&D, specifically targeting industry-academia collaboration, and we expect the life sciences industry to be a substantial beneficiary.

On growth, this Government continue to support innovative businesses through our highly competitive taxation regime, including measures such as the patent box and R&D tax credits. The recent Budget contained a welcome announcement of investment in a new wave of advanced manufacturing centres to support the development of cell and gene therapies. This determined action is reaping rewards. The UK has one of the strongest life sciences industries in the world, generating turnover of more than £60 billion each year. Indeed, it is our most productive industry.

On skills, we know that attracting the most talented individuals to our life sciences industry is essential. As the Prime Minister has made clear, the UK will always remain open to those with the skills, drive and expertise to support our economic growth. The Budget announced that more than £100 million will be invested in global research talent over the next four years to attract the brightest minds to the UK.

The future of medicine regulation after Brexit is a critical issue. Any future regulatory model will need to ensure that patients have timely access to safe, effective medicines and support a flourishing life sciences sector. I am having extensive discussions with the industry

and other stakeholders, and our strong desire is to form a constructive new partnership with the EU on medicine licensing.

On digital and data, technology is already helping to improve patient care, and we are investing £4.2 billion over the spending review period in digital and data transformation, including areas such as electronic patient records, apps and wearable devices, telehealth and assistive technologies. Furthermore, the NHS has a unique opportunity to work with the life sciences industry to use data to patients' benefit, and we expect the life sciences strategy to provide proposals that will accelerate clinical trials and the uptake of medical innovations.

I reiterate our commitment to improving patient access to new medicines and technologies, a subject that we have spoken about many times in the process of going through the Bill. It is a critical objective of our life sciences strategy. The early access to medicines scheme, introduced in 2014, provides a platform from which to provide patients with innovative medicines prior to licensing. The Cancer Drugs Fund has allowed over 100,000 patients to access innovative, life-saving medicines. NHS England's test beds programme, launched last year, provides an opportunity to link new technologies with new ways of delivering healthcare, and its commissioning through evaluation programme provides an opportunity for promising but experimental treatments to be brought forward for patient use.

There is clear evidence that those actions are having a positive impact. The latest innovation scorecard, published in January, showed that, of the 77 medicines that are measured, over half saw growth in uptake of over 10% year on year. Still, there is of course more to do. That is why the Government will be responding shortly to the recommendations of the accelerated access review, with the aim of getting transformative products to patients who need them up to four years earlier than we do now.

In discussing patient access, I am aware of concerns about changes that NHS England and the National Institute for Health and Care Excellence are making to the way in which drugs and other treatments are assessed and adopted in the NHS. I must remind noble Lords that these changes have been made in response to the recommendations of the Public Accounts Committee, which stated that NICE should,

"ensure affordability is considered when making decisions".

I come to the changes themselves. The first is that NICE is introducing a fast-track appraisal process that will bring forward access for NHS patients by around five months to very cost-effective new treatments. In other words, should pharmaceutical companies offer very good value to the NHS in the pricing of their products, we will see faster patient access—a win for patients, a win for the NHS and a win for industry.

Secondly, NICE and NHS England are introducing a budget impact test for new medicines that are expected to cost more than £20 million in any of the first three years after introduction. I want to take this opportunity to address a number of misconceptions about this policy. The budget impact test is not a cap. It does not represent the maximum that the NHS will spend on any individual drug in a given year. The test is simply intended to provide an opportunity for NHS England to enter into commercial negotiations with companies to bring down the price of medicines that have a significant budget impact on the NHS, and in doing so will allow for the kind of flexibilities—for example, commitments around volume—that companies have been asking for. The proposal will affect only around one in five drugs and, while the proposals are intended to improve affordability, they are not intended to create delay. Most negotiations will be concluded quickly and, where agreement is not reached, a managed access scheme will ensure that those whose clinical need is greatest will be prioritised. Patients will continue to have a right to NICE-recommended drugs, as enshrined in the NHS constitution.

Thirdly, the proposals introduce a sliding cost-benefit threshold for very expensive drugs for rare diseases, evaluated through NICE's highly specialised technologies programme. It will be possible for transformative treatments that offer significant health gains to be approved up to £300,000 per quality adjusted life year, or QALY. That is 10 times greater than NICE's threshold for treatments considered by its mainstream technology appraisal process. I do not believe, as some have suggested, that the new threshold will prevent medicines being approved via this route. In fact, with increased commercial capacity within NHS England to strike win-win deals, I am very optimistic that patient access will continue for genuinely transformative medicines.

Lastly, let me also be clear that these arrangements apply to new medicines after 1 April. Any suggestion that a patient receiving a medicine approved under the previous arrangements will have their medicine withdrawn due to these changes is wrong.

I turn to the amendments considered in the other place. The Commons rejected the previous amendment proposed by the noble Lord, Lord Warner, a new version of which he has tabled for discussion today. For reasons I have already explained, I do not believe that the Bill is the right vehicle for promoting the life sciences sector or improving patient access: it is only about providing value for money. Furthermore, there are three specific problems with the amendment.

4 pm

First, it undermines the Government's ability to put effective cost controls in place. That is because controlling the prices of medicines cannot be said in itself to promote the interests of the life sciences sector and deliver growth. For example, if the Government were to act to control the price of a generic medicine with a vastly inflated price, it could be argued that that is not promoting the life sciences sector because any generic drugs manufacturer can argue that it is a life sciences company. Nevertheless, this would be the right course of action for the NHS, patients and taxpayers. Approving the amendment would encourage companies to bring legal challenges and seriously impair the Government's ability to operate cost control schemes. It would lead to rising costs and consequently reduce the funding available for the rest of the NHS.

Secondly, cost is not a factor in patient access to medicines that have been approved by NICE. The NHS constitution is clear that commissioners are legally

[LORD O'SHAUGHNESSY]
required to fund drugs and other treatments that have been recommended by NICE technology appraisal guidance. The uptake of medicines is primarily dependent on clinicians' choices about what is best for their patients, and the cost of a drug is not a factor in clinical prescribing. Indeed, the cost of the drug is not visible at the point of prescription. Improving the uptake of drugs involves working with clinicians to encourage the use of innovative medicines to replace existing treatments, and legislation is not the right way to create such behavioural change.

Finally, there is a fatal contradiction between the two parts of the noble Lord's amendment. Even if one were to accept the premise that cost is a factor in patient access to NICE-approved medicines, the first part of the amendment, which would make it harder to control costs, would actively reduce, not increase, patient access by making medicines more expensive. The amendment does not, therefore, work on its own terms.

To conclude, I understand the intentions of the noble Lord, Lord Warner, and others who have supported the amendment. Throughout the Bill's passage, I have been happy to listen to the arguments of noble Lords—and to act on them—in the pursuit of achieving better value for money for the NHS, but I cannot support the amendment because I do not believe that it would be in the interests of either the NHS or patients. The House of Commons was right to reject the predecessor to this amendment, and I strongly urge noble Lords to take the same approach with the amendment before us today. I beg to move.

Motion A1 (as an amendment to Motion A)
Moved by ***Lord Warner***

At end insert "and do propose the following amendment in lieu—

3B: Insert the following new Clause—

"**Duty to take account of the life sciences sector and access to new medicines and treatments**

In discharging, through the provisions established or amended by this Act, its responsibility to secure best value for the National Health Service in purchasing medicines and medical supplies, the Government must take account of the need to—

(a) promote and support a growing life sciences sector within the United Kingdom economy; and

(b) ensure that patients have rapid clinical access to new clinically effective and cost-effective medicines and treatments approved by the National Institute for Health and Care Excellence through their technology appraisal process.""

Lord Warner (CB): My Lords, the amendment removes the requirement on the Government in the original amendment passed by this House to have "full regard" to the considerations relating to life sciences and access to NICE-approved medicines and treatments. Instead, it requires the Government to "take account of" those considerations in discharging its responsibilities under the Act. This responds to the Government's concerns that the original wording was too inflexible to respond to all the situations with which they might be confronted in controlling the price of medicines and medical supplies. I suggest that the revised wording gives them the flexibility they seek while retaining some requirement to pause to consider the impact and implications of a price cut to NHS-purchased medicines and medical supplies on the UK's important life sciences sector and on patient access to NICE-approved medicines.

We passed the original amendment and placed it at the front of the Bill because of our central concern that the legislation seemed overpreoccupied with driving down the price of drugs and medical supplies to the NHS and was in serious danger of losing sight of the importance of the life sciences sector to UK plc, despite the Minister's protestations—and, together with that, the related issue of ensuring that patients have speedy access to the most cost-effective therapies.

Delaying patients' and NHS access to new proven therapies will only drive life sciences away from the UK at a time when pharmaceutical investment here is already on a downward trajectory, and at the very time when we need this investment to be increasing under the Government's own industrial strategy post Brexit, as the Minister has rightly said. But the money is going down from big pharma investing in this country and the Bill has not helped reverse that trend. Delaying patients' and NHS access to new proven therapies will only make things worse.

The danger of this Bill passing without a pausing mechanism of the kind I am suggesting is that the Act will become yet another example of the short-termism that is criticised in this House's Select Committee report on NHS sustainability, published today. I recommend that noble Lords read that report about the short-term focus of much of the action taking place in the NHS today. I declare an interest as a member of that Committee.

The Bill has made the ABPI and the pharmaceutical industry worried that it signals the end of the voluntary PPRS system for settling the price of research-based medicines in this country. Only this week the ABHI published a report on a strategy for a thriving med-tech industry outside the EU, calling for the NICE technology appraisal programme to be expanded to assist NHS take-up of new technology. Little did it know that it was this very week, as the Minister recognised, that the Government, through the agency of NHS England, had introduced a new "budget impact test" for NICE-assessed products. That is yet another hurdle to be jumped by British science and research and before NHS patients can benefit.

I have been probing this new system which in plain English is a new affordability test grafted on to the NICE appraisal process following discussions between NHS England and NICE, under, I suggest, a good deal of pressure from the Department of Health. I tabled a Question on this on 14 March, to which the Minister answered on 28 March. I still have concerns about that Answer, which I am pursuing through further Questions. But I want briefly to share those concerns with the House because they are relevant to why we should send the Bill back to the Commons with a new amendment.

First, there is the very real issue of how big a part NICE-approved medicines actually played in the 20% rise in the drugs bill between 2010-11 and 2015-16 that the Government are so concerned about. Were these appraisals the villains or were there other explanations

for that increase in the drugs bill? We do not know. Nor do we know whether the costs of these appraisals were actually offset by savings derived from the new treatments. The danger is that an unexplained rise in the NHS drugs bill can cause a panic reaction in the department, which will then use this new legislation to curb access to new drugs.

My second concern is over the actual legality of this new system and the damage being done by it to NICE's reputation for independence. As I understand the 2013 regulations governing NICE functions, they impose a three-month period for NHS implementation of NICE-approved technology appraisals. It is only NICE that can extend the period of implementation, not the Secretary of State and not NHS England. So we are going to see a system being developed under which NICE is regularly put under pressure by the Department of Health or NHS England to extend the three-month implementation period.

I welcome any light that the Minister can throw on these concerns, but it is not just me or this House that he needs to satisfy—or even industry. He also has to convince patient interest groups such as Breast Cancer Now, Prostate Cancer UK and Diabetes UK, which are all very concerned about the budget impact test and what it means for patients' speedy access to new proven therapies and their rights under the NHS constitution. I am not convinced that what the Minister has said this afternoon will convince them that they should not be suspicious of these changes.

The more events unfold, the more this looks like a piece of legislation originally designed legitimately to tackle a major NHS rip-off from a generic scam which was then rapidly expanded in scope to give the Government more powers to drive down NHS prices for medicines and medical supplies. From our earlier consideration at different stages of the Bill, I suggest that there has been a lack of proper consultation with many interested parties, and the measure provides powers whose exercise could well have some highly undesirable outcomes. The budget impact test could well illustrate what we might expect without some counter-influence; my Amendment A1 strives to do that but without over-restricting the Government's legitimate freedom of action when there are outrageous increases in drug prices to the NHS. I beg to move.

Baroness Walmsley (LD): My Lords, I support the noble Lord, Lord Warner, in his amendment. I thank the Minister for how he has worked with your Lordships' House on all sides to improve this Bill; it is unfortunate that we remain with one point of disagreement. We certainly support the policy objective of the Bill in general and very much welcome the list of actions in the Minister's introduction to promote research and drug development in this country. But in listening to his outline of his particular responsibilities, it occurred to me that no policy area is ever an island; they always impact on other things. The Minister's responsibility to achieve best value for the NHS actually impacts on other responsibilities that he and his department have—in particular, in relation to this amendment, on the thriving life sciences sector, on which we all depend, and the access of patients to cutting-edge medicines.

Both those things are suffering from particular threats at the moment. One is Brexit, which I shall not go into now; we have discussed it on many occasions. The other is the recent £20 million affordability test that the Government are introducing. Although £20 million sounds like a very large amount of money, if it is applied to medicines where the population of those needing the medicines is very large, such as some of those mentioned by the noble Lord, Lord Warner—diabetes, breast cancer and other things—the individual cost to an individual patient does not need to be very high to be caught up by the affordability test. The Minister used the word "only"; he said that it would affect only one in five of medicines, but I think that that is an awful lot of medicines, and we should be very concerned about it. That is why we feel that it is important to press the Minister on this issue.

I congratulate the noble Lord, Lord Warner, on offering the Government a compromise, which I hope would avoid what the Minister is clearly worried about: being taken to judicial review by a pharmaceutical company about efforts to push down the price of a medicine. I draw the Minister's attention to the word "sector" in paragraph (a) of the proposed new clause, which asks the Government to take account of the need to,

"promote and support a growing life sciences sector".

The word "sector" makes it unlikely that any pharmaceutical company trying to take the Government to judicial review would succeed if the Government had, in all other respects, promoted a thriving life sciences sector in this country. It is highly unlikely that they would do so.

I therefore hope that the Minister will think again and not resist this amendment. It is essential, given the current threats to patients in this country—and very large populations of patients too, in particular those coming towards the end of life—to pharmaceuticals, to treatments and access to medicines. I therefore hope that the Minister will reconsider, and, if the noble Lord, Lord Warner, wishes to test the opinion of the House, he will have the support of these Benches.

4.15 pm

Lord Lansley (Con): My Lords, I intervene in this instance not to agree with but, I am afraid, to disagree with the amendment in the name of the noble Lord, Lord Warner. However, I will also make some important points that are relevant to the issues raised in this Motion and the amendment.

I am against the amendment to the Motion because I entirely agree with my noble friend the Minister that Lords Amendment 3, which the Commons disagreed to, was flawed in the sense that—in relation to the specific responsibilities under the Act for the PPRS and pricing medicines and supplies—it would have put into legislation a set of statutory requirements to have regard to, or indeed to take account of, that are partial and disjointed. Over many decades we have argued that the Secretary of State's responsibility under the PPRS is not to create an industrial strategy. If we had said that that was the objective, it would have been regarded as a state aid, and it was never regarded as such.

[Lord Lansley]

It is not the job of the Secretary of State, through the PPRS, to deliver a successful industry. There are many ways—my noble friend illustrated them better than I could have—in which the Government can discharge that wider responsibility, and should do so. That responsibility is to secure the best value for the NHS in purchasing medicines and supplies. We should all be in favour of that and not wish to see it abridged.

Lord Warner: Perhaps I may just ask the Minister to explain how, under the PPRS, incentives are often given through R&D tax allowances. Does he not consider that state aid?

Lord Lansley: I am perfectly happy if the Minister wants to reply but, from my point of view, I do not regard the PPRS as state aid. If R&D tax credits are available, they should be made available. When the Office of Fair Trading reviewed the PPRS back in 2008-09, I think, it concluded that it was neither a state aid nor a spur to innovation but was actually all about managing the drugs budget. That is what this legislation is all about: managing the drugs budget.

It is, however, important to recognise that the statutory duties in Lords Amendment 3 do not include the one which the Secretary of State should have specific regard to: affordability. It is deficient in not providing for that. Noble Lords will recall that, at an earlier stage, I tabled an amendment the purpose of which was to insert a more complete set of statutory duties for the Secretary of State to have regard to. Affordability must form part of that, but it is not present in this amendment. I am therefore against the amendment.

In the course of this legislation we have discussed other important issues which are still coming to a head. It is absolutely right, as my noble friend said, that the Government are setting out to promote innovation and the life sciences sector, and there are many ways of doing that. The Conservative Party manifesto of 2015 stated:

"We will increase the use of cost-effective new medicines and technologies".

It also stated:

"We will speed up your access to new medicines".

It is important that we do that as it is in the interests of patients, our life sciences industry and ourselves as a world leader in science in this area. However, we have on the stocks the accelerated access review—which, ironically, took too long to be produced, was delayed in its publication and has not yet been replied to. We also have a life sciences strategy. The many positives in that run the risk of being negated by the way in which NHS England and NICE have gone about the consultation.

As I said at an earlier stage, it is possible to see how NICE and NHS England can work together in ways that would give industry greater confidence as it would mean that it could get early engagement with NHS England about the managed entry of new medicines into the NHS, including, as my noble friend said, on issues of importance to industry, such as the volume of purchasing of new medicines in the early stages of access. However, the budget impact test, at £20 million, is probably not one-fifth of all new medicines; it is one-fifth of all new medicines regarded as cost effective by NICE. Therefore, this is not a case of any old medicine that might be very expensive; it just happens to be medicines which are cost effective but have relatively high volumes, which is exactly the point to which the noble Baroness, Lady Walmsley, referred.

However, the issue for NHS England should not be the cost of introducing new medicines that are cost effective and in the voluntary PPRS, as the purpose of the pharmaceutical price regulation scheme, as currently designed, is—through the clawback—to give government assurance about the overall increase in the drugs budget. As a consequence, that money is made available as part of the overall funding provided to NHS England. Therefore, NHS England should in theory have in its budget the money that is necessary to meet the drugs bill, including new medicines as they come on stream, because there is clawback for that.

We have this Bill in front of us partly, but not entirely, because the drugs budget was rising much faster than anticipated, and much of that growth was outside the voluntary PPRS. This Bill plugs that gap and sorts that out. However, in doing so—and here we are at the beginning of April—once this Bill is on the stocks and secures Royal Assent and the Secretary of State is able to align the statutory PPRS with the voluntary PPRS, there is no reason why NICE and NHS England should continue to apply an overall budgetary impact test. I say to my noble friend that I think the Government should step in at that point and say, "Where this product has come through a PPRS where a clawback is applied and we have a budgetary mechanism in place—redress—for any extra cost to the drugs bill in the course of this PPRS through to the end of 2018, NHS England should not interpose any extra delay, or seek any extra delay, through NICE in introducing that medicine to the NHS". I am afraid that if it continues to do so in the way that it is at the moment, that will have a severe negative impact on the view held by the boards of major corporations in relation to the take-up of new medicines by the NHS.

I am sorry to say to the noble Lord, Lord Warner, and other noble Lords that the remedy is not contained in this amendment. The remedy is in the Government's hands if they choose to make that point very clearly to NHS England in relation to what this legislation enables us to achieve in controlling the drugs budget.

Baroness Finlay of Llandaff (CB): My Lords, I thank the Minister for the way in which he has conducted all the previous stages of the Bill, the amount of discussion and negotiation that he has had with all of us, and for accepting many of the amendments. It might be helpful to the House, if, when he sums up, he could clarify how much of the 7% increase is due to new NICE-approved drugs coming through into the system.

It would also be helpful to know whether NICE has the ability to refuse to go along with the budget impact test on this estimated one-fifth of medication that it deems to be cost effective if it feels that a new medicine coming on line is extremely cost effective and that its cost efficacy will have a major impact on those

with life-limiting or life-altering conditions. I am talking about people with a disease that will progress at quite a rate, meaning that over a 90-day period they will be likely to experience a significant decline without the intervention of whatever the new medication might be.

It would also be helpful if the Minister could tell us how the independence of NICE will be assured with this budget impact test. In many parts of the world NICE has been viewed as exemplary in deciding how a medication is approved to come on line, but there are problems with it. If it were viewed as having its independence eroded, that would seriously undermine public confidence in the whole process, particularly among those who have serious and life-limiting or life-altering illnesses.

Baroness Masham of Ilton (CB): My Lords, I am all in favour of bringing down the price of drugs where possible, but patients' access to new drugs is very important. For a long time, NICE has been very slow to approve drugs and that has caused great frustration for patients and the industry. What can the Minister do about orphan drugs? Not having them can be life-threatening for patients, but NICE has taken some of these drugs off the list. That is really serious for patients for whom they are a lifeline. Does Scotland not have a better system?

Lord Hunt of Kings Heath (Lab): Well, that's a question, my Lords. First, I declare an interest as president of the Health Care Supply Association and of GS1, the barcoding organisation.

I support the Motion in the name of the noble Lord, Lord Warner. I note what the noble Lord, Lord Lansley, says—that it is not a remedy for the problem being described—but it would send a powerful message to the Government. It is a message which, judging by the debate in the Commons on this matter, I am afraid Ministers in the Commons have not really heard, although I acknowledge that in his opening remarks today the Minister certainly turned to the crux of the issue.

Essentially, with a Bill that gives the Government huge power over drug prices—indeed, it gives them absolute power—the real concern is that NHS patients will not get access to new medicines as they would in other countries. This in turn puts at risk investment in R&D by the pharmaceutical industry in this country, which in turn threatens to undermine the life sciences sector. It is one of the most crucial sectors in this country and in our economy, and post Brexit must become even more important. Essentially, we are seeking to turn this into a virtuous circle whereby the NHS is seen to want to invest in new medicines and treatments, industry feels that the UK is therefore a good place in which to invest, and our life sciences sector grows and becomes even more important.

The problem is that over the last few years we have seen increasing rationing or restrictions on access to these new and effective drugs. We have had a short debate on NICE. I was the Minister first in charge of NICE, going back some years now. When it was set up, it was, first, deemed to be wholly independent of the NHS in its judgments, and secondly, designed to speed up access to new technologies and medicines. However, in the past few years the remit has changed. It seems to have been pushed almost into part of NHS management and budgetary control. The noble Lord, Lord Lansley, put his finger on it when he said that after NICE has reached a judgment that a medicine is both clinically and cost effective, NHS England has, in a number of ways, sought to put in additional controls. That is why there is concern about the new proposal: that if a NICE-approved treatment exceeds or is expected to exceed a cost of £20 million in any of the first three years, NHS England could ask for a longer period for its introduction. The Minister said that the budget impact test, as it has come to be known, is not a cap but a negotiating tactic. I understand that, but I put it to him that in the past few years NHS England has shown neither the willingness nor the capacity to do anything but reduce access for patients. It is very difficult not to see this as another hurdle.

4.30 pm

We have all had correspondence from various charities. The Specialised Healthcare Alliance says its members are concerned because they think these proposals will put patients at risk by impeding access to new treatments. I have also received a letter from a large number of charities concerned that the proposals will delay access, with no limits on how long this can last. As they say, this would effectively mean that officials have the power to put the brakes on a new treatment at the last minute and hold it just out of reach of patients because they cannot afford to give it to all the patients who need it, after they have been told by the experts in NICE that the medicine represents a good use of resources.

Keir Woods, head of oncology at the major pharmaceutical company Merck, points to that company's investing 20% of its global venture capital in the UK. He celebrates the UK's position as a global power in health and its world-class universities, centres of excellence in clinical research and top medical journals. All that has a positive impact on investment. We are home to 4,800 life sciences companies, with the largest pipeline of new discoveries in Europe. That is something to celebrate, but the point he makes is that this is at risk unless we increase the uptake of these new innovations in the UK.

Currently, the UK has developed around 14 of the top 100 global medicines. That is something to be pleased about. However, 20 years ago, we were responsible for one quarter of the top 100 global medicines. The noble Lord, Lord Warner, referred to the £4 billion being invested by pharma in R&D. However, six or seven years ago, it was £5 billion. The risk is that it will go down, billion by billion, because the NHS is, frankly, hopeless at adopting these new medicines. Patients are at risk; the industry is at risk; the life sciences sector is at risk.

The Minister listed the six headings of the life sciences strategy, including science-based support for innovation, business and skills, medicine regulation, digital and data, and improving patient access to

[Lord Hunt of Kings Heath]
medicines. I applaud that. But the fact is that patients are not getting access to new medicines. The initiatives the noble Lord has announced are, so far, having very little impact on the generality of that access.

The Minister says that the Bill is concerned only with value for money and not with patient access and investment in life sciences. However, this is the Bill before us and this is our opportunity to say to the Government that they have got to do something about speeding up access to medicines, not only for patients but in order to strengthen and support a key element in our economy. For that reason, I support the amendment.

Lord O'Shaughnessy: My Lords, I am grateful to all noble Lords for the points they have made in the discussion we have just had. I will try to deal with as many of them as I can in my response.

I am afraid that we do not agree with the first point of the noble Lord, Lord Warner, about the change of wording to make it more flexible. Such wording as exists in the current amendment would increase the risk of judicial review. As my noble friend Lord Lansley pointed out, it would impair our ability to crack down on those companies that are abusing the NHS by raising prices in a completely unwarranted way. I cannot believe that this is what noble Lords want.

The noble Lord, Lord Warner, referred to the Bill providing a pausing mechanism. It is important to point out and remind noble Lords that the Bill requires a consultation before the beginning of any new statutory scheme. One of the key amendments that we made—indeed, I accepted proposals from others in Committee and on Report—was to introduce an affirmative resolution on extending price controls into the devices realm. So those consultations and pauses already exist—and they do so in a way that is appropriate to the core purpose of this Bill, which is to control costs.

The noble Baroness, Lady Walmsley, referred to the balance that is being struck. She is quite right that there is a balance to be struck, but that does not mean that the balance needs to be struck in each and every item of government policy. As my noble friend Lord Lansley pointed out, this Bill is not the right vehicle to achieve support for the life sciences and industry and to improve patient access. These aims are achieved through other routes, as I have outlined, and the Government are doing a huge amount of work on them.

I wholeheartedly agree with all noble Lords on the importance of the life sciences sector and of improving patient access. The noble Lord, Lord Hunt, was right to point out that, post Brexit, it will be more important than ever. The noble Baroness, Lady Masham, said that this is not just a macroeconomic point; it is about the lives of humans, often in great suffering, who need to have access to medicines. I thank her for bringing that out. It is precisely why the Government are developing an ambitious strategy and a sector deal; and it is precisely why I have been keen to ensure that the NHS is seen as a partner and beneficiary of that deal. Rather than this being seen as something that is done to it, it has to be a counterparty, as it were. I disagree with the noble Lord, Lord Hunt, because we are seeing improvements in uptake for the reasons that I have outlined.

In the course of dealing with the Bill, while I have had complaints from the life sciences sector about certain things that we have done—I will touch on those in a moment—it is fair to say that I have not received any complaints from the industry that this Bill will affect it negatively. It understands that the Bill is about providing equality between the statutory and voluntary schemes, cracking down on those who seek to abuse the system and making sure that there is proper information to inform the price control schemes that we have.

Looking further ahead, from 2019 onwards we will need to look at the medicine and pricing regulation system in the round—and we will be doing so from a position of being outside the European Union. It is therefore absolutely essential that we have a world-leading price and regulatory environment. I am looking at all aspects of that now and talking to industry and others. As my noble friend Lord Lansley pointed out, it is only right to consider the changes introduced by NICE and NHS England as we look to a comprehensive solution from 2019 onwards.

While we are talking about the outcome of that consultation, I should point out that it was provided in response to the Public Accounts Committee and that there is no threat to the independence of those organisations. I completely agree with the noble Baroness, Lady Finlay, in applauding the reputation that NICE has around the world and the fact that the life sciences industry values getting NICE technology approvals.

The changes being made are consistent with the NHS constitution. I explained in my opening statement how this will work and I have addressed the misconceptions. This is not about delay or reducing uptake, it is about costs, and indeed the changes bring about a variety of positive and welcome benefits to commercial agreements and to a fast-track appraisal process.

The noble Baroness, Lady Finlay, asked what proportion of the growth in the drugs bill has been driven by branded drugs. She will know that that is quite difficult to define because of the issue of what are known as parallel imports. These are branded drugs that are outside the schemes which come in, but of course they make a contribution to the bill. As a country we are one of the best, if not the best, in the OECD in terms of the use of generic drugs, which of course is one way of holding down the bill and creating headroom for innovative drugs. There is a good story to be told about that.

The noble Baroness also mentioned orphan drugs and she is quite right to highlight them. There is the highly specialised technology route. I should also point out that there are routes and specialised commissioning within NHS England, including the commissioning through evaluation programme. These routes have been invented by NHS England to facilitate access to drugs, not to delay it.

To conclude, I want to return to the amendment itself. I should stress to noble Lords that this is not a cost-free amendment and it is not simply a declaratory

piece of legislation. It would increase costs to the NHS for drugs for no benefit. No more drugs would be bought and no more people would take them up. Indeed, it would take money away from other care settings. The Government cannot agree with an amendment that would put the NHS at such a disadvantage. I do not believe that it would be in the interests of either patients or the health service. The House of Commons was right to reject the first version of the amendment and this version does not substantively change the intent. I hope and trust that noble Lords will take the same approach in rejecting it, but before that I would like to ask the noble Lord, Lord Warner, on the basis of the arguments that I have made in response to his key points, to withdraw it.

Lord Warner: My Lords, this has been an interesting debate and I thank noble Lords for their contributions. I do not interpret this amendment in the same way as the Minister and I am slightly surprised that he thinks there is a happy mood in the industry about all this because that certainly does not square with my contacts. I would also like to draw his attention to a comment made during a pink ribbon conference recently by the oncologist who heads chemotherapy commissioning for NHS England. He was talking about the budget impact test: "That is why we expect the £20 million figure to hit cancer drugs much more than other drugs". I think that that is quite an interesting revelation which suggests that some of those who are closer to this than perhaps the Minister and me take a different view about how the budget impact test actually works in practice.

The Minister would have had plenty of time, if he had accepted the principle behind the amendment, to negotiate with us a form of wording that would deliver its intent. He has spent his time trying to get us to take it out of the Bill. He has more access to draftspeople than I do. If he had accepted the principle, we could have come up with wording that is more to his taste. Neither he nor his officials have co-operated with that kind of approach. I believe that this amendment as it stands would be of benefit to patients, to UK plc and to the industry. I wish to test the opinion of the House.

4.44 pm

Division on Motion A1

Contents 245; Not-Contents 208.

Motion A1 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Ahmed, L.
Alderdice, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Andrews, B.
Armstrong of Ilminster, L.
Ashdown of Norton-sub-Hamdon, L.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Benjamin, B.
Berkeley, L.
Best, L.
Birt, L.
Blackstone, B.
Blunkett, L.
Boateng, L.
Bradley, L.
Bradshaw, L.
Brinton, B.
Brookman, L.
Bruce of Bennachie, L.
Burnett, L.
Burt of Solihull, B.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Chakrabarti, B.
Chandos, V.
Chidgey, L.
Christopher, L.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Clinton-Davis, L.
Collins of Highbury, L.
Colville of Culross, V.
Cork and Orrery, E.
Corston, B.
Cotter, L.
Coussins, B.
Crawley, B.
Cunningham of Felling, L.
Davidson of Glen Clova, L.
Davies of Oldham, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
Dubs, L.
Elder, L.
Erroll, E.
Falkland, V.
Farrington of Ribbleton, B.
Featherstone, B.
Fellowes, L.
Finlay of Llandaff, B.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Greengross, B.
Grender, B.
Grocott, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harrison, L.
Haskel, L.
Haworth, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hilton of Eggardon, B.
Hollick, L.
Hollins, B.
Hollis of Heigham, B.
Howarth of Newport, L.
Howe of Idlicote, B.
Howells of St Davids, B.
Hoyle, L.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Irvine of Lairg, L.
Jay of Paddington, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Jowell, B.
Judd, L.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kestenbaum, L.
Kidron, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Kramer, B.
Laming, L.
Lane-Fox of Soho, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Lester of Herne Hill, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Listowel, E.
Livermore, L.
Low of Dalston, L.
Ludford, B.
Lytton, E.
McAvoy, L.
McConnell of Glenscorrodale, L.
Macdonald of Tradeston, L.
McIntosh of Hudnall, B.
Mackenzie of Framwellgate, L.
McKenzie of Luton, L.
McNally, L.
Maddock, B.
Mair, L.
Mallalieu, B.
Mar, C.
Masham of Ilton, B.
Massey of Darwen, B.
Meacher, B.
Monks, L.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morrow, L.
Murphy of Torfaen, L.
Newby, L.

Northover, B.
Nye, B.
Oates, L.
O'Neill of Bengarve, B.
O'Neill of Clackmannan, L.
Ouseley, L.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Prescott, L.
Primarolo, B.
Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Rebuck, B.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Rodgers of Quarry Bank, L.
Rosser, L.
Rowe-Beddoe, L.
Rowlands, L.
Royall of Blaisdon, B.
St Albans, Bp.
St John of Bletso, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Singh of Wimbledon, L.
Slim, V.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
Steel of Aikwood, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Temple-Morris, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tomlinson, L.
Tope, L.
Touhig, L.
Trees, L.
Truscott, L.
Tunnicliffe, L. [Teller]
Turnbull, L.
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warner, L. [Teller]
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Waverley, V.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Williams of Elvel, L.
Willis of Knaresborough, L.
Winston, L.
Wood of Anfield, L.
Woolf, L.
Woolmer of Leeds, L.
Worthington, B.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Bates, L.
Bell, L.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Brookeborough, V.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Caithness, E.
Callanan, L.
Carey of Clifton, L.
Cathcart, E.
Cavendish of Furness, L.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Condon, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E. [Teller]
Cox, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
Cumberlege, B.
Dannatt, L.
De Mauley, L.
Dear, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Dundee, E.
Dunlop, L.
Dykes, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Faulks, L.
Fellowes of West Stafford, L.
Finkelstein, L.
Flight, L.
Fookes, B.
Framlingham, L.
Fraser of Corriegarth, L.
Freeman, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Glentoran, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hailsham, V.
Hamilton of Epsom, L.
Hanham, B.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Higgins, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lindsay, E.
Lingfield, L.
Livingston of Parkhead, L.
Lupton, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
MacLaurin of Knebworth, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Marlesford, L.
Mobarik, B.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Patten, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Robathan, L.
Rogan, L.
Saatchi, L.
Sanderson of Bowden, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Stevens of Kirkwhelpington, L.
Stirrup, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Tanlaw, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Vere of Norbiton, B.
Warsi, B.
Wasserman, L.
Wei, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

Pension Schemes Bill [HL]

Commons Amendments

4.57 pm

Motion on Amendment 1

Moved by ***Lord Henley***

That this House do agree with the Commons in their Amendment 1.

1: Clause 1, page 1, line 17, leave out "and" and insert "to"

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, if it is convenient to the House I shall speak also to Amendments 3, 4 and 20. The amendments largely respond to points raised in debates in this House. Amendments 1 and 20 address an unintended consequence of the Bill and enable a scheme funder to engage in activities in relation to any part of the scheme, not just the money purchase section. I am grateful to the noble Lord, Lord McKenzie, for drawing our attention to that issue. Amendments 3 and 4 address the original requirement in the Bill that the scheme funder must be a separate legal entity and must only carry out activities directly relating to the master trust scheme in question. Noble Lords and stakeholders raised concerns about the impact of this requirement on business.

First, the amendments enable scheme funders to operate more than one master trust. Secondly, a new regulation-making power will introduce some flexibility to the requirement that scheme funders' activities be limited to the master trusts of which they are the scheme funder or prospective funder by allowing exceptions subject to certain requirements. For example, the regulations might require that a scheme funder who carries out activities other than those that relate to the master trust disclose information similar to the financial reports in its management accounts, so that the activities relating to the master trust are distinct from other lines of business. The regulations may also require, where a scheme funder is part of group of companies, that information be disclosed about the corporate structure of the group to the extent that it affects the financing of the master trust.

5 pm

These regulations will be subject to the affirmative procedure on the first occasion. I understand that the Delegated Powers and Regulatory Reform Committee has today published its report on this power and concluded that our explanation is not sufficient as to why a different level of parliamentary scrutiny is appropriate for later exercises than the first. Let me explain. The regulations first exercising the power should be subject to parliamentary scrutiny and debate, given the importance of the scheme funder's role in the financial sustainability of the master trust and the potential impact of any requirements prescribed in regulations on scheme funders. I have given some examples today of how that power might be used.

After the first set of regulations have been brought into force, the Government expect subsequent amendments to those regulations to be relatively minor; for example, they might need to be changed in future to keep pace with the evolving master trust market. New financial arrangements between master trusts and their scheme funders might require minor changes to the regulations to ensure sufficient transparency for the Pensions Regulator's financial assessment. As a result, we think that the affirmative resolution procedure would be disproportionate for those further regulations.

Given the wide variety of master trust scheme structures and arrangements with scheme funders, the department will work closely with key stakeholders, as part of our ongoing consultation, to develop the first set of regulations. We will strike an appropriate balance between minimising the burdens on business and providing the Pensions Regulator with the appropriate level of transparency for its ongoing supervision of the financial sustainability of the master trust scheme. I beg to move.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for introducing this first group of Commons amendments—Amendments 1, 3, 4 and 20. By way of background, we should acknowledge a degree of consensus emerging on the Bill, which has indeed been helped by the amendments before us today, which deal directly with some of the concerns we raised earlier in the parliamentary process.

This does not mean that we consider, as should have been evident in the other place, that the Government are on top of the entirety of the pensions landscape. There is more to do on the level and transparency of charges; governance; extending the benefits of auto-enrolment; and addressing the lingering injustice felt by those women whose state pension age was raised quicker than expected. Of course, the Government will need to consider John Cridland's analysis of the state pension age, emerging issues from the DB Green Paper, and the need to make progress on proposals for the Money Advice Service, not to mention the continuing combating of pension scams.

The Bill deals with a specific and technical issue and is important to protecting millions of savers and billions of pounds of savings, and we have sought to address it in these terms. One of the criticisms of the Bill is its heavy reliance on secondary legislation, although that has now been changed to affirmative on first use, as we have just heard. The aspiration, as we understand it—and the Minister may confirm—is for this process to be completed during 2018 to enable all the provisions to be commenced. Doubtless this timetable was contemplated without due regard to Brexit. What is clear now is that an enormous amount of legislation, mostly secondary, will be required to give effect across government to our exiting the EU. Can the Minister say what assessment has been made of the capacity of government—indeed, of Parliament—to cope with all of this? Will he undertake to publish a current timetable for implementation of the Pension Schemes Bill?

We support Amendments 1 and 20, which as we have heard deal with an unintended effect of the original drafting. It would have required the scheme

[Lord McKenzie of Luton]
funder's activities to relate only to the money purchase benefits aspect of each scheme that is a mixed-benefit scheme.

As the Minister has outlined, Amendments 3 and 4 deal with Clause 11 and the scheme funder requirements. This clause generated considerable debate in your Lordships' House and in the other place, as the Minister again acknowledged. This was not about challenging the policy, which quite properly seeks to ensure that the financial position of scheme funders and their financial arrangements with master trusts are transparent and clear to the regulator. The concern raised by a number of noble Lords as well as stakeholders was that the original requirement for separate legal entities and activities relating to just one master trust scheme were too restrictive, could force costly corporate restructuring and could detract from market opportunities to consolidate.

The remedy proposed is to allow the scheme funder to carry out activities that relate to more than one master trust and for the Secretary of State to have power to make regulations to except a scheme funder from the requirement that it must carry out only activities directly related to master trust schemes for which it is a scheme funder. The power can be used where a scheme funder meets additional requirements relating to its financial position, its arrangements with the master trust involved and its business activities. The regulations can also enable application by the relevant master trust scheme to seek to satisfy the regulator that the scheme is financially viable.

On the face of it, these amendments potentially enable concerns about shared services, FCA-regulated entities and consolidation opportunities to be addressed, but it would be helpful if the Minister put further flesh on the bones of how he sees these relaxations being used. As we expected, he has addressed the Delegated Powers and Regulatory Reform Committee's requiring a more convincing explanation of why these regulations should be subject to the affirmative procedure on first use—bearing in mind that this is the case in a number of places in the Bill. Subject to any final matter the Minister may raise, we are inclined to support these amendments as they demonstrate that the Government have been listening to the genuine concerns about what the original Clause 11 would have generated.

Lord Henley: My Lords, I am most grateful to the noble Lord, Lord McKenzie, for the constructive approach he has taken to this group of amendments. I hope that this will continue for the rest of this consideration of Commons amendments. He raised various points about Cridland and the state pension age, which go wider than the Bill at the moment. I will not respond to those points but he made an important point about the degree of secondary legislation that will come forward not purely from the Department for Work and Pensions but from across government—he meant later this year, I presume, and throughout next year. He wondered whether we hoped to get all of it completed by 2018. I believe that we do but it will obviously be quite a trying matter. We will want to continue to engage with the regulator, the pension industry and other stakeholders throughout the year. That will be followed by formal consultation on those draft regulations, which we currently hope to get early next year so that we can get them coming into force from 2018.

What pressure there will be on this House and another place from all the various primary and secondary legislation coming before us is probably beyond the noble Lord's pay grade, and certainly beyond mine. However, I am sure that the usual channels will discuss that and ensure that we give appropriate coverage to all these matters.

As to the detailed timetable of all that consultation with the regulator and pension stakeholders, the noble Lord asked for a table, but it might be helpful it I write him a short letter setting that out, if there is anything that I can add to what I have said. We aim to have those regulations coming into force from 2018, and nothing that I have seen so far seems to suggest that we will not be able to meet that. I think we can go ahead and agree these amendments. I hope the noble Lord will accept that.

Motion agreed.

Motion on Amendment 2

Moved by ***Lord Henley***

That this House do agree with the Commons in their Amendment 2.

2: Clause 9 leave out Clause 9

Lord Henley: My Lords, it will be convenient to take Amendments 5 to 19 at this stage. In the other place, Amendment 2 resulted in the removal of Clause 9, which had been inserted in this House after a vote on Report on an amendment tabled by the noble Baroness, Lady Drake. It provided for a scheme funder of last resort to meet costs where a master trust is being wound up without the necessary funds to transfer the accrued benefits. It remains the Government's view that this provision is simply not required. I do not want to go through all the arguments put forward by my noble friends Lord Young and Lord Freud who took this Bill through the vast majority of its stages late last year. The Bill requires that in order to operate, a master trust must be authorised. The authorisation criteria include that the master trust must be financially sustainable and have sufficient systems and processes for the running of the scheme. To meet the financial sustainability requirement, the scheme will, among other things, need to provide evidence to the Pensions Regulator that it has sufficient funds to meet the costs of wind up. It will also have to provide evidence that it has sufficient systems and processes, which will include its arrangements for holding accurate records on its members and the rights and benefits to which they are entitled. The Pensions Regulator will carry out ongoing supervision of master trusts. The schemes will be required periodically to provide the Pensions Regulator with information on its financial resources and administration to enable the Pensions Regulator to be satisfied that the funding remains adequate and the systems and processes robust. A scheme funder of last resort would therefore be required only if this whole approach to regulation fails in some catastrophic way. I have no reason to believe that it is likely to do so.

Amendments 5 to 19 concern the provisions in the Bill for a master trust that is going to wind up; they are intended to address concerns that were raised in earlier debates in this House that finding another master trust to take members on may be difficult. The amendments allow regulations to provide that master trusts that are to be wound up under continuity option 1 can transfer their members' accrued rights and benefits to a pension scheme other than a master trust. In addition, the same restrictions in the Bill on new or increased charges being applied to a master trust receiving scheme could be applied by regulations to that non-master trust receiving scheme.

In introducing these amendments in another place, my honourable friend the Minister for Pensions said:

"The non-master trust receiving scheme would be made subject to exactly the same restrictions on increasing or introducing new charges as those to which master trust receiving schemes are subject".—[*Official Report*, Commons, Pension Schemes Bill Committee, 7/2/17; col. 65.]

The amendments allow for regulations to be made that would widen the potential destinations to which members of a master trust being wound up can be transferred, while ensuring that their savings cannot be used to fund the costs of that transfer. In another place, my honourable friend the Minister for Pensions explained:

"Allowing other types of pension schemes to receive transferred members, as long as they meet specified requirements, could increase the options available to trustees, introduce extra flexibility and widen the market for potential schemes. This might be useful if trustees found that they were struggling to find somewhere appropriate for their members' rights, which might particularly benefit members using decumulation options. Being able to increase the options in future might help reduce the risk that trustees of failing master trusts might not be able to find another master trust to take their members on".—[*Official Report*, Commons, Pension Schemes Bill Committee, 7/2/17; col. 66.]

Amendments 5 to 19 are therefore primarily useful in future-proofing this aspect of the authorisation regime, and will be used as and when developments in the market give rise to a need for them. Not to include them in the Bill at this stage could unnecessarily restrict the market for members' rights and benefits to their detriment. I beg to move.

5.15 pm

Baroness Drake (Lab): My Lords, the Bill, in strengthening the regulation of master trusts, is indeed welcome. I noted that a recent release by the ONS on funded pensions and insurance in the UK national accounts referred to the significance of the establishment of DC master trusts, so in general there is increasing recognition of the importance of having fit-for-purpose regulation of master trusts. However, the government amendments in this group raise certain questions that I would like to put to the Minister.

Amendment 2 to Clause 9 simply deletes the provision for a funder of last resort. That is disappointing. Will the Minister update the House on what further action the Government have taken since the Bill was last considered by this House to address the protection of scheme member benefits in the event of a master trust winding up with insufficient resources to meet the cost of complying with and obligations under the Bill? The noble Lord, Lord Freud, implied that there was ongoing work and discussions with the industry, so it would be helpful to know what actions have been taken.

The other government amendments in this group, to Clauses 25 and 34, addressed the issue of allowing, in a wind-up on failure, the transfer of scheme members and their benefits to a receiving scheme that is not a master trust—for example, a group personal pension. While not wanting to disagree in principle with widening the pool of schemes to which transfers can be made, I think that that change to the Bill raises some questions. Given that the Pensions Regulator will be authorising a transfer to a scheme that has not been subject to the master trust authorisation regime, how will it satisfy itself that the receiving scheme on transfer is both sustainable and well governed?

The Bill provides under Clause 34 for a prohibition on increasing or imposing new charges on members by either the transferring or the receiving scheme in order to meet the cost of resolving failure. As a non-master trust receiving scheme will not have been subject to the authorisation regime and the continuity and implementation strategy requirements in the Bill, how will the Pensions Regulator apply the prohibition on increasing charges and police it after the transfer of members to a non-master trust, given that the receiving scheme will not be in its regulatory jurisdiction?

Government Amendment 13 provides for regulations to allow for transfers from a master trust to a contract-based scheme. Given that the transfer will be from a trust to a contract arrangement, do the Government consider that there are any special considerations that the regulations will need to address? If so, what are they?

Baroness Altmann (Con): My Lords, I welcome much of the thrust of the Bill. I am also delighted to see Amendments 3 and 4, which, I hope, ensure that insured master trusts will not be forced to separate from their insurance parent, which would have forced them to face higher costs and reduced the security of their members. I am very grateful to my noble friend for taking on board the comments made during the Bill's passage through this House.

It strikes me that Amendment 2 should be considered separately from those to which it has been joined. I reiterate my strong concern—notwithstanding the reassurances from my noble friend—about leaving out Clause 9. I understand that there is a view that it is unnecessary and that the new regime will ensure that master trusts have sufficient resources, are financially sustainable and have capital adequacy in place. However, even with new schemes and the best will in the world, capital adequacy tests may prove inadequate. No provision in the Bill would cover members of a very large pension scheme that suffered a catastrophic computer failure and lost member records. The cost of restoring that could be well above the capital adequacy put in place, and nothing in the Bill explains where the cost of restoring those records would be covered. The only place might be the members' pots themselves, which is not supposed to happen.

I vividly recall assurances given by Ministers on defined benefit schemes during the 1990s, when the minimum funding requirement was supposed to ensure

[Baroness Altmann]
that schemes would always have enough money to pay pensions. No one foresaw the problems evident in the early 2000s, when schemes that had met MFR legislation wound up and ended up without enough money to pay any money to some members on the pensions that they were owed.

Even more concerning than that is that the Bill is being introduced when 80 or so master trusts are already in existence in the market with a huge number of members across the country already saving in a pension. These trusts have not been subject to the capital adequacy test or other tests that the Bill will rightly introduce. What is the protection for members of existing schemes who are saving in good faith? They are not protected at all. That was why I was very pleased that we passed the amendment concerning the scheme funder of last resort. I echo the question of the noble Baroness, Lady Drake: what discussions have taken place with the industry to find a solution to cover the eventuality—we do not expect it and it is, I admit, a small probability—that an existing master trust winds up without enough funding to cover the costs of administration to sort out its records and transfer them over to another scheme? I should be grateful for some information from my noble friend about whether there are ongoing discussions and how the department sees that eventuality being covered: where would the money be found?

On Amendments 5 to 19, I share some of the reservations mentioned by the noble Baroness, Lady Drake, such as the regulatory disparity between a master trust, which would be regulated by the Pensions Regulator—and therefore under its control, if you like—and a master trust transferred under the amendments to a pension scheme regulated by the Financial Conduct Authority. How would the regulatory systems work together when they are under different legislation?

I have other concerns, but I may raise them under the next group.

Lord McKenzie of Luton: My Lords, let me start by expressing our regret that the requirement for there to be a funder of last resort—successfully pressed by my noble friend Lady Drake on Report—has been deleted from the Bill. That concern was also expressed by the noble Baroness, Lady Altmann. We of course accept that the whole purpose of the Bill—its protections, including capital adequacy, financial sustainability, systems requirements, scheme funder and transfer regime—is to secure people's pension pots, militate against scheme failure, and ensure good order when difficulties arise. But as my noble friend asserted on Report, notwithstanding this, it cannot be guaranteed that a master trust will not fail and when it does there will be an available master trust to step into the breach so that members' funds are protected. The noble Baroness, Lady Altmann, has just expressed similar concerns with vivid potential examples.

In seeking to resist the funder of last resort proposition, the noble Lord, Lord Freud, claimed that it would be costly and a disproportional response to the issue and with moral hazard implications—arguments deployed by the Parliamentary Under-Secretary of State for Pensions in the other place. We remain unconvinced of these arguments when put in the balance against the importance of protecting people's savings. Nevertheless, we need to examine how the Commons amendments to Clauses 25 and 34 contribute to ameliorating this risk, which at least potentially they do.

We acknowledge the amendments to Clauses 25 and 34 which potentially widen the scope of continuity option 1 and expand the prohibition on increasing administration charges or imposing new administration charges. In particular, they raise the prospect of the accrued rights and benefits under a master trust scheme being transferred to an alternative pension scheme which is not a master trust. No detail is offered in the amendment about the likely characteristics of an alternative pension, other than the fact that it must be a pension scheme under the 1993 Act. This of course will include both personal and occupational pension schemes. Regulations will spell out the circumstances when the alternative might be available, and the characteristics of an alternative scheme. Regulations will also spell out how such an option is to be pursued.

While we can see the benefits of a potentially wider pool of pension schemes which could be available in the event of a master trust failure, it begs a number of questions about how any alternative scheme would be regulated and what protection it would offer members. My noble friend Lady Drake, in particular, as ever has produced some forensic questions to seek at least some clarity on key issues: further actions and discussions that have taken place; whether a receiving alternative scheme is sustainable and well governed; how such a scheme can operate a prohibition on increasing charges and preventing members' funds from being accessed; and consideration of how bulk transfers would work. The noble Baroness, Lady Altmann, joined in the same sort of inquiry.

It remains to be seen how much these amendments provide a real opportunity to add a layer of protection and whether the market will offer up alternative schemes which can assist. We look forward to the Minister's reply, but we are not minded to oppose these amendments.

Lord Henley: I start by offering my thanks to the noble Lord for making it clear that he is not minded to oppose these amendments. I understand that noble Lords felt quite strongly about their amendments and for that reason wanted them in the Bill to be considered by another place. The other place has considered those amendments and we now have this opportunity for further debate. We can then get on with seeing the Bill on to the statute book.

Before dealing with the questions, I shall respond to the brief point made by my noble friend Lady Altmann about not being happy with the groupings. The groupings are a largely informal matter, sorted out by the usual channels. To my knowledge—and I think that it was probably done in discussion with the Opposition—they have changed a number of times, but that is not unusual. Very often we get it wrong in how things are grouped. But as is made clear on the bit of paper that comes to the House every day, groupings are an informal matter, and it is always open to all noble Lords to intervene on any appropriate amendment at the appropriate stage.

Lord McKenzie of Luton: I can confirm that it was me who suggested that Amendment 2 should be added to the list.

5.30 pm

Lord Henley: I am grateful to the noble Lord. It is a matter that is possibly more in the hands of the Opposition than those of anyone else—but it is also a matter for all other Members of the House to put in their views, if they wish. The groupings are designed purely to assist the House and, as the mantra makes clear, they are informal and can be broken by any noble Lord.

A number of questions were put forward by the noble Baroness, Lady Drake. Again, I commend her for all the work on this Bill; I am grateful that it was largely my noble friends Lord Young and Lord Freud who had to deal with her expertise at those earlier stages, rather than myself. I come to it late, and have learned a certain amount in the course of proceedings—and, no doubt, I shall learn more in due course, particularly when we get to the regulations referred to earlier.

I come to the first of the noble Baroness's questions, when she asked what further plans the department had for how things would be taken forward. My honourable friend the Minister for Pensions, who takes this Bill and all within it very seriously, referred in Committee to conversations that he had with representatives of certain pension funds who were then contemplating a system for allocation among themselves of any master trust that was going to wind up, if the market did not provide a proper destination. Those discussions will continue and, no doubt, my honourable friend, if he has any further points, will be able to speak to my noble friend Lady Altmann and others who have concerns.

My noble friend Lady Altmann was also worried about the confidence that we had that the risk of a master trust failing in a catastrophic manner is very low. I would still maintain that, and I think so would my honourable friend. The Pensions Regulator has been working very closely with the master trusts, and the work certainly gives us all in the department the comfort that the risk is low. The regulator continues to proactively assess the level of risk in the master trust market, and so will be alert to any changes. We hope that the regulator will publish information, including on confidence in the levels available in due course.

The noble Baroness, Lady Drake, also raised the question of how the Government will be satisfied that the receiving scheme is sustainable and well governed. Any receiving scheme would have to be regulated by the appropriate regulator; all the occupational schemes will be overseen by the Pensions Regulator and all the contract schemes will be regulated by the FCA. We hope that that will provide the appropriate coverage.

Finally, the noble Baroness asked about the Pensions Regulator and how it would apply the prohibition. The Bill provides the power to legislate on restrictions on charges in non-master trust receiving schemes. How those restrictions on charges would operate where the receiving scheme was not regulated by the Pensions Regulator would form part of future discussions if these regulations were considered to be necessary. For instance, if the scheme was regulated by the FCA, there would be discussions with the FCA about how to achieve this.

As the regulator of the exiting scheme, the Pensions Regulator would have responsibility and oversight over this scheme's actions. The master trust pursuing continuity option 1 will have to set out in its implementation strategy which scheme it intends to use as its receiving scheme. The exiting master trust will have its implementation strategy approved by the Pensions Regulator, which also has the power to direct the trustees of the exiting master trust where they are failing to comply with their duties under the Bill. While the Pensions Regulator may not be the regulator of the receiving scheme, it will have oversight and powers it can use in that situation.

I hope that that deals largely with most of the questions. If there is anything I have failed to address, obviously, I will write. However, there will be further opportunities as we consult on those regulations over the coming year and next year to deal with these matters. Again, I give the assurance that my honourable friend the Minister for Pensions, as well as my right honourable friend the Secretary of State, will keep all this in mind and will be open to all comments that noble Lords wish to make.

Motion agreed.

Motion on Amendments 3 to 20

Moved by ***Lord Henley***

That this House do agree with the Commons in their Amendments 3 to 20.

3: Clause 11, page 7, line 7, leave out subsections (2) and (3) and insert—

"(2) The first requirement is that the scheme funder is a body corporate or a partnership that is a legal person under the law by which it governed.

(3) The second requirement is that the scheme funder only carries out activities that relate directly to Master Trust schemes in relation to which it is a scheme funder or prospective scheme funder.

(3A) The Secretary of State may make regulations providing for exceptions from the second requirement.

(3B) The regulations may include provision excepting a scheme funder from the second requirement—

(a) where the scheme funder meets additional requirements specified in the regulations (such as requirements relating to a scheme funder's financial position, its financial arrangements with the Master Trust scheme in question or its business activities);

(b) where the scheme funder applies to the Regulator and provides the Regulator with information specified in the regulations, or such other information as the Regulator may require in order to satisfy the Regulator that the Master Trust scheme is financially sustainable."

4: Clause 11, page 7, line 20, leave out subsection (6) and insert—

"( ) The first regulations that are made under subsection (3A) are subject to affirmative resolution procedure.

( ) Any subsequent regulations under subsection (3A), and regulations under subsection (4), are subject to negative resolution procedure."

5: Clause 25, page 17, line 21, leave out "Master Trust" and insert "pension"

6: Clause 25, page 17, line 23, leave out "subsection" and insert "subsections (1A)(b) and"

7: Clause 25, page 17, line 24, after "the" insert "Master Trust"

8: Clause 25, page 17, line 27, at end insert—

"(1A) Each pension scheme proposed under subsection (1)(a) must be—

(a) a Master Trust scheme, or

(b) in such circumstances as may be specified in regulations made by the Secretary of State, a pension scheme that has characteristics specified in regulations made by the Secretary of State ("an alternative scheme")."

9: Clause 25, page 17, line 28, leave out "The notification" insert "Notification under subsection

(1)(b)"

10: Clause 25, page 17, line 33, leave out subsection (3) and insert—

"(3) The Secretary of State—

(a) must make regulations about how continuity option 1 is to be pursued, in a case where a proposed transfer is to a Master Trust scheme;

(b) may make regulations about how continuity option 1 is to be pursued, in a case where a proposed transfer is to an alternative scheme;

(c) may make regulations for the purpose of otherwise giving effect to continuity option 1, in either case."

11: Clause 25, page 18, line 29, leave out "receiving"

12: Clause 25, page 18, line 37, at end insert—

"(4A) Regulations under subsection (3)(b) may include—

(a) any provision mentioned in subsection (4);

(b) provision deeming any member whose accrued rights or benefits are to be transferred to an alternative scheme to have entered into an agreement with a person of a description specified in the regulations."

13: Clause 25, page 18, line 46, leave out "subsection" and insert "subsections (1A)(b) and"

14: Clause 34, page 23, line 41, after "scheme" insert "that is a Master Trust scheme"

15: Clause 34, page 24, line 16, at end insert—

"(5A) The Secretary of State may by regulations apply some or all of the provisions of this section to a receiving scheme that has characteristics specified in regulations under section 25(1A)(b)."

16: Clause 34, page 24, line 20, leave out "Master Trust" and insert "pension"

17: Clause 34, page 24, line 28, at end insert—

"(7A) Regulations under subsection (5A) are subject to affirmative resolution procedure."

18: Clause 34, page 24, line 29, at beginning insert "Other"

19: Clause 40, page 28, line 15, at end insert—

""pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act 1993;"

20: Clause 40, page 28, line 35, at end insert—

"(2A) The reference in section 11(3) to activities that relate directly to Master Trust schemes is, in its application to a Master Trust scheme which provides money purchase benefits in conjunction with other benefits, to be read as a reference to activities that relate directly to the scheme as a whole."

Motion agreed.

Motion on Amendment 21

Moved by ***Lord Henley***

That this House do agree with the Commons in their Amendment 21.

21: Clause 46, page 31, line 3, leave out subsection (2)

Baroness Altmann: My Lords, before the Bill passes through, I will make a couple of observations. Perhaps the Minister, who will not have the answers now, might write to me to allay some of my concerns that I will put on the record about the Bill.

The first regards net pay schemes being used for auto-enrolment as master trusts for low earners, who cannot get tax relief so they end up paying 25% more for their pensions. These low earners, who are probably mostly women, are the ones who surely most need extra money yet are unable to receive it. There is nothing in the master trust framework that will require employers to ensure that low earners are not enrolled into such schemes. Indeed, one pension scheme—NOW: Pensions—is reimbursing members for the tax relief they have lost, which is fine; they are not out of pocket.

The second issue on which my noble friend might be able to write to me is that I remain concerned that during a pause order, members may in fact lose entirely their entitlement to an auto-enrolment pension building up for them—for an indefinite period, because we do not know how long the pause order can last.

Lord Henley: My Lords, I am not sure that I have ever spoken on a privilege amendment before, but I have noted what my noble friend had to say and I promise to write to her. I beg to move.

Motion agreed.

Digital Economy Bill

Third Reading

5.39 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Digital Economy Bill, have consented to place their interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Clause 3: Bill limits for mobile phone contracts

Amendment 1

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

1: Clause 3, page 3, line 26, leave out "switch" and insert "roam"

Lord Stevenson of Balmacara (Lab): My Lords, this is a technical amendment in the sense that it seeks to correct an error which seems to have been made

inadvertently in the run-up to Report. As a result—for no particular purpose, these things just happen—Clause 3(1)(b) states,

"allow the end-user to switch (at no extra charge) to another provider",

whereas it should state,

"allow the end-user to roam (at no extra charge) to another provider".

Those noble Lords who are not conversant with the Bill may find these words rather strange and may feel that we are making a mountain out of a molehill. However, I assure the House that this is a significant change. The issue that we are trying to address—and the reason that I am spending a little time on this, although it is a technical amendment, and I know that the Minister would like to make a few remarks in response—is that there are in this country, despite the considerable investment, care and concern of those responsible for the infrastructure, a large number of what are called not-spots. These are places within which one's mobile phone dies and one is unable to access anything, let alone the emergency services. The reasons for this are probably more complex than I need to go into at this stage, but in essence our amendment seeks to suggest that in areas of not-spots—not across the whole country—it might be feasible for those who have mobile phones with one provider to hook on to the signal provided by another, which would provide the roaming commonly found when one goes abroad but not in the UK. The counter-argument I am sure we will hear from the Minister is that this would interfere with the current arrangements for good competition which will drive forward much better and quicker coverage of the whole country, and that therefore our proposal is the wrong way to go. However, we beg to differ.

The wording of our previous amendment may have been deficient but, given the brilliant arguments put forward by my noble friend Lord Mendelsohn and our colleague on the Liberal Benches, the noble Lord, Lord Fox, we won a vote on this issue. We therefore seek to change "switch" to "roam", as I said. I hope this will be accepted as a technical change and that the Government will accept the amendment. However, I have just been alerted to the possibility that the current wording may still be deficient and may require further action following Third Reading. Having had a quick word with the clerks, I am pretty confident that a simple cross-referencing issue is involved, and that that can be picked up as we go forward. However, we may have to return to that if we have ping-pong on the Bill. I beg to move.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I have just been informed by my noble and learned friend that all amendments lead to Rome. We accept that a genuine mistake was made in tabling the original amendment. Therefore, we will accept this amendment today. However, the Government have set out the arguments against requiring network operators to offer domestic roaming before, and I will try to be clearer this time as we did not have the opportunity to address those on Report. I will try to be brief.

First, domestic roaming is not mandated but it is not prohibited. Mobile networks could voluntarily enter into agreements with each other but they do not because it is costly and prevents them differentiating from competitors on the basis of coverage. As the noble Lord, Lord Stevenson, reminded us, the noble Lord, Lord Mendelsohn, told us on Report about the benefits he receives from his chosen provider, which permits roaming. This is, of course, a provider based outside the UK and the EU. However, he did not highlight the cost of that. The advertised price is £100 for one gigabyte of data and voice calls are £100 for 1,000 minutes, which is 10 times more expensive than the going rate for a standard domestic contract. That premium arises because operators have to pay other operators network access charges. Networks should be entitled to recover the cost of their investment. If one relies on another to provide coverage, it is only reasonable that fees should be paid, and those fees are of course passed on to the consumer.

Secondly, as the noble Lord, Lord Stevenson, anticipated, there is the question of the impact on investment. Our strategy has been to grow investment in infrastructure, and that has worked. It has locked in £5 billion of investment since 2014. Some 89% of UK premises are now covered by all four operators, and that percentage is growing. More importantly, this investment is closing not-spots. Ofcom forecasts that by the end of this year the number of not-spots will have more than halved since 2014. Roaming might make it easier for some people where only a single operator exists, subject to cost, but it does not do anything for those in not-spots. Extending coverage remains our priority and that needs investment.

5.45 pm

Thirdly, if roaming were the silver bullet, why has it not been done in comparable markets? This approach has not been adopted elsewhere in Europe. The only exception is France, where there was an attempt to kick-start a new market entrant, but now, even there, the regulator is phasing out roaming. The few countries with domestic roaming—New Zealand, Canada and India, for example—have mobile markets and geographical challenges that do not make them comparable to the UK.

Fourthly, we agree that there is no need for every corner of the country to be covered by four masts. Sharing apparatus can be achieved without roaming. The new electronic communications code, in this Bill, is an enabler of more sharing, and noble Lords will have seen the support we have received from the wholesale infrastructure providers, which lead the way in this kind of sharing. However, other sharing is also being pursued, including the open access to Openreach's ducts and poles, and Ofcom will soon be consulting on that.

Finally, the amendment is focused on allowing the opportunity to roam where services fall below standard. We are not clear what standards the amendment tries to refer to but consumers have other protections and remedies available to them: they may be subject to statutory cooling-off periods on new contracts; they may have other contractual rights; and, thanks to this Bill, they may be able to switch or to qualify for automatic compensation.

[Lord Ashton of Hyde]

The Government will now consider further Clause 3, as amended by this amendment, when it returns to the other place. In the meantime, as I said, we accept Amendment 1 in the names of the noble Lords, Lord Stevenson and Lord Fox.

Lord Stevenson of Balmacara: I am very grateful to the Minister for that response. I sense that we may be seeing this issue again, so I will not delay the House further. I just want to put on the record that, if there has been a reduction in the number of not-spots, it must have taken place in every conceivable part of the United Kingdom apart from the ones I travel to, because I have not noticed anything.

Amendment 1 agreed.

Clause 10: Statement of strategic priorities

Amendment 2

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

2: Clause 10, leave out Clause 10

Lord Ashton of Hyde: My Lords, this is a group of technical amendments to ensure that the legislation is as clear and consistent as possible.

Amendment 2 removes Clause 10, which creates a new power for the Secretary of State to set a statement of strategic priorities relating to the management of radio spectrum. On Report, Clause 104 was introduced, expanding this power to cover telecommunications and postal services, in addition to the management of radio spectrum. The introduction of this new provision means that Clause 10 is no longer necessary. I promised on Report to introduce this amendment at Third Reading.

Amendments 3 to 8 relate to the measures for age verification for online pornography. Amendments 3 and 6 remove clarificatory wording on,

"a means of accessing the internet",

from Clause 16 and put it in Clause 23. Due to an earlier amendment, that phrase is no longer used in Clause 16 but it is still used in Clause 23, so the definition is moved to Clause 23.

Amendment 4 is one for aficionados of parliamentary drafting. It ensures that the Bill is consistent by aligning the wording of Clause 19(7)(a), which refers to,

"the House of Commons and the House of Lords",

with the wording of Clause 27(13)(a), which refers to "each House of Parliament". I think we will all sleep easier at night if that is consistent.

Amendment 5 clarifies that the regulator's power to require information can be from internet service providers and any other person that the age-verification regulator believes to be involved, or to have been involved, in making pornographic material available on the internet on a commercial basis to persons in the United Kingdom.

Amendments 7 and 8 amend the definition of "video works authority" for the purposes of Clause 24, so that this includes the authority designated in respect of video games. This follows the approach to the extreme pornographic material provisions of the Criminal Justice and Immigration Act 2008.

Amendment 9 removes the provision for transitional, transitory and saving provisions in relation to the repeal of Section 73 of the Copyright, Designs and Patents Act 1988. This is a technical drafting amendment to ensure consistency between this clause and Clause 122 on commencement. I can confirm again to the House that Section 73 will be repealed without a transition period and that the Government will commence repeal without delay.

Turning to Amendment 12, I am very grateful to the noble Baroness, Lady Drake, for drawing my attention on Report to the need for complete clarity as to whom the Government are referring in the undertaking to be transferred from BT plc to a future Openreach Ltd. I accepted that a clear definition of the term "undertaking" was necessary and offered to come back with a government amendment at Third Reading to address this issue. Government Amendment 12 does this, making it clear that we define the term "undertaking" to include anything that may be the subject of a transfer or service provision change, whether or not the Transfer of Undertakings (Protection of Employment) Regulations —TUPE—apply. The intention is that all employees currently benefiting from the Crown guarantee will continue to do so if they transfer to Openreach Ltd. The Government consulted on the wording in advance of laying this technical amendment. I am grateful to the noble Baroness for assisting us, and to both BT plc and the trustee for confirming that this definition was satisfactory.

Amendments 13 to 17 relate to the Electronic Communications Code. Under the new code, an owner or occupier whose access to their land is obstructed by electronic communications apparatus without their agreement has the right to require the removal of that apparatus. Amendments 13 and 14 make it clear that this right arises only where the apparatus itself interferes with access, as opposed, for example, to a temporary obstruction by a vehicle.

Amendments 15, 16 and 17 merely correct minor omissions and referencing errors. I beg to move.

Baroness Howe of Idlicote (CB): My Lords, I welcome these tidying-up amendments. I want to take the opportunity provided by this Third Reading debate to congratulate the Government once again on taking action to protect children from pornography on the internet through age verification. I shall be watching the implementation of Part 3 of the Bill closely. I would like also to put on record my thanks to the Minister for meeting with me to discuss adult content filters. I am very grateful also to noble Lords who supported my amendment at an earlier stage, highlighting the need to get a better understanding of the adult-content filtering approaches adopted by smaller ISPs that service homes with children: the noble Lords, Lord Collins of Highbury and Lord McColl of Dulwich, and the noble Baroness, Lady Benjamin.

Turning to the future, I am very much looking forward to the discussions on the Government's Green Paper on internet safety and to their response to the

Communications Committee's report, *Growing up with the Internet*. Part 3 of this Bill is not the end of the story on children and internet safety.

Despite many positives, in comparing and contrasting the Bill that entered your Lordships' House with the Bill as it now leaves, my response is one of sadness. The underlying principle of parity of content has been removed and the Bill is, in this respect, unquestionably weaker as a result.

In the first instance, the Bill entered your Lordships' House properly applying the same adult content standard online as applied offline. It leaves your Lordships' House saying that most material that the law does not accommodate for adults offline will be accommodated online behind age verification. Only the most violent pornography—that which is life-threatening or likely to result in severe injury to breast, anus and genitals—will be caught. Injury or severe injury to other parts of the body appear to be fine as long as they are not life-threatening. As the Bill leaves us, the message goes out loud and clear that violence against women—unless it is "grotesque", to quote what the Minister said on Report—is, in some senses, acceptable.

In the second instance, the Bill entered your Lordships' House properly applying the standard of zero tolerance to child sex abuse images, including non-photographic and animated child sex abuse images. Today it leaves your Lordship's House with the relevant powers of the regulator deleted so that it can no longer take enforcement action against animated child sex abuse images that fall under the Coroners and Justice Act 2009. As such, the Bill goes out from us today proclaiming that non-photographic images of child sex abuse, including animated images, are worthy of accommodation as long as they are behind age verification.

As agreed, Third Reading is a time for tidying up. However, Part 3 of the Bill clearly requires further amendment so that the message can go out once again—as it did in the other place—that there is no place for normalising violence against women and no place for accommodating any form of child sex abuse. I hope that the other place will now rise to that challenge.

Lord Clement-Jones (LD): My Lords, I do not wish to detain the House unduly on these amendments. I welcome, in particular, Amendment 9 as it is the fulfilment of a pledge made by the Minister on Report. I am delighted that Section 73 of the Copyright, Designs and Patents Act will be no more as soon as the Bill comes into effect. I am delighted that the Minister has fulfilled his undertaking.

Baroness Drake (Lab): My Lords, I, too, thank the noble Lord, Lord Ashton, for tabling Amendment 12, which gives greater clarity to the BT and Openreach employees covered by the provisions of Clause 119. The Government have also made clear their intention to engage fully with the BT pension scheme trustee and for that I am also grateful. I hope their discussions go well.

Lord Ashton of Hyde: My Lords, I am grateful for those comments. I take the point of the noble Baroness, Lady Howe, that there is still work to do. As she mentioned, the internet safety strategy Green Paper will be with us in June.

Amendment 2 agreed.

Clause 16: Internet pornography: requirement to prevent access by persons under the age of 18

Amendment 3

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

3: Clause 16, page 20, line 1, leave out paragraph (b)

Amendment 3 agreed.

Clause 19: Parliamentary procedure for designation of age-verification regulator

Amendment 4

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

4: Clause 19, page 23, line 10, leave out "the House of Commons and the House of Lords" and insert "each House of Parliament"

Amendment 4 agreed.

Clause 20: Age-verification regulator's power to require information

Amendment 5

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

5: Clause 20, page 23, line 26, leave out "a" and insert "any other"

Amendment 5 agreed.

Clause 23: Age-verification regulator's power to give notice of contravention to payment-services providers and ancillary service providers

Amendment 6

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

6: Clause 23, page 26, line 42, at end insert—

"(6) For the purposes of subsection (5)(b), a means of accessing the internet does not include a device or other equipment for doing so."

Amendment 6 agreed.

Clause 24: Meaning of "extreme pornographic material"

Amendments 7 and 8

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

7: Clause 24, page 27, line 17, leave out "the" and insert "a"

8: Clause 24, page 27, leave out line 21 and insert—

""video works authority" means a person designated under section 4(1) of the Video Recordings Act 1984;"

Amendments 7 and 8 agreed.

Clause 37: Copyright etc where broadcast retransmitted by cable

Amendment 9

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

9: Clause 37, page 36, line 8, leave out subsections (3) to (5)

Amendment 9 agreed.

Clause 113: Functions relating to regulations under section 112

Amendment 10

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

10: Clause 113, page 124, line 3, at end insert—

"( ) such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate, and

( ) such other persons as the Secretary of State thinks appropriate."

Lord Ashton of Hyde: My Lords, the Government's Amendments 10 and 11 acknowledge the DPRRC's recommendations in relation to improved safeguards for the proposed charging regulations for the Information Commissioner. I committed to making these amendments on Report.

Amendment 10 will make it a requirement for the Secretary of State to consult,

"such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate, and … such other persons as the Secretary of State thinks appropriate".

Amendment 11 will make it a requirement for the Secretary of State to use the affirmative procedure when making regulations under the new charging power, except for in cases of inflation increases, when the negative procedure will apply.

6 pm

On Report, the noble Lords, Lord Collins and Lord Clement-Jones, sought assurances that the proposed ICO charging power clauses could not be used by the Secretary of State to set charges that allow for the over-recovery of costs to fund functions that are not currently in the ICO's remit. ICO charges are set on a cost recovery basis and will continue to be set on that basis. I want to make it clear that the Government have no intention of setting charges that exceed the costs needed by the ICO to carry out its data protection responsibilities. As noble Lords will know, the £35 annual fee charged to 90% of data controllers by the ICO has not risen since 2001 and the £500 fee charged to large data controllers has not risen since 2009. Throughout the negotiations on the EU general data protection regulation, the Government fought hard to minimise the burdens on business while protecting the privacy rights of individuals. The Government will continue to seek to minimise the burden on business by setting fees that recover only the costs which are necessary for the ICO to run an effective data protection regulatory regime fit for the challenges of the 21st century digital economy.

On the issue of function creep, I would like to reassure noble Lords that Clause 113 (2)(a) clearly sets out the functions for which the Secretary of State can make regulations to raise charges for the ICO. If in the future the Government wish to raise charges to fund additional functions not listed in Clause 113, should that be appropriate, the Government would need to amend subsection (2)(a) by primary legislation.

Finally, I hope that it will reassure noble Lords to learn that the clauses will now contain a number of additional safeguards against excessive charging. These include a requirement to consult the ICO and representatives of data controllers before bringing forward regulations to set or amend fees; a requirement for the Secretary of State to review the fees every five years to ensure that they are still relevant and proportionate, and a requirement for the Secretary of State to use the affirmative procedure when making regulations under the new power except in the case of inflation increases, when the negative procedure will apply. I beg to move.

Lord Clement-Jones: My Lords, I thank the Minister for his introduction to Amendment 10. This amendment may not be the full loaf, but it certainly is three-quarters of a loaf in terms of an assurance on the two matters which gave us concern, the first of which was the extent to which the charges might exceed the costs incurred by the ICO. The Minister's assurance is very helpful in terms of the operation of Clause 113, as is his assurance on mission creep, which is something that the noble Lord, Lord Collins, was particularly concerned about. Again, I am grateful to the Minister for his two assurances.

Lord Collins of Highbury (Lab): My Lords, I too am grateful for the assurances that the Minister has given us and I thank the Delegated Powers Committee for its excellent report which drew specific attention to this issue. The committee's concern was not without evidence and it gave an example in relation to probate—I notice that the noble and learned Lord, Lord Keen, is in his place—so it is an issue that was very much in people's minds when considering this part of the Bill. However, the assurances given by the Minister are clear and concise. We have protections in terms of parliamentary scrutiny, in particular in relation to the element of function creep where there is a requirement for primary legislation. I welcome and support the amendment.

Amendment 10 agreed.

Clause 114: Supplementary provision relating to section 112

Amendment 11

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

11: Clause 114, page 125, line 6, leave out subsection (2) and insert—

"(2) A statutory instrument containing regulations under section 112(1) or (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(2A) Subsection (2) does not apply to a statutory instrument containing regulations which—

(a) only make provision increasing a charge for which provision is made by previous regulations under section 112(1), and

(b) do so to take account of an increase in the retail prices index since the previous regulations were made.

(2B) Such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

(2C) In subsection (2A) "the retail prices index" means—

(a) the general index of retail prices (for all items) published by the Statistics Board, or

(b) where that index is not published for a month, any substituted index or figures published by the Board."

Amendment 11 agreed.

Clause 119: Guarantee of pension liabilities under Telecommunications Act 1984

Amendment 12

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

12: Clause 119, page 128, line 42, at end insert—

""undertaking" includes anything that may be the subject of a transfer or service provision change, whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply."

Amendment 12 agreed.

Schedule 1: The electronic communications code

Amendments 13 to 15

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

13: Schedule 1, page 153, line 42, leave out "on, under or over other land" and insert "kept on, under or over other land in exercise of a right mentioned in paragraph 13(1),"

14: Schedule 1, page 153, line 44, leave out from second "the" to "interferes" in line 45 and insert "apparatus"

15: Schedule 1, page 180, line 22, leave out "of the land on which the tree is growing"

Amendments 13 to 15 agreed.

Schedule 2: The electronic communications code: transitional provision

Amendments 16 and 17

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

16: Schedule 2, page 194, line 24, leave out "12" and insert "14"

17: Schedule 2, page 195, line 22, leave out from "any" to end of line 27 and insert "application or order made under paragraph 6 of the existing code."

Amendments 16 and 17 agreed.

6.04 pm

Motion

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

That the Bill do now pass.

Lord Ashton of Hyde: My Lords, in moving this Motion, I express grateful thanks to all noble Lords who have contributed to the Bill's passage and shared their knowledge on the wide variety of subjects covered by it. It seems a long time since December, when we referred to Christmas tree Bills. As we now approach Easter, I express my gratitude to both Opposition Front Benches for their openness and co-operation, especially to the two ringmasters, if I may call them that, the noble Lords, Lord Stevenson and Lord Clement-Jones, but also to the other noble Lords: the noble Baronesses, Lady Jones, Lady Bonham-Carter and Lady Hamwee, and the noble Lords, Lord Mendelsohn, Lord Collins, Lord Grantchester, Lord Wood, Lord Foster, Lord Fox and Lord Paddick, all of whom have led on various parts of the Bill. I am very grateful to them.

Most importantly, I pay tribute to and thank Andrew Elliot, Patrick Whitehead and all the other members of the Bill team, and to my private office, Matt Hiorns and Martha London, who have shown tremendous resilience, patience and humour over the last four months while the Bill was in this House. I am very grateful to all of them. I beg to move.

Lord Stevenson of Balmacara: My Lords, a few years ago I used to complain to my colleagues that I had drawn a short straw in the sense that many of my other colleagues were in departments that were constantly dealing with meaty legislation, while we shadowing the DCMS had to make do with the occasional debate and even sometimes a rather thin Question, usually organised by the indefatigable noble Earl, Lord Clancarty, from the Cross Benches. Is it a coincidence, I asked myself, that since the Minister took over the brief we have had not only the BBC royal charter to deal with, but three and a half Bills? The half was the Law Commission's Intellectual Property (Unjustified Threats) Bill, which was a bit of a mixed bag between the DCMS and BEIS. It was really introduced under the last regime, but we have had to keep a close watching eye on it and on the other place, even though it was a Law Commission Bill. It is of course exhilarating to be at the very heart of public policy-making and it has been great fun, but it is also absolutely exhausting.

At pride of place in this canon of interesting Bills is the Digital Economy Bill. As the Minister said, it has generated a considerable amount of interest across the House. With its many disparate parts, it allowed the House to play a very full and important role as it scrutinised every clause and virtually every line, as it should. It is what we do and we do it well.

I thank the Minister, the noble Baroness, Lady Buscombe, and the noble and learned Lord, Lord Keen, for their very full participation in the Bill. They were engaged on all the issues. We were able to get hearings and discussions with them when we wanted them. I am only sorry that they had to stand down the Deputy Leader of the House on one amendment that was not moved. I am sure that he would have added considerably to the debate and given us a full hand of stars. The tone throughout has been one of unfailing courtesy. While the willingness to write to us on matters of detail was not up to the high standards set by the noble Viscount, Lord Younger, who is in his place—how

[Lord Stevenson of Balmacara]
could it be?—it is much appreciated. We also appreciated the direct involvement of the Minister in the other place, particularly on Part 3.

I believe the House should be willing to put on record exemplary service when it comes across it. I award this year's prize for Bill support, if there is any justice in this world, to the Digital Economy Bill team, whose opening gambit of a neatly bound and very substantial pack of all the documents you could possibly want set the gold standard for work of this type. They were very helpful in letting us know what was going on, even when I suspect they would have rather remained silent. We appreciate that they were always willing to organise meetings, even on occasion tracking down Ministers who had gone AWOL.

My Front Bench team has been superb. I am very grateful to my noble friend Lady Jones of Whitchurch, who led on the difficult and ongoing work to do with age verification. My noble friend Lord Collins of Highbury relished the chance to lead on an issue—horseracing—unrelated to his usual stomping grounds, and coined the phrase "function creep", which I am sure will be adorning your Lordships' debates in years to come. My noble friend Lord Grantchester led on the rather dull, but it turns out rather rewarding, area of the electronic communications accord, which paid dividends in a number of amendments that we were able to secure. My noble friend Lord Mendelsohn, who I am sorry is not with us today, dealt very capably with the USO and related issues. My noble friend Lord Wood helped us with the amendments consequent on the BBC charter renewal.

Our legislative assistant, Nicola Jayawickreme, has been a class act and has kept us going with the background material so necessary for effective observation as well as dealing with the Public Bill Office and drafting so many amendments, even one on the day her flat was flooded and she had to move out all her belongings.

As I approach the end of my active Front-Bench responsibilities in your Lordships' House, working on this Bill will be one of the memories I most cherish.

Lord Ashton of Hyde: My Lords, I should feel awful, but I neglected to mention my noble friend Lady Buscombe and my noble and learned friend Lord Keen, who helped enormously. I had written it down on my notes, but, as usual, I did not pay any attention to them. I want to pay tribute to them and thank them very much.

Lord Clement-Jones: My Lords, I am sure that they would have been mentioned fulsomely by other Benches as well. I have not laboured in the vineyard quite as much as the noble Lord, Lord Stevenson. I have not had multiple Bills simultaneously to deal with—and one can only admire that kind of stamina—but, still, the passing of this Bill carries a sense of relief given the variety of subject matter that we have had to deal with during the past few months. The Minister said that it was from Christmas to Easter; these Bills are seasonal in their nature.

We certainly have not achieved everything that we wanted, but I believe that the Bill is leaving this House in much better shape than that in which it arrived. As the noble Lord, Lord Stevenson, implied, it is certainly a very meaty Bill. It is also a disparate Bill, covering a huge range of issues most of which are unified only by the word "digital". That was quite a challenge for all those who were trying to cover the whole subject matter of the Bill.

I want to thank my own colleagues, particularly my noble friends Lord Paddick, Lord Fox, Lord Foster, Lord Lester, Lord Storey, Lord Addington, Lady Bonham-Carter, Lady Hamwee, Lady Janke, Lady Benjamin and Lady Grender. I thank our adviser team, particularly Elizabeth Plummer, Rosie Shimell and Vinous Ali. I want also to thank the Opposition Front Bench—the indefatigable noble Lord, Lord Stevenson, the noble Baroness, Lady Jones, and the noble Lords, Lord Collins, Lord Wood and Lord Grantchester—for their collaborative approach. Of course, I thank many others on the Cross Benches, including the noble Lord, Lord Best, with his successful amendment, the noble Viscount, Lord Colville, and the noble Baroness, Lady Howe—indefatigable is too small a word for her.

Lord Stevenson of Balmacara: Indestructible.

Lord Clement-Jones: "Indestructible" is suggested to me by the Opposition Front Bench.

Finally and very sincerely, I thank the noble Lord, Lord Ashton, the noble and learned Lord, Lord Keen, the noble Baroness, Lady Buscombe, and the Bill team. I echo what the noble Lord, Lord Stevenson, had to say about the Bill team for their willingness to engage constructively, explain, amend and give what assurances they could throughout the passage of the Bill. We welcomed considerable movement during that time: changes in definition of "extreme pornographic material", appeals on site blocking, the incorporation of many of the DPRRC amendments and new Ofcom powers—my noble friend Lady Benjamin is not in her place; she is probably celebrating somewhere the fact that Ofcom has new powers in respect of children's programmes. There were amendments on remote e-book lending and listed events—the list goes on, which demonstrates that the Government were listening.

Of course, we anticipate ping-pong with great delight. I think that some six amendments to the Bill were passed. I hope that the Government will give consideration to them and not just bat them back to this House. They were all carefully thought through. I hope that we will see some changes as a result of those amendments in this House.

Of course, we did not get everything on our shopping list as the Bill went through. On Ofcom appeals, the noble and learned Lord, Lord Keen, stood fast on Clause 85. I hope that in the future we might find some change on compulsory anonymisation for age verification, and I think that IPTV is something that may come back to haunt us. I hope that the consultation will demonstrate the absolute need for amendments in the future. I am sure that my noble friend Lord Lester will also be returning by popular demand to the question of the statutory underpinning of the BBC charter. In the meantime, I thank the Minister and look forward to the passing of the Bill.

The Earl of Erroll (CB): My Lords, I add my great thanks to the Minister, on behalf of all the people I was talking to, for his intelligent and sensitive handling of the rather difficult, tortuous, twisting turns which were confusing what we saw as the perceived prime purpose of Part 3. I think we got there and have something that is going to be workable. I just hope that the regulator, when it gets operational, will find that what is coming out of the British Standards Institution PAS 1296 will be helpful in trying to make sure that age verification works in protecting children from accessing all the adult content online, which was the only bit that I was dealing with. Thank you very much indeed.

Lord Lester of Herne Hill (LD): My Lords, I suspect that this is au revoir and not adieu to the Bill, if one is still allowed to use French in this House. I thank the Minister for putting up with endless conversations with me about statutory underpinning or something instead. I thank him for arranging for me to see the Culture Secretary, which I look forward to doing if she is free to do so before the Bill comes back. I make it clear that I am agnostic about how to achieve the protection of the BBC's independence and viability—whether in the charter, in statutory underpinning or in undertakings given by Ministers. My difficulty at the moment is that we have still not had those undertakings, but I look forward to future debates.

Bill passed and returned to the Commons with amendments.

Higher Education: Loans

Motion to Regret

6.17 pm

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

That this House regrets that the Higher Education (Basic Amount) (England) Regulations 2016 and the Higher Education (Higher Amount) (England) Regulations 2016 together with retrospectively changed loan conditions for existing students are further incremental burdens on students that risk worsening the opportunities for young people from low-income backgrounds, mature students and those undertaking part-time courses; and calls on Her Majesty's Government to report annually to Parliament on the impact on the economy of the increasing quantum of graduate debt, estimates of payback rates, and the estimate of the annual cost to the Exchequer of the present system.

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee

Lord Stevenson of Balmacara (Lab): My Lords, I declare a previous interest in that some time ago I worked in what is now Edinburgh Napier University. My wife is a governor of a university in London and I have two children, believe it or not, currently studying at British universities and one who graduated two years ago.

The Higher Education (Basic Amount) (England) Regulations 2016 and the Higher Education (Higher Amount) (England) Regulations 2016 set variable limits on the maximum fees that publicly funded English higher education institutions can charge students. They are negative instruments and the time for praying against them has long passed. However, in its 21st report, the Secondary Legislation Scrutiny Committee drew these instruments to the special attention of the House,

"on the ground that they give rise to issues of public policy likely to be of interest to the House".

I am taking up that challenge. Despite the fact that we spent something like four months looking at the Higher Education and Research Bill, I still hope to engage the interests of Members of your Lordships' House.

I am going to argue that the neoliberal marketisation of our higher education system is wrong in principle, because higher education is not a market; that it loads students with personal debt; that it will not improve opportunities to study for young people from disadvantaged and low-income backgrounds, mature students and those who wish to undertake part-time courses; and that linking fee rises, thereby increasing the personal debt of students, to only one of the attributes of a good university is a mistake. I will end by arguing that the cost of these polices to the public purse is now so complex and uncertain that it is virtually impossible to challenge what the Government are doing: we need more and more regular information and I call on the Government to provide it.

I went to university in the 1960s: my fees were paid by the state and I received a full maintenance grant. I would not, and indeed could not, have gone to university without that support, and I am sure my life would have been very different had I not had those chances. Education has been, and always will be, an important ladder out of social disadvantage.

In the period since 2012, our higher education system has been transformed. The tripling of fees, the introduction of income-contingent tax liabilities—loans in common parlance—and the ending of maintenance grants were described as market-driven, aimed at putting students at the heart of the system. According to classical economic theory, those 2012 reforms, with their direct grant payments to institutions, and fixed undergraduate recruitment caps replaced by a voucher system financed by loans, should have improved student choice as the money followed the applicant. Good institutions would expand to meet demand and those that struggled to recruit would have to either up their game or exit the market.

But have these reforms actually achieved what they set out to do, and has it been for the good? According to the IFS think tank, we have students leaving university with personal debts of around £53,000 for a three-year course. A large majority will not repay their loans in full. We have the most expensive courses in the world, and there has been a complete collapse in part-time provision, mature students have all but disappeared, and there is a dearth of home-based postgraduate students.

Even if the reformers of 2012 were right to bring competition into the sector, it was hardly a resounding success. First, all institutions gravitated to the highest

[Lord Stevenson of Balmacara]

possible fee—then £9,000. Those that did not were regarded as inferior, so that in truth all that was created was a monopsony: a rigged market where prices are set by producers. Secondly, the undergraduate tuition fee is not a price. As 90% of eligible students take out a loan to fully cover tuition fees, the cost of the degree is actually determined by the loan repayments made, not the amount borrowed, and this can vary widely. Somebody who never earns more than the repayment threshold pays nothing, and very high earners have to repay it all. The price signal is determined primarily by future income, not graduating debt. It is smoke and mirrors. That is why the expert commentator in this policy area, Andrew McGettigan, argues that,

"the tuition fee cannot signal as a price should in a perfectly competitive market".

At this point, in my view, Ministers should surely have given up the experiment in neoliberalism. Instead, they have decided—and brought forward in the current Bill—that what was missing from the 2012 reforms was better information and a thorough shake-up of the system by stimulating an influx of challenger institutions. One cannot argue against changes that improve information, but it has to be high-quality. The current proposal for a teaching excellence framework to provide the market with a proxy indication of teaching excellence in each HE provider is, to my mind, hopelessly flawed.

There is widespread agreement on the need to ensure teaching of the highest quality in our higher education system. Indeed, students paying £9,000 or more a year are surely entitled to expect a consistently high quality of teaching, wherever they undertake their degree. But there are, I suggest, four main practical reasons why the Government's present approach is wrong.

First, the TEF is not ready. There is not yet a settled methodology, no agreement on the metrics to be used, and no agreement on the balance between the metrics and provider submissions. We are clearly some way off where we need to be on even the basic wiring. Secondly, currently the TEF rating will relate to the university and not to the subject or course. We will not see subject-level ratings until 2020, and even that may be an ambitious target. Thirdly, the customers who are supposed to be benefiting from this behemoth—the students—are vehemently against the proposal. Fourthly, universities are not just teaching machines, and linking fee rises to a faux framework which does not even address teaching in the classroom is to diminish the regard we should have also to scholarship and research excellence, engagement with wider society, and the dissemination and application of knowledge. A good university should be judged across all its missions.

However, there are also principled reasons why the current TEF proposals should be abandoned. As the noble Lord, Lord Sutherland, who created Ofsted, said at Second Reading of the Higher Education and Research Bill, it is simply not possible to devise a robust and sustainable scheme of evaluating teaching excellence if it does not start in the lecture theatre or classroom. Any scheme that relies on second-order metrics is simply not fit for purpose. Any scheme to measure teaching excellence, particularly if it is to operate at course or class level, surely has to be based wholly or mainly on the systems already in place in higher education providers which ensure that the courses offered are taught to a high standard. Most current HE providers of high standing already have such systems in place. Why duplicate them?

Surely the better way is to build trust and co-operation with the institutions themselves to get this right, subject only to a proportionate and risk-based assessment procedure. Assessing that good-quality teaching exists is one thing, but a system of rating universities gold, silver or bronze with the flawed TEF will jeopardise the excellent international reputation of British higher education, which does so much to attract overseas students and extend British influence and soft power abroad. Why rush to introduce an untested system, which will create the impression that some universities are failing when they are not?

We must not forget that there is a huge downside at a personal level. Students who get a bad deal from a course or institution have very limited abilities at present to revisit their choices. They even seem to have their own initiatives penalised by the current system, which does not support transfers or credit accumulation —although I hope that that will change. In any case, caveat emptor is surely not the responsible policy for higher education, which is still the main ladder for those striving to escape from social disadvantage. I conclude that these latest market reform measures will not provide the sustainable HE sector that this country will need in the medium term, let alone in the long run.

The SIs before us change the system of inflationary fee increases, which have been in place since 2004, to one which ties the fee level that may be charged to an assessment of teaching excellence in the sector. According to the Secondary Legislation Scrutiny Committee, the department's assessment is that the potential increase in fees will not be significant enough to alter participation decisions by prospective students. However, at the same time as laying these regulations, the DfE published an equality analysis covering detailed changes to maximum fee caps for 2017-18 and their impact on protected and disadvantaged groups of students. It is a good report. In its EA, the DfE accepts that one impact will be an increase in student loan debts. However, it also accepts that the current evidence suggests that students from ethnic minorities, less advantaged backgrounds and mature students are more debt averse and cost sensitive than the others. But are these not the very groups that we want to attract?

The committee rightly asked the DfE to comment on this astonishing admission. The department's response includes a statement acknowledging that there is still much to do. It says that,

"Young people from disadvantaged backgrounds are still much less likely to go to university than their more affluent peers".

Am I alone in finding that comment deeply troubling?

Where are the policies to reinvigorate part-time provision? The collapse in enrolments at Birkbeck, University of London and the Open University coincided with the hike in course fees and the introduction of maintenance loans. No real change in approach is signalled in the higher education Bill or in the Technical and Further Education Bill, which passed through

this House yesterday. There are plenty of good ideas out there. It is a pity that suggestions such as have been made for a specialist advice and admissions service for lifelong learning courses, similar to UCAS, the creation of a community learning centre in every major city and the reintroduction of individual learning accounts to support flexible learning throughout life have not been given more consideration in either of those Bills. So we have a policy approach which will not work: a system of fee increases, and thereby personal borrowing increases, which will not enhance social mobility or improve part-time provision.

What about the impact on students themselves? In Budget 2015, the Government confirmed that they would freeze the loan repayment threshold for five years and lower the official financial reporting discount rate for loans from RPI plus 2.2% to RPI plus 0.7%. Those of your Lordships who are not numerate in economics or in the detailed and sophisticated analysis of interest rates may wish to drift out for the next few minutes because this is quite technical—I did not say leave, as noble Lords would miss what might be my last speech from the Front Bench, which would be terribly upsetting. I play all the plugs when I need the support.

On the question of abolishing maintenance grants, the IFS said:

"The poorest 40% of students going to university in England will now graduate with debts of up to £53,000 from a three-year course",

which is up from £40,500. It also points out that high earners coming from poorer backgrounds will now repay for longer,

"with the average individual contributing an extra £9,000 towards the cost of their degree",

in net present value terms. The IFS concluded that freezing the repayment threshold for five years means that graduates would see their repayments increase by £3,800, on average, and that a median lifetime earner would see an increase in repayments of £6,000. For those who started between 2012 and 2015, this represents a sizeable retrospective price hike on what they were promised before signing up to their loan agreement. That is bad enough but, as the IFS points out, compared to the 2012 reforms the 2015 measures are regressive. They affect those coming from the poorest backgrounds adversely and affect median earners the hardest.

6.30 pm

Finally, in some ways the most worrying thing of all is the huge uncovered gap in public finances which this system is creating, although I fully admit that it is very hard to untangle the figures as so little is published on this issue. According to a recent report of the Education Policy Institute:

"The contribution of student loans to net government debt is forecast to rise from around 4 per cent of GDP today to over 11 per cent in the 2040s".

There are some published figures about the value of the student loan book, which the Government are trying to sell. At the end of March 2015, existing student loans had a face value of £64 billion—what was nominally owed to the Government—and were expected to generate repayments equivalent to only £42 billion in net present value terms. Who is covering that gap? Where is it held in the government accounts? Have the figures been audited? To which department are all these debts being booked?

By the end of March 2016, following changes in the discount rate, which have been described by some commentators as window dressing for the purposes of the sale of the loan book, the face value of the book had increased to £76 billion, with a fair value of £57 billion. There is still a stonking great £19 billion gap which has to be financed, presumably on the market.

If noble Lords do not follow the maths here, I can sympathise. We are trying to understand a system that requires long-range forecasts, upwards of 30 years, of complex issues including: estimates of gross and average salary levels; emigration; morbidity; and likely future participation in the workforce. These are mind-bendingly difficult to model, let alone to comprehend, even if we could see all the figures.

The issue is that we are kept totally in the dark. The only thing I have been able to find on this issue is figures in the BEIS accounts, which are a year late—that is no criticism, it is just that they are published a year behind. They report that the official RAB estimate for new loans issued is 23%, down from more than 40%, which was the original estimate, but that the Treasury has set a target RAB of 28%, which is plus 5%, although it is down from 35% in the forward plan, which mainly reflects the rebasing of the discount rate change. What does that actually mean in plain English?

This is not good enough. This is why my Motion calls on Her Majesty's Government to report annually to Parliament on the impact on the economy of the increasing quantum of graduate debt and asks them to provide estimates of payback rates and an estimate of the annual cost to the Exchequer of the present system. It is not a lot to ask, and it is a no-brainer if the Government want to convince us that they are on the right track. I beg to move.

Baroness Garden of Frognal (LD): My Lords, we on these Benches support the case put so eloquently by the noble Lord, Lord Stevenson, and we much regret that he is stepping down from his Front-Bench role. We seem to have had to work together a lot in recent days, and it has always been a great pleasure to do so.

This increase in tuition fees is a significant further step towards full marketisation of the UK higher education sector, which threatens the accessibility and reputation of this vital sector. Allowing some universities with higher teaching ratings to charge higher fees means that students will increasingly have to weigh the opportunity presented by a particular course against the fee being charged. In fact, such a step could simply encourage the development of a two-tier university system whereby richer students go to higher-rated universities while the most disadvantaged students go to the lower-rated universities or not at all.

We on these Benches totally reject the idea of linking fees to teaching excellence framework gradings, as the noble Lord, Lord Stevenson, set out. They are an untried and untested form of assessment which should not be used to determine fees. There appears to be no correlation between increased fees and improved teaching quality. The National Union of Students points out that:

[Baroness Garden of Frognal]

"Since tuition fees were trebled in 2012, there is no evidence to suggest that there was a consequential improvement in teaching quality. There has been no change in student satisfaction with the teaching on their course, while institutions have instead been shown to spend additional income from the fees rise on increased marketing materials, rather than on efforts to improve course quality".

Doubtless some universities have used the fees to improve quality, but there is no guarantee that that is what the fees are there to do.

We have argued for many years that there is a serious lack of attention to teaching quality in universities. The emphasis has been heavily weighted to research for prestige, funding and career promotions, and we welcome the aims in the Higher Education and Research Bill to redress the balance, but we do not believe the way to solve this is through linking teaching quality to fees.

These changes come on top of other deeply damaging changes to student finance. First, there was the abolition of maintenance grants for lower-income students, which makes these regulations all the more damaging. Getting rid of grants while increasing the cost of university education may put lower-income students off attending higher-performing universities. Secondly, the retrospective change in loan conditions to freeze the repayment threshold for tuition fees at £21,000 breaks the deal done with students by the coalition and changes the terms for many students, meaning paying back from a lower starting point.

These measures will in no way encourage diversity or open access to mature or part-time students, nor encourage lifelong learning. We acknowledge the welcome increase to £833 million for the Director of Fair Access to improve student success for the more disadvantaged, but that is not going to solve the problem. Social mobility is simply not good enough. These measures will do nothing to improve opportunities for those from disadvantaged backgrounds. We join in the regrets.

Lord Willetts (Con): My Lords, I declare my interests as a visiting professor at King's College London, an adviser to 2U and an honorary fellow of Nuffield College, Oxford. I am discovering that this debate is a kind of valedictory for the noble Lord, Lord Stevenson. I would like to say how much I have enjoyed his interventions from the Front Bench during the debates we have both participated in. I am sure he will continue to contribute to this House; we need his contributions, and I have greatly appreciated what he has done.

It is rather peculiar that on this valedictory we are having a debate about these measures, when of course the truth is that the structure of higher education finance we are considering is one that all three parties have introduced during their times in government. If there is any example of a shared consensus on how to finance higher education, it is the Blair/coalition Government proposals for fees and loans. It is now a stable system, and one that all three parties have contributed to and should support.

It is of course not a system of up-front payment; that is its crucial feature. It is a graduate repayment scheme. When graduates repay, at a rate of 9% on earnings above £21,000, it is nothing like having a commercial debt. If a child of mine left university with £25,000 on their credit card or an overdraft of £50,000, I would be extremely worried as a parent. However, knowing that during their working lives they were going to pay back 9% of their earnings above £21,000, and that they would do so only if they were earning more, and if for whatever reason they were earning less they would not have to—in other words, they would be paying through PAYE—would not cause me concern.

Far more importantly, it does not concern students, which is why we have seen steady increases in the numbers of young people going to university as the successive changes have been brought about. Those changes have led to a growth in the number of places, particularly at universities that students have been choosing. We have indeed begun to see growth and shrinkage between different universities, reflecting student choice. We have seen more undergraduates getting their first choice of university. We have seen more places at university in total; indeed, these reforms made it possible to remove the cap on student numbers.

The increase in the number of university places has been particularly beneficial to students from lower-income backgrounds—the marginal students who are not otherwise getting in. Indeed, we have seen a surge in the number of people going to university from low-income backgrounds. At the beginning of this process, nearly 10 years ago when the Blair changes were first brought in and my party opposed them—with exactly the argument that we have been hearing again today: that they would put off low-income students—10% of students from the poorest backgrounds were going to university. After 10 years of these changes, 20% of students from the poorest backgrounds are going to university. That is not good enough—it is still way behind the 60% of young people from the most affluent backgrounds going to university—nevertheless, it is a doubling. We are on a journey in which we are gradually improving social mobility, with more young people from low-income backgrounds having this opportunity.

So the evidence is that they are not, to quote the noble Lord, Lord Stevenson, "debt-averse", for the reason that it is not debt. I love the noble Lord's example of his time at university. When he left, I suspect—because we are roughly contemporary—that he was facing an income tax rate of 35%. Now graduates face an income tax rate of 29% above a very high threshold. If he was not income tax-averse to going to university, why should they be income tax-averse now if they are facing a 29% rate of PAYE above a high threshold?

I will not detain the House for much longer, but it is possible, if you get into the figures, to take a flow of payments and convert it into a stock. You can create extraordinary figures for liabilities or assets if you take what is essentially a flow of payments and convert it into a stock.

For example, graduates, during their working lives, are very likely to pay at least £500,000 in income tax. As, by and large, people who go to university earn a bit more, they leave university with the prospect of £500,000 of income tax debt, at least, around their necks. Should we be anxious about that? No. In their working lives, if they earn a decent income, of course

we will expect them to make a contribution to the Exchequer through income tax. Just as you can apparently create enormous figures for debt by aggregating lots of years of income tax, if we think of the amount that we as a nation will spend on the National Health Service over the next 20 or 30 years, we can also construct an enormous figure by taking £100 billion a year or whatever and multiplying it by 20 or 30. So graduates have an enormous pile of income tax debt—£500,000 at least—in order to pay for trillions of pounds of National Health Service spending. That is because government is a going concern. Neither of those figures should be of concern to us, because we can manage them through the annual flows of income and expenditure.

I should like to draw these brief remarks to a close, however, by welcoming a point in the Motion of the noble Lord, Lord Stevenson, because it is the only way I should conclude a short speech when we are apparently saying farewell to his Front-Bench service. I agree that we need from time to time to look at how the system is working. We do not need to change the structure—we do not need another big review; another Dearing or Brown—but of course there is a social choice in this system. The social choice is the balance between private repayment by graduates, and the public—the generality of taxpayers—taking the burden of writing off repayments that will not be made by graduates who, for example, do not earn enough to reach the threshold. That is a public-private balance which, in a way, reflects that of public and private benefit from higher education.

It is legitimate from time to time to have a debate about what is the right balance between graduate repayment through PAYE and the likely level at which, eventually, graduates' loans will be written off because they cannot afford to repay them. Incidentally, that would be impossible if we fixed the term in the way the party opposite want, but I think that every five years—once during the lifetime of a Parliament—such a structured review would be worth while.

I end by welcoming that aspect of the noble Lord's proposal. This need not be done every year: the information is available. Once again, I thank him personally for the lively and well-informed contributions he has made to our debates on higher education and other matters in the recent past.

Lord Bew (CB): My Lords, I particularly support the final part of the Motion to Regret of the noble Lord, Lord Stevenson. I add my voice to that of other Peers to say how much we have benefited, especially during the passage of the higher education Bill, from the contributions that he has made in this House. Following the example of the noble Lord, Lord Willetts, I declare my interest as a visiting professor of King's College, Cambridge, an honorary fellow of King's College London and an honorary fellow of Pembroke College, Cambridge.

In the first part of his speech tonight, the noble Lord, Lord Stevenson, expressed his rejection of what he regarded as the neoliberal approach to higher education. I must confess that my heart warms to that. Part of me wants to recommend to Ministers the recent book by Stefan Collini on higher education, published by Verso, but I accept that for some years we have had a tripartite consensus about these fundamental matters of financing higher education, and I see little possibility of that consensus changing significantly. I should say, as someone who has worked all his life in the university sector, that I understand that it is not the function of the general public just to keep us in the style to which we have been accustomed. None the less, the last part of the noble Lord's Motion to Regret contains something of great seriousness. I am more uncomfortable than the noble Lord, Lord Willetts, about the spiralling figures in this area. Everything that we look at unnerves me somewhat. Student loans, for example, in the last year rose to £12.6 billion—17.1% as the first cohort of students who claim the higher level of them graduated. Graduates who pay fees up to £9,000 a year are estimated to have left university with an average of £44,000 worth of debt compared with an average of £16,200 faced by students who graduated five years earlier.

6.45 pm

Something seems to be happening with these numbers which must unnerve anybody who is connected or who has a serious interest in our public finances. The noble Lord, Lord Stevenson, has already referred to the Institute for Fiscal Studies, which claims that 70% of the students from those who graduated in the last year are expected never to repay their loans. These things have to concern us. Of those who graduated in 2002, 44% paid the total amount within 13 years. So, we are in a different place now. These are worrying figures. I think that the request that we have an annual report to Parliament which spells out where we are is perfectly reasonable. In that respect I am very happy to support the noble Lord's Motion to Regret.

Viscount Younger of Leckie (Con): My Lords, I start by thanking the noble Lord, Lord Stevenson, for tabling this Motion. Before I respond, I shall, if I may, take the opportunity to say a few words about the noble Lord. The House now knows from remarks he made towards the end of Third Reading of the Higher Education and Research Bill last night that he is stepping down from his current spell of active Front-Bench responsibilities. This is certainly a surprise to me, and I am genuinely very sorry to hear it.

I have engaged with the noble Lord fairly intensively on a number of Bills in this House over several years, as he will know, as have some of my colleagues. It is fair to say that we usually know where we stand with him. He can be direct; he sometimes tells it as is, which he should certainly take as a compliment. He also looks to be helpful and constructive—while emphasising his party's perspective, of course. Above all, I will miss his humour, sometimes cryptic, often sharp and always quick. My colleagues on these Benches have great respect for him and regard him as a bit of a magician—a member of the Magic Circle, perhaps—for his ability to juggle several Bills at the same time with relatively little support, although I am sure it is quality support. He will not be leaving the Front Bench entirely, I understand, but we all wish him well for the future.

These words have nothing at all to do with me trying to warm the seat for the noble Lord as I move on to respond to the concerns he has raised this afternoon. We take pride in the fact that Britain has some of the best universities in the world. To make

[Viscount Younger of Leckie]
sure that this continues, it is important that we put universities on a strong, sustainable financial footing. Indeed, Andreas Schleicher of the OECD said in September 2016 that,

"the UK had been able to meet rising demand for tertiary education with more resources … by finding effective ways to share the costs and benefits".

However, the £9,000 fee cap that was set in 2012 is now worth £8,500 in real terms. If we leave it unchanged, it will be worth £8,000 by the end of this Parliament. As my noble friend Lord Willetts alluded to, the Labour Government under Prime Minister Tony Blair sensibly put in place new legal powers in 2004 which allow Governments to maintain university fees in line with inflation through a negative procedure. Rather than increasing the fees for everyone, we are allowing only high-quality providers to increase their fees in line with inflation. Universities UK and GuildHE, the two main representative bodies that collectively represent more than 170 higher education providers in England, Wales, Scotland and Northern Ireland, have made it clear that allowing the value of fees to be maintained in real terms is essential if our providers are to continue to deliver high-quality teaching.

The importance of this was expressed by Gordon McKenzie the CEO of GuildHE when he wrote that,

"fees had to rise by inflation at some point and it was fairer for students if those rises were linked to an assessment of quality."

The vote on Report of the Higher Education and Research Bill was obviously disappointing. However, I remind noble Lords that the parliamentary process is still ongoing, and I look forward to Peers' further engagement on this matter. Our policy intention remains to link maximum fees to the quality of provision via the teaching excellence framework as part of our wider reform package, as we are doing through these regulations. It is counter to government policy to see fee caps rise under any other circumstances.

As I mentioned, the fee link has been strongly supported by sector organisations GuildHE, as well as Universities UK, which said,

"allowing the value of the fee to be maintained in real terms is essential to allow universities to continue to deliver a high-quality teaching and learning experience for students".

The noble Lord, Lord Stevenson, stated that the TEF was not ready and that we needed to move to the subject-level TEF. His opposition to TEF flies in the face of the support given to it by the sector bodies—and I have just added a few quotes to support that. It is absolutely our intention to move to subject-level assessment, but carefully, after two years of rigorous pilots.

I refer to the points raised in the Motion about the importance of ensuring access to university for everyone. Through universities being sustainably financed, we have been able to lift the student number cap, meaning that more people than ever before have been able to benefit from a university education, as my noble friend Lord Willetts said. Many people said, when fees were increased to £9,000, that it would dissuade people from disadvantaged backgrounds, but the opposite has happened. For this academic year, 2016-17, the entry rate for 18 year-olds from disadvantaged backgrounds is at a record high—namely, 19.5% in 2016, compared with 13.6% in 2009. So far, that has continued into 2017, with record applications for the 15 January deadline. Disadvantaged young people are now 43% more likely to go to university than in 2009, or 74% more likely to go to university than in 2006. In addition, those who go to university have more funding available to them. By replacing maintenance grants with loans, we have been able to increase the funding for living costs that some of the most disadvantaged students receive. It is an increase of over 10% in the current academic year, with a further 2.8% increase for 2017-18.

The noble Baroness, Lady Garden, stated that there were too few BME students, and of course we would always want more. However, we have record numbers of black and minority ethnic students going into higher education, and we want to go further still. We are legislating for greater transparency that will provide unprecedented access to anonymised applicant data on gender, ethnicity and socioeconomic background, as I think she is aware.

Universities, too, are spending even more to help those from disadvantaged backgrounds to access higher education. In 2017-18, institutions are expected to spend over £800 million on measures to improve the access and success of disadvantaged students, which is more than double what was spent in 2009-10 and can continue to increase if fees are allowed to keep pace with inflation. The Government's policy will further build on this success, as stated by Les Ebdon, the director of the Office for Fair Access who said that,

"TEF will ensure that higher education providers have to carefully consider about how to provide excellent teaching for all their students, whatever their background".

On the repayment of loans, I wish to assure noble Lords that our repayments system offers a fair deal to students. The current student loan system is heavily subsidised by the taxpayer and universally accessible to all eligible students, regardless of their financial circumstances. While the Motion in front of us states that the Government retrospectively change the terms of loans, I would remind the House that nothing in fact has changed. Our repayments system is based on income and not the amount borrowed. Again, my noble friend Lord Willetts alluded to that issue. Graduates with post-2012 undergraduate loans pay back only when they are earning more than £21,000, and then only 9% of earnings above that threshold. After 30 years, any outstanding debt will be written off, with no detriment to the borrower. That is entirely different to a commercial loan. The maximum fee cap is rising only by inflation, so it will not increase in real terms for anyone going to university.

We believe that it is right for those who benefit most from higher education to contribute to the costs. We should not forget that higher education leads to a better chance of being employed compared to those holding two or more A-levels, and an average net lifetime earnings premium that is comfortably over £100,000.

The noble Lord, Lord Stevenson, asked about reporting to Parliament on student loans, which is a fair question. I reassure the House that the debt repayments and

costs associated with the present system of student loans are already reported annually to Parliament in the Department for Education's annual report and accounts, the next set of which is due to be published this summer. In addition, student loans also feature regularly in the economic and fiscal outlook publications from the OBR, which are laid in Parliament twice a year.

Finally, I reassure your Lordships that the fee increase under these regulations is open only to those institutions who meet high quality standards. For this year this meant that they passed a quality review carried out by highly respected bodies such as the QAA, and those that wanted to charge the highest fees will need an access agreement.

As the TEF is fully implemented, the assessment process that universities will have to meet to be judged as good enough to raise their fees in line with inflation will become even more rigorous and more robust. The TEF will provide strong reputational and financial incentives to prioritise the student learning experience. We are linking funding to quality of provision, not just quantity of students, and ensuring that providers demonstrate high-quality teaching if they wish to maintain their fees by inflation.

The TEF has been strongly supported by organisations such as OFFA and the Sutton Trust, bodies whose fundamental purpose is to support the life chances of those from disadvantaged backgrounds. The Sutton Trust, for example, has said that,

"we need to shake the university sector out of its complacency and open it up to a transparency that has been alien to them for far too long. It is good that they are judged on impact in the research excellence framework, and that the teaching excellence framework will force them to think more about how they impart knowledge to those paying them £9000 a year in fees".

Ensuring that people from all backgrounds are able to go to university is an essential part of the Government's ambition to support all people to realise their potential, whether they are young or mature students and whether they study full or part time. The increases to maximum fee caps set out in these regulations are critical to achieving that objective. They ensure that our university sector has a sustainable financial footing so that it remains world class. I remind noble Lords that we are allowing fee caps only to keep pace with inflation—and in real terms they will be less than in 2012. Equally, we remain firm that these fee increases should not be automatically given but awarded to those that provide high-quality teaching and value for money to students.

I will answer some points on student funding made by the noble Lords, Lord Stevenson and Lord Bew. We believe our student funding system is fair and sustainable. The resource accounting and budgeting charge is not an unintended loss nor a waste of public money. It is the policy subsidy required to make higher education widely available, achieving the Government's objectives of increasing the skills in the economy and ensuring access to university for all. After I answered an Oral Question from my noble friend Lord Flight the other day, I wrote quite a lengthy reply to him on this matter, and I am more than happy to put a copy of that letter in the Library if it is not already there.

The Government's policies increase the number of people who are able to benefit from university education, resulting in record numbers of young people from disadvantaged backgrounds applying to university. Those opposing the increase in fees in line with inflation have not explained how they will find the £16 billion of which they will be depriving our universities over the next decade, risking universities' financial sustainability and depriving universities of the funding they need to provide a high-quality education.

Therefore, in the light of my remarks, I hope that the noble Lord, Lord Stevenson, will consider withdrawing his Motion.

Lord Stevenson of Balmacara: My Lords, I thank noble Lords very much indeed for their comments, particularly about me. I am a deeply private person, and I hate it when the spotlight suddenly swings round and catches you like a rabbit—which I am here today. I did not want that or expect it, and I certainly did not want it to spoil the debate. I hope it has not, because the contributions have been on a serious level, and I thank the Minister in particular for dealing with the issues as they were presented.

The question of personality in this House is interesting. When you first come into the House, the thing that is impressed most on you is how it has to be treated as a third person in a passive sense—namely, as your Lordships' House. You never speak about individuals. You certainly do not use first names. So the sudden emergence of an individual who has something to say is really rather shocking, and I hope that it does not get repeated—certainly not to me.

We have had a good debate. I have now realised, after nearly seven years here, that the way to tackle these issues is by tabling this sort of Motion because in the normal cut and thrust of debate and in the discussion of legislation and questions, one can never get down to a serious debate about serious issues. Therefore, I agree with the noble Lord, Lord Willetts, that a Motion such as this is a good thing to have now and again—not all the time, but just occasionally—to enable us to have a detailed discussion of issues causing concern. I fully accept what the noble Lord, Lord Bew, said—some of these issues are rather worrying.

The Minister said in his conclusion that he thought we had a fair and sustainable student finance system. It may or may not be fair—I am reminded of Zhou Enlai who, when asked about the impact of the French Revolution, said that it was too soon to say—and we will not know that for 30 years until we look back at the system when it has ended. However, we cannot wait that long. Therefore, the suspicion is that it is not fair. Is it sustainable? We cannot tell that because the figures are very difficult to interpret. The noble Lord, Lord Willetts, with several brains working full time, has not been able to crack it all and will be able to give us lectures and seminars to end all seminars. I look forward to those. However, I cannot cope with that. I just want something simple. If we cannot interpret this system on the basis of the DfE's published accounts, perhaps tabling another Motion at an appropriate time agreed with the Minister, because he is a friend as well, would be the way forward. However, in the interim, we should get things started by testing the opinion of the House on whether it would like to see more information on this interesting area.

7.01 pm

Division on Lord Stevenson's Motion

Contents 174; Not-Contents 163.

Motion agreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Addington, L.
Alderdice, L.
Allan of Hallam, L.
Andrews, B.
Bakewell of Hardington Mandeville, B.
Bassam of Brighton, L. [Teller]
Beith, L.
Benjamin, B.
Berkeley, L.
Bew, L.
Bilimoria, L.
Birt, L.
Bradley, L.
Bradshaw, L.
Brinton, B.
Brookman, L.
Browne of Belmont, L.
Burnett, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Chakrabarti, B.
Chandos, V.
Clement-Jones, L.
Collins of Highbury, L.
Corston, B.
Cotter, L.
Craigavon, V.
Crawley, B.
Cunningham of Felling, L.
Davies of Oldham, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Donaghy, B.
Drake, B.
Dubs, L.
Dykes, L.
Elder, L.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greaves, L.
Grender, B.
Grocott, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harrison, L.
Haworth, L.
Hay of Ballyore, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollick, L.
Hollis of Heigham, B.
Hope of Craighead, L.
Howarth of Newport, L.
Howe of Idlicote, B.
Howells of St Davids, B.
Hoyle, L.
Humphreys, B.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussain, L.
Jolly, B.
Jones, L.
Jones of Whitchurch, B.
Jowell, B.
Judd, L.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Lester of Herne Hill, L.
Lister of Burtersett, B.
Livermore, L.
Low of Dalston, L.
Ludford, B.
McAvoy, L. [Teller]
McIntosh of Hudnall, B.
Mackenzie of Framwellgate, L.
McKenzie of Luton, L.
McNally, L.
Mallalieu, B.
Monks, L.
Morgan of Huyton, B.
Morris of Handsworth, L.
Morris of Yardley, B.
Morrow, L.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Loan, B.
Paddick, L.
Parminter, B.
Pendry, L.
Peterborough, Bp.
Pitkeathley, B.
Prescott, L.
Primarolo, B.
Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rennard, L.
Rosser, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Newnham, B.
Soley, L.
Steel of Aikwood, L.
Stevens of Kirkwhelpington, L.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Teverson, L.
Thomas of Gresford, L.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Trevethin and Oaksey, L.
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Willis of Knaresborough, L.
Winston, L.
Woolmer of Leeds, L.
Worthington, B.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Ashton of Hyde, L.
Attlee, E.
Balfe, L.
Bates, L.
Bell, L.
Berridge, B.
Bertin, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Browning, B.
Buscombe, B.
Byford, B.
Callanan, L.
Cathcart, E.
Cavendish of Furness, L.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E. [Teller]
Crathorne, L.
Crickhowell, L.
De Mauley, L.
Deben, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Feldman of Elstree, L.
Fellowes of West Stafford, L.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Green of Deddington, L.
Green of Hurstpierpoint, L.
Griffiths of Fforestfach, L.
Hailsham, V.
Hamilton of Epsom, L.
Hayward, L.
Helic, B.
Henley, L.
Higgins, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jones of Birmingham, L.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Loomba, L.
Lupton, L.

McColl of Dulwich, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
MacLaurin of Knebworth, L.
Magan of Castletown, L.
Mancroft, L.
Mar, C.
Marlesford, L.
Masham of Ilton, B.
Mobarik, B.
Morris of Bolton, B.
Moynihan, L.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Patten, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Robathan, L.
Rogan, L.
St John of Bletso, L.
Sanderson of Bowden, L.
Sassoon, L.
Scott of Bybrook, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Spicer, L.
Stowell of Beeston, B.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wakeham, L.
Warsi, B.
Wasserman, L.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

House adjourned at 7.12 pm.