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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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

Thursday 27 April 2017

11 am

Prayers—read by the Lord Bishop of Southwark.

Retirement of a Member: Lord Macdonald of Tradeston

Announcement

11.05 am

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Macdonald of Tradeston, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much valued service.

Transport: Pedicabs

Question

11.06 am

Asked by ***Baroness Couttie***

To ask Her Majesty's Government, in the light of the commitment made by the Secretary of State for Transport on 26 May 2016 to regulate pedicab drivers, when the necessary legislation will be brought forward.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the Government agree that the Mayor of London should have the power to regulate pedicabs, and have been working with Westminster City Council and Transport for London over the detail of a proposed regulatory system. Of course, it will be for a future Government to determine if and when the necessary legislation could be introduced.

Baroness Couttie (Con): I thank my noble friend the Minister for his response and am encouraged by his words. Pedicabs in London are not subject to any safety checks and not covered by insurance. Drivers do not have criminal record checks and do not even need driving licences. Pedicabs regularly flout traffic regulations; for example, driving up one-way streets the wrong way or congregating in large numbers outside theatres and other tourist attractions, blocking bus lanes and access for emergency vehicles, and creating tremendous congestion. Their fares are unregulated and we have had some highly publicised examples of exorbitant fares levied on unwary passengers. There are a lot of examples of antisocial behaviour as well. Would the Minister agree that regulation needs to be brought in as soon as is practical when a new Parliament comes in?

Lord Ahmad of Wimbledon: My noble friend articulated the reasons why regulation is required in this area. Of course, she speaks from great local experience in this respect. As I already said, while this is a matter for a future Government to determine, I and the current Government have said on record that we would look towards the earliest opportunity to legislate in this respect. It remains my personal view that we should seek to regulate this industry for the reasons my noble friend stated.

Baroness Randerson (LD): My Lords, as well as the safety issues involved, there are a number of reported cases where tourists in particular have been charged extortionate amounts of money. Does the Minister accept that this is bad for the reputation of London and of Britain, and can he give us a categorical assurance that, if this Government are returned after the general election, there will be legislation in the coming year—as promised last year but that promise was broken?

Lord Ahmad of Wimbledon: It would perhaps be presumptuous of me at the Dispatch Box to say what Government will be returned on 8 June. I have already made my position and that of the current Government clear: we would look to legislate at the earliest opportunity. The noble Baroness raises an important point about the image of London in the view of tourists who are not aware, perhaps, whether they are getting into a regulated vehicle or of the price that will be charged. I am acutely aware of the challenges the noble Baroness poses. As I said, I am certainly keen to see this area regulated at the earliest opportunity, but it is a matter for a future Government.

Lord Rosser (Lab): I would like to explore this a little more with the Minister. I agree with the comments made so far about the problem that needs to be addressed. However, my recollection is that in May last year the Government announced that they would regulate the industry. Unless the Minister tells me I have this wrong, I thought they said then that legislation would come forward later in the year—2016. Clearly, it did not. Is this a particularly complex area to deal with? Is that why legislation did not come forward in 2016? Is it proving more difficult than thought, or is there some other reason why nothing was done within the timescale that, as far as I know, the Government originally suggested?

Lord Ahmad of Wimbledon: The Government explored various legislative vehicles, such as the opportunity for a sponsored Private Member's Bill. As I said earlier, without pre-empting what may have happened or will happen in coming months, it is important to recognise that there were opportunities. Certain legislative vehicles in the current timetable could have been used to legislate in this respect. It remains the case—I have given a personal commitment and that of the current Government to this—that this is an important area to legislate in. We will continue to do so at the earliest opportunity if a Conservative Government are re-elected on 8 June.

Lord Kennedy of Southwark (Lab): My Lords, coming from a family of black cab drivers, I endorse every single word said by the noble Baroness, Lady Couttie. I press this Government or whichever Government are elected in a few weeks' time that this should be top of the agenda for the new Transport Secretary to deal with on day one.

Lord Ahmad of Wimbledon: I am sure that those who aspire to hold that position have taken note of the noble Lord's comments.

Lord Leigh of Hurley (Con): Can my noble friend the Minister advise us whether the Government plan to make any economic assessment of the impact of the imposition of bicycle lanes on London businesses, particularly small businesses and mobile tradesmen such as stonemasons, who effectively have had to stop serving London businesses?

Lord Ahmad of Wimbledon: As my noble friend is aware, cycle lanes are primarily a responsibility of the Mayor of London. I know that views have been expressed in this House and elsewhere, and I am sure those will be taken into account if reviews are carried out of cycle lanes and their operation in London.

Lord Hamilton of Epsom (Con): Can my noble friend assure the House that the pledge he has made to legislate on this matter will not become a manifesto commitment?

Lord Ahmad of Wimbledon: Again, I am not going to pre-judge the commitments in a manifesto. I have made as clear as I can at this juncture the intention of the current Government and my personal view in this respect, as someone who oversees legislation and indeed the operation and co-ordination of such activity in London with the Mayor of London. Whoever the Government are, I am sure they will continue to work with the Mayor of London in ensuring that we regulate this industry in the years to come.

Lord West of Spithead (Lab): My Lords, the confusion and despair that are seen as a result of this makes one think of mutinies. Of course, there was a mutiny 228 years ago tomorrow on the "Bounty". The Royal Navy sent out 40 ships to find the mutineers. I think today we would have difficulty doing that—would they have to be pedalled to get there? Does the Minister agree that we need more ships—ideally, driven?

Lord Ahmad of Wimbledon: Pedalling in boats—that is something we have all done, perhaps, on the Serpentine in Hyde Park and elsewhere. My day would not be complete without a history lesson from the noble Lord. As ever, I greatly appreciate that.

Health: Electronic Patient Records

Question

11.13 am

Asked by ***Baroness Manzoor***

To ask Her Majesty's Government what plans they have to ensure that electronic patient records are available to healthcare professionals on a national basis, with appropriate safeguards and patient consent.

Baroness Manzoor (Con): My Lords, in asking the Question standing in my name on the Order Paper, I draw the House's attention to my entry on the register of interests.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, the Government are committed to making patient and care records digital, real-time and interoperable by 2020. Ahead of that, summary care records, which provide essential information about a patient, such as their medication, allergies and adverse reactions, are now available in many parts of the country in key areas of the NHS, such as ambulance and A&E services. Healthcare professionals can view these, with patient consent, to inform decisions about care.

Baroness Manzoor: I thank my noble friend for that comprehensive Answer. I am rather concerned that the National Data Guardian's third report, which was out last year, does not fully address the issue of who those electronic patient data belong to. Do they belong to the GPs? Do they belong to NHS England? Do they belong to NHS Digital? This is particularly important because some GPs are moving towards only localised electronic patient record-sharing, which will have an adverse effect on the efficiency of the NHS. Can my noble friend the Minister assure the House and me that electronic patient data records will be kept nationally and that it is the patient's choice over who has access to those records?

Lord O'Shaughnessy: My noble friend makes an important point about the use of data. There is a balance to be struck. The first point to be made about the use of data is that patients need to be part of any decision about sharing them. In 2012, the NHS Future Forum published an independent report on this issue and used the phrase,

"No decision about me without me",

to describe the role of patients. There is of course a need to share data among clinicians, particularly when they treat a patient themselves. There can also be wider concerns: for example, in a public health pandemic or some such incident data would need to be shared more widely. But that can be done only with patients being informed and offering their consent.

Lord Hunt of Kings Heath (Lab): My Lords, is there not a problem here? If all the focus is at national level, that usually takes a long time and it inhibits local progress. Does the Minister agree that one of the great challenges is being able to share information between the health service and social care if integrated care, particularly for older people who are discharged from hospital, is to be delivered? Is any progress being made in getting full integration at local level, which is clearly a challenging area?

Lord O'Shaughnessy: The truth is that there is patchy use of data within the health service. Practically all GPs now offer electronic patient records and something like 9 million people have registered to make appointments online. But it is not at the same level in acute trusts, mental health trusts and so on; there is still paper usage. The intention has been to have a paperless NHS by 2020. This means that with patient consent based around clinical need we would have the ability to share data around the patient pathway, whatever part of the health service they were in.

Baroness Walmsley (LD): My Lords, given the continued revelations of data security breaches, along with the absence of a response to last year's report from Dame Fiona Caldicott, how do the Government intend to avoid a repeat of the fiasco several years ago over care.data? Does the Minister agree that it is vital that patients are given confidence in the security of their data so that they do not withdraw from allowing their data to be used for vital medical research?

Lord O'Shaughnessy: The noble Baroness is quite right that the National Data Guardian produced her report last summer. There has been the intention to reply to that report but purdah has had an inevitable impact, unfortunately. She made points in that report about the simplified process for opting out but was also clear that vital uses can be made of suitably anonymised data which benefit patients directly, particularly through medical and clinical research, and about making sure that patients know about that so that they can choose to have their data shared. It is encouraging that at the moment, only around 2% of all patients have opted to have their summary care records not shared. This suggests that when it is explained properly and there are suitable safeguards, people are happy to share their data.

Lord Marlesford (Con): My Lords, on the subject of records, my noble friend on the Front Bench will have studied the February House of Commons Public Accounts Committee report, *NHS Treatment for Overseas Patients.* The PAC is chaired by the Labour Party at present. It identified a leakage of up to £2 billion a year in the treatment of patients who are either not entitled to NHS treatment free in Britain or whose treatment should be reimbursed by the countries from which they come. The target which the Government have for this leakage is only £500 million a year, or 25%. Will the Minister undertake that in the event of the Government being successful in the election they will make a real effort to stem this leakage, which is diluting the impact of the health service on the British people?

Lord O'Shaughnessy: I am obviously not going to make any commitments for any future Government but I can tell my noble friend about the work that the Government have been doing on this issue. We are making sure that there are identity checks for overseas patients in hospitals to ensure that those people who are not entitled to free care, either through reciprocal arrangements or by some other means, pay for the care that is provided for them, while making sure that at all times anybody who is in need of urgent care has that care given to them, even if they then have to pay later.

Lord Maxton (Lab): My Lords, will the Minister make it clear to the House that there are four health services in the United Kingdom, not one? What negotiations are taking place with his equivalent colleagues in the other Administrations in the United Kingdom to ensure that there is one common computer system across the whole of the United Kingdom? Electronic patient records depend upon there being one computer system not a variety of computer systems across the whole of the country.

Lord O'Shaughnessy: The noble Lord is quite right that the UK Government speak only for the English health system. There is a difference between having a single ICT system—we have been down that road and billions have been wasted—and having systems that can speak to one another and a common code of usage around data security, robustness, sharing patient opt-outs and so on to make sure that there is the ongoing access to information that the noble Lord is talking about, particularly for people who live in border areas who move between the different health systems.

Baroness Greengross (CB): My Lords, while of course patient confidentiality must always be respected, in the recent *Next Steps on the NHS Five Year Forward View* there was a very concerning item on urgent treatment centres. I find it worrying that personalised care plans for patients in mental health crisis or at the end of life would be available in only 40% of emergency care settings, assuming that the target of the report is met. Are the Government prepared to look at these figures and consider them carefully?

Lord O'Shaughnessy: The picture that the noble Baroness paints starts from a position of not a great amount of sharing, particularly outside primary healthcare. That is what the Government have been trying to address. The primary route for doing that has been through the global digital exemplars which are enabling data sharing with all the appropriate safeguards in acute trusts and mental health trusts. The intention has been to continue to increase that over time.

Transport: Disabled Parking in London

Question

11.22 am

Asked by ***Lord Shinkwin***

To ask Her Majesty's Government what discussions they have held with central London boroughs about disseminating best practice in the provision of parking spaces, specifically for disabled people who live and work in central London.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, no such discussions have taken place. It is the role of local authorities to manage their networks efficiently and determine their own policies for balancing the specific needs of their particular communities. However, local authorities are required to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations under Section 149(1) of the Equality Act 2010.

Lord Shinkwin (Con): My Lords, I thank my noble friend for his Answer. Exactly a month ago, I mentioned the problems I was having with parking in Lambeth, as recorded at column 446 of *Hansard* for 27 March. Since then the car that was being left in the disabled bay near where I live, sometimes for three weeks in a row and always with a blue badge on display, has been moved. So clearly someone at Lambeth Council is reading Lords *Hansard* because the young man I saw, who walked away from the car in question without any apparent disability, had clearly been tipped off by

[LORD SHINKWIN]
someone in the council not to park in the disabled bay. Blue badge misuse is a serious offence, yet Lambeth Council says that in this case there is no evidence—even though I have been advised that the blue badge in question was issued by Lambeth Council not to a young man but to a 59 year-old woman. On behalf of all those disabled people who genuinely rely on their blue badge and do not have the privilege of standing up and asking a Question in your Lordships' House, will the Minister urge all local authorities to prioritise tackling blue badge fraud, including when it involves their own staff?

Lord Ahmad of Wimbledon: I thank my noble friend. First, I am sure all your Lordships are very pleased to learn that Camden Council is following our proceedings very closely.

Noble Lords: Lambeth!

Lord Ahmad of Wimbledon: I apologise—Lambeth. I am sure Camden is as well. The issue which the noble Lord raised specifically about Lambeth is an important and serious one. Abuse of the blue badge scheme is taken very seriously, and although enforcement is a matter for local authorities, as noble Lords may well be aware, it is a criminal offence to misuse a blue badge when parking, and offenders may be prosecuted and fined up to £1,000. I would also say to my noble friend that in 2013, the Department for Transport introduced new legislation to enable on-street civil enforcement officers to seize badges that are being misused. Previously, only the police could do this. On the point he makes about sharing good practice, I understand that there are a series of roadshows, in which the department is involved with local authorities, intended precisely to share best practice and to end this abuse.

Baroness Thomas of Winchester (LD): My Lords, the powers of local authorities were clarified just a few years ago, as the noble Lord mentioned, in a Bill that I had the honour of taking through your Lordships' House. Is that bearing fruit? Does the noble Lord have any figures to say whether it has produced more prosecutions of fraudulent blue badge holders?

Lord Ahmad of Wimbledon: The noble Baroness is right to raise this. The number of prosecutions is still low compared to the reports that are received, partly because of the need to produce evidence. I was involved in local government for 10 years and had responsibility at a local level for this. Part of it is education: a lot of people sometimes park inadvertently and think it is okay for a few minutes. The other, more serious, issue is the blatant abuse of parking places by fraudulent blue badge holders, an area where there also needs to be greater education. The roadshows, which are sharing best practice, will help to address the issue of enforcement more effectively.

Lord Geddes (Con): Can my noble friend advise the House how often checks are made of the abuse of blue badges?

Lord Ahmad of Wimbledon: As my noble friend will know, blue badges and disabled parking bays are assessed as part of any traffic enforcement that takes place in a local authority. To my knowledge, no specific initiatives are undertaken to check on this, but general enforcement of traffic management rules at a local level is conducted regularly as part of traffic enforcement in each local area.

Lord Dubs (Lab): My Lords, the Minister referred to the responsibility of local authorities to enforce the blue badge scheme. Is there not a difficulty when blue badges issued by one local authority are used incorrectly in another local authority? Do we not have to have better enforcement procedures to make sure that blue badges are not abused?

Lord Ahmad of Wimbledon: I agree with the noble Lord, who raises a vital point. That is why looking at how we work across the board and sharing good practice will address some of the issues. Again, I stress the point that part of this is about education, information and dissemination, but those involved in traffic enforcement should know what the specific rules are in order to ensure that effective enforcement can be carried out.

Lord Laming (CB): My Lords, could I invite the Minister to extend his comments to another aspect that affects people with disabilities of all kinds, which is parking on or obstructing pavements? This has become an increasing problem for people with mobility problems of one kind or another. When looking at this problem, could the Minister also bear in mind the need to keep pavements clear for people?

Lord Ahmad of Wimbledon: Again, the noble Lord raises an important point. Outside London, and indeed in certain boroughs of London, pavement parking is permitted. It causes a big issue in terms of access—and not just, dare I say it, for the disabled. I still have reasonably young children, one still in a pushchair, and this is a problem for young families attempting to get through. The noble Lord makes a very valid suggestion and we will certainly ensure that it is part of the discussion.

North Korea

Question

11.29 am

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what evaluation they have made of the risks to world peace posed by the situation in North Korea.

Lord Alton of Liverpool (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I should mention that I co-chair the All-Party Parliamentary Group on North Korea.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we have made it clear that North Korea must stop its destabilising behaviour. Its nuclear and ballistic missile programmes are a violation of multiple United Nations

Security Council resolutions and a threat to regional and international security. We fully support action at the United Nations Security Council to counter this threat and maintain pressure on the regime. The Foreign Secretary will shortly be discussing North Korea's illegal activity at the Security Council.

Lord Alton of Liverpool: My Lords, yesterday's presidential invitation to the White House of all 100 Members of the United States Senate for a briefing on the unfolding and dangerous crisis on the Korean peninsula underscores its gravity, as does the recollection that the last Korean war cost nearly 3 million lives, including those of 1,000 British servicemen. With one-quarter of North Korea's gross domestic product used on armaments and over 1 million men under arms, how are we using our own diplomatic presence in Pyongyang and Beijing and at the Security Council to engage China, to avert North Korea's present and long-term threat, and to forestall a catastrophic outcome? Closer to home, why was the Korea National Insurance Corporation able to use London—an issue that I raised with the Government last January—to generate over £113 million to support both the regime and its nuclear weapons programme?

Baroness Anelay of St Johns: I will turn to the specific point before I answer the more general and important point that the noble Lord first made: the EU designated the London office of the Korea National Insurance Corporation on 28 April 2016. Since that date the UK has taken the appropriate actions to sanction the firm and has absolutely followed that through; we take sanctions policy extremely seriously, which is why we issued a White Paper on sanctions just last week. On the general point, we have worked and will continue to work not only through our critical engagement with the North Korean Government in Pyongyang through our embassy there but also at the United Nations, because it is only by work with the United Nations Security Council co-operating and with China exerting influence that there can be any change to North Korean behaviour.

Lord Howell of Guildford (Con): My Lords, I reinforce the point made by the noble Lord, Lord Alton, that the key to this incredibly dangerous situation is the full engagement and support of the Chinese Government and the sharing of their concerns with ours and those of the rest of the world. Is it not possible that HMG might be able to play a particularly useful intermediary role in this area?

Baroness Anelay of St Johns: As always, my noble friend makes a most important point. I can give him an assurance that the Foreign Secretary is meeting the Chinese representatives when he travels later today to New York. He has already had very fruitful discussions with China. It is notable that the whole of the United Nations Security Council, including China, agreed that sanctions should be exerted on the DPRK, and China has shown good faith in that this year in its sanctions on coal.

Baroness Liddell of Coatdyke (Lab): My Lords—

Lord Campbell of Pittenweem (LD): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with brief questions we can hear from the Liberal Democrats and then the Labour Benches.

Lord Campbell of Pittenweem: My Lords, what is the response of Her Majesty's Government to the opinion expressed today by Mr Paul Wolfowitz, who was a member of the Administration of George W Bush and is no shrinking violet in these matters, that the solution to the crisis with North Korea will not rest in military action, not least because of the dangers that that would present to the citizens of South Korea?

Baroness Anelay of St Johns: My Lords, my right honourable friend the Foreign Secretary made it clear that he sees military action as undesirable. We, along with our allies in America, have not taken offensive action. It is of course North Korea that has been offensive in its actions. Clearly the position of Seoul on the border means that any military action would be absolutely disastrous. That is why we are all working together as allies in the United Nations to ensure that there are stronger sanctions and, in particular, that there is a stronger will on the part of China to exert its influence on North Korea, to avoid an escalation of what we have seen over the last few weeks.

Baroness Liddell of Coatdyke: My Lords, given the uncertainty that exists about North Korea, not least after President Trump's discussions yesterday with the Senate, if there is the possibility of military engagement by the United States against North Korea, would there be a situation similar to what the Foreign Secretary suggested this morning in relation to Syria, which would engage British troops? If that is the case, what attempts will be made to consult Parliament, given that the elected House will cease to exist in a very few hours' time?

Baroness Anelay of St Johns: My Lords, it is a straightforward fact that the United States has made it clear that it is not seeking military action. It is installing a defensive missile system and working with allies in the area such as South Korea. What came across very strongly in the announcement by the Secretary of State in America yesterday is that the United States is seeking a peaceful resolution. It made it clear that it wants to bring North Korea to its senses, not to its knees.

Lord Collins of Highbury (Lab): I welcome the Minister's response about the Security Council, but will she reassure us that when the Foreign Secretary is in New York, he will be in communication with his counterpart in the United States to ensure that these two great allies act in concert to ensure effective sanctions?

Baroness Anelay of St Johns: Yes, my Lords: in New York but also on a more regular basis.

Lord Spicer (Con): My Lords—

Noble Lords: Dubs! Time!

Child Refugees

Private Notice Question

11.36 am

Asked by ***Lord Dubs***

To ask Her Majesty's Government what assessment they have made of the situation regarding child refugees in the Calais and Dunkirk areas, and whether they will take immediate steps to allow a significant number to enter the UK.

Lord Dubs (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in 2016, the UK transferred more than 750 children from France as part of comprehensive support for the Calais camp clearance. The UK also offered support to France following the recent fire at Dunkirk. We continue to work closely with the French to transfer eligible children under Section 67 of the Immigration Act and the Dublin regulation. The fastest route to safety is to claim asylum in France.

Lord Dubs: My Lords, I welcome the fact that the Government announced in a Written Ministerial Statement today that a further 130 children would be taken into this country under Section 67 of the Immigration Act, even if the reason is the Home Office having to hang its head in shame because it made an administrative error as part of collating the figures. That comes out of "Yes Minister". Will the Government now reconsult local authorities, because many local authorities, not just in England but in Scotland, Wales and Northern Ireland, have expressed a willingness to take more child refugees? Is not the Minister aware that many representations have been made recently about the availability of local authority places?

Baroness Williams of Trafford: The administrative error is most unfortunate, and for that I apologise. I would not want that to happen. The good news is that we have an additional 130 places, and I think we should all be very pleased about that. The important thing here is that no child has been disfranchised. Any eligible child has been taken thus far, and 200 children have been taken so far, so we have not even got to the figure of 350. I would not want noble Lords to think that any child had been disfranchised because of this administrative error, which is, as I said, most regrettable.

On the consultation, we have consulted local authorities. For the record, I can tell noble Lords that there are 4,000 unaccompanied children in local authority care as we speak. Some local authorities, such as Kent and Croydon, host a disproportionate number of children. We are always very glad to hear from local authorities coming forward to take children through the national transfer scheme or to take refugee children, but it is not as though we have not consulted properly. I know that the Immigration Minister wrote to all local authorities, a national launch event was held, and more than 10 regional events were held in every part of England, as well as one in Scotland and one in Wales.

Lord Wigley (PC): My Lords, the Minister will be aware of reports last week in the context of child refugees that an assumption was being made that, if such a child was disabled, they would be debarred because they would be regarded as too burdensome. Will she take the opportunity to deny with all possible strength that that could be the Government's policy?

Baroness Williams of Trafford: My Lords, it would never be the Government's policy—I do not think any Government's policy—to disfranchise a disabled child because they were too burdensome. A child would be assessed under the criteria of either Dubs, Dublin or the vulnerable children's resettlement scheme. No child would ever be disenfranchised because they were disabled. I can very strongly confirm that.

Baroness Sheehan (LD): I have two questions for the Minister. Is she aware that Help Refugees will press ahead with its pending court case, as freedom of information data show that further clerical errors exist? Secondly, will the Government accept that we have a moral and legal duty to these children to reopen the Dubs scheme to ensure that these errors are ironed out once and for all and that we act with utmost haste in bringing these unfortunate children to the UK? The Government have been far too slow in actioning those points.

Baroness Williams of Trafford: My Lords, as my first Answer explained, we have not closed the Dubs scheme. We have 200 children here and there is potential for another 280 to arrive under the additional numbers. I look forward to the outcome of the court case and would not want to comment on it at this stage.

Baroness Manzoor (Con): My Lords, France or Europe are not some war-torn country, so I am delighted that refugees are able to get to a place of safety, whether in France or here. My concern is that the most vulnerable children and women are still in Syria and on the borders of Syria. What support have the Government given in that vital work?

Baroness Williams of Trafford: I am very pleased to be able to do that. My noble friend is absolutely right that the most vulnerable are still in the regions. Last year, the former Prime Minister made an announcement to double the amount of assistance going to the region to £2.4 billion—double the amount that it had been previously. My noble friend makes exactly the right point that we should be sending help to the regions where it is most needed.

Lord Rosser (Lab): First, I think it would have been better if the Government had come with an Oral Statement to the House on this issue rather than putting it in a Written Statement just before we are about to cease sitting, as this is an issue of considerable interest to the House. We discussed this in the House on 9 February, after the Government said a Written Statement in the Commons:

"Local authorities told us they have capacity for around 400 unaccompanied asylum-seeking children until the end of this financial year".—[*Official Report*, Commons, 8/2/17; col. 10WS.]

That would have been 2016-17. I asked the Minister:

"What capacity have local authorities told the Government they have for unaccompanied asylum-seeking children in the 1917-18 financial year on the basis that the current level of government funding is continued?".—[*Official Report*, 9/2/17; col. 1861.]

I did not get a direct reply to that question. The Minister said that the Government were in constant touch with local authorities. Can she give us the figure? What capacity have local authorities told the Government that they have for unaccompanied asylum-seeking children in the next financial year, 2017-18, on the basis that the current level of government funding is continued?

Baroness Williams of Trafford: My Lords, as my honourable friend in the other place outlined in the Written Ministerial Statement yesterday, the capacity for Section 67 children is 480. As for future commitments, obviously we are hours from Prorogation and I cannot make any future declarations at the Dispatch Box, much as I would want to. Those figures will be forthcoming should we be successful in the general election.

Lord Roberts of Llandudno (LD): My Lords, the Minister said that there are 4,000 children in foster care. Are these 4,000 asylum-seeking, unaccompanied youngsters, as we voted on in the recent Act, and is she aware that of the children dispersed in France, 600 have made their way back to Calais because they have not been accepted in a very friendly way? Can the she answer those two questions?

Baroness Williams of Trafford: I am not sure why children who had been accepted for local authority accommodation here would want to go back to Calais. I am sure that there are various reasons for that.

Noble Lords: In France.

Baroness Williams of Trafford: Sorry, I have slightly misheard the noble Lord's question. He asked me, first, whether there are 4,000 unaccompanied children in local authority care in this country. Yes, there are. Other children who were not eligible for either Dubs or Dublin have been dispersed within France.

Lord Roberts of Llandudno: My Lords—

Noble Lords: Order.

Lord Elton (Con): My Lords, the debates that we have from time to time on this issue focus almost exclusively on local authorities, suggesting that they are the only and the best providers. Is that the case? If so, what is the arrangement by which other providers can link into the system in order to increase the number of places available?

Baroness Williams of Trafford: I am glad that my noble friend asked that question, because one thing that the Government have been very keen to promote is the community sponsorship scheme, which the most reverend Primate the Archbishop of Canterbury has taken part in, taking in Syrian families in Lambeth Palace. In fact, in my own local authority in Trafford we also have a community sponsorship scheme. I never let the time pass up without encouraging noble Lords to tell of any community sponsors they know who might be willing to take families.

Arrangement of Business

Announcement

11.48 am

Lord Taylor of Holbeach (Con): My Lords, on Monday I advised the House that, subject to the progress of business, we hoped to prorogue once today's business was completed. The timing of Prorogation today will depend on the time that this House will take to complete its business, which is of course in the hands of the House itself. We will adjourn during pleasure after we have considered the Motion in the name of the noble Lord, Lord Clark of Windermere, and then resume for the Royal Commission. I anticipate that this will not be before the middle of the afternoon, but when timings are more certain we will indicate them on the annunciators.

I should alert the House to some breaking news: we now have the date for State Opening, which will be Monday 19 June. The first meeting of Parliament will be Tuesday 13 and Wednesday 14 June, when the House will meet for the purposes of swearing in. I understand that the House authorities will shortly issue a Lords Notice, confirming the arrangements for State Opening and Dissolution, including the use of the facilities of the House.

Local Audit (Public Access to Documents) Bill

Third Reading

11.49 am

Bill passed.

Merchant Shipping (Homosexual Conduct) Bill

Third Reading

11.50 am

Bill passed.

Guardianship (Missing Persons) Bill

Third Reading

11.50 am

Bill passed.

Farriers (Registration) Bill

Third Reading

11.51 am

Bill passed.

Higher Education and Research Bill

Commons Reason and Amendments

11.51 am

Motion A

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

That this House do not insist on its Amendment 1 and do agree with the Commons in their Amendments 1A, 1B, 1C and 1D in lieu.

Commons Amendments in lieu

1A: Page 32, line 18, at end insert—

"( ) After subsection (3) insert—

"(3A) In exercising its power to give consent under subsection (A1), the Office for Students must have regard to factors set out in guidance given by the Secretary of State.

(3B) Before giving guidance under subsection (3A), the Secretary of State must consult—

(a) bodies representing the interests of English higher education providers,

(b) bodies representing the interests of students on higher education courses provided by English higher education providers, and

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

1B: Page 32, line 21, leave out from beginning to end of line 23 and insert—

"(5) In this section, "English higher education provider", "higher education course" and "registered higher education provider" have the same meanings as in Part 1 of the Higher Education and Research Act 2017 (see sections 77 and 79 of that Act)."

1C: Page 33, line 7, at end insert—

"(5ZA) In exercising its power to give approval under subsection (A1) or (2), the Office for Students must have regard to factors set out in guidance given by the Secretary of State.

(5ZB) Before giving guidance under subsection (5ZA), the Secretary of State must consult—

(a) bodies representing the interests of English higher education providers,

(b) bodies representing the interests of students on higher education courses provided by English higher education providers, and

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

1D: Page 33, line 18, at end insert—

"( ) In subsection (7), before the definition of "relevant institution" insert—

""English higher education provider" and "higher education course" have the same meaning as in Part 1 of the Higher Education and Research Act 2017 (see section 77 of that Act);"

Viscount Younger of Leckie (Con): My Lords, I say at the outset that I am pleased to return to the Higher Education and Research Bill, which has been strengthened in this House by the attention and expertise shown by noble Lords.

I turn first to Amendments 1A, 1B, 1C and 1D. There has been much debate and discussion in your Lordships' House about the importance of continuing to protect both institutional autonomy and use of the term "university". In particular, the noble Lords, Lord Stevenson and Lord Kerslake, and the noble Baronesses, Lady Wolf, Lady Brown and Lady Garden, spoke eloquently at the Bill's Committee stage about the importance of ensuring that there is proper protection in place. As a result, your Lordships agreed Amendment 1. We agree with many of the sentiments behind that amendment. To continue to protect institutional autonomy, we responded with a significant package of amendments at Lords Report stage designed to provide robust and meaningful protection of this important principle, so vital to the success of our higher education sector. Today, the Government propose further amendments in lieu of Amendment 1 to continue to protect the value and reputation of university title. I am pleased to report that these amendments were agreed yesterday in the other place.

Our amendments in lieu ensure that before permitting the use of university title, the Office for Students must have regard to factors in guidance given by the Secretary of State. Further to that, before giving the guidance, the Secretary of State must consult bodies that represent higher education providers and students, and any other appropriate person. This will ensure that the guidance is correctly focused. I reassure noble Lords that this consultation will be full and broad. It will reference processes and practice overseas—for example, in Australia—and provide an opportunity to look at a broad range of factors to consider before granting university title. This may include factors such as: track record in excellent teaching; sustained scholarship; cohesive academic communities; interdisciplinary approaches; supportive learning infrastructures; dissemination of knowledge; the public-facing role of universities; academic freedom and freedom of speech; and wider support for students and pastoral care.

These factors chime with the comments on the definition of a university made by my honourable friend the Minister in the other place. He has said previously that,

"in a limited sense a university can be described as predominantly a degree-level provider with awarding powers. If we want a broader definition, we can say that a university is also expected to be an institution that brings together a body of scholars to form a cohesive and self-critical academic community to provide excellent learning opportunities for people",

the majority of whom are studying to degree level or above. He said also that:

"We expect teaching at such an institution to be informed by a combination of research, scholarship and professional practice. To distinguish it from what we conventionally understand a school's role to be, we can say that a university is a place where students are developing higher analytical capacities: critical thinking, curiosity about the world and higher levels of abstract capacity in their analysis".—[*Official Report*, 26/4/17; col. 1159.]

Further, the strength of the university sector is based on its diversity and we should continue to recognise that a one-size-fits-all approach is not in the interests of students or wider society. In particular, for example, small and specialist providers that support the creative arts, theology and agriculture have allowed more students with highly specialised career aims the opportunity to study at a university. As we said in our White Paper and throughout the passage of the Bill, the diversity of the sector and opportunities for students have grown as a result of the important changes introduced by the Labour Government in 2004; namely, the lifting of the requirement for universities to have students in five subject areas and award research degrees. We would not expect to go back on the specific changes that the party opposite made.

I thank noble Lords again for their constructive engagement and consideration of the teaching excellence framework. In particular, I pay tribute to the noble Lords, Lord Kerslake and Lord Blunkett, for the time and energy that they have personally put into this issue. We all agree that students deserve high-quality teaching and need access to clear and comparable information as they make one of the most important decisions of their lives so far.

The crux of our debate has always focused on the operation of the TEF. A TEF that has no reputational or financial incentives would not focus university attention

on teaching or help students to make better choices. That is why we are proposing to remove the two amendments that this House previously voted in, which would render the TEF unworkable. Nevertheless, it was clear from our previous debate that noble Lords remained concerned about the operation of the TEF and the link between the TEF and fees. The Government have listened to and reflected on the concerns raised in this House. I am delighted to be able to put before the House a set of amendments which, I believe, directly address the most fundamental concerns raised during our previous debates.

I am pleased to endorse Amendment 23C in lieu of Lords Amendment 23, which requires the Secretary of State to commission an independent review of the TEF within one year of the TEF clause commencing. Crucially, the amendment requires the Secretary of State to lay this report before Parliament. This will ensure greater parliamentary accountability for the framework as it moves forward. The report itself must cover many of the aspects that have concerned Members of this House and the other place, including: whether the metrics used are fit for use in the TEF; whether the names of the ratings are appropriate for use in the TEF; the impact of the TEF on the ability of providers to carry out their research and teaching and other functions; and an assessment of whether the scheme is, all things considered, in the public interest.

I am happy to repeat the commitment made in the other place that the Secretary of State will take account of the review and, if he or she considers it appropriate, will provide guidance to the OfS accordingly, including on any changes to the scheme that the review suggests are needed, whether this be in relation to the metrics or any of the other items that the review will look at.

Noon

We have also heard concerns about the impact of the link between the TEF and fees. We recognise the important role of Parliament in setting fee caps. That is why I am also pleased to seek the House's support for our Amendments 12A, 12B, 12F and 12G, which amend the parliamentary procedure required to alter fee limit amounts to ensure that any regulations that raise fees are subject, as a minimum, to the affirmative procedure. This provides a greater level of parliamentary oversight than the legislation currently in place. Furthermore, these amendments demonstrate our commitment to a considered rollout of differentiated fees.

Amendments 12C and 12D in lieu will delay the link between differentiated TEF ratings and tuition fee caps so that this will not be introduced for over three years, with the first year of differentiated fees as a result of TEF ratings being no earlier than the academic year beginning in the autumn of 2020. I should like to clarify that point as I know that it is slightly complex. Until August 2020, there will be no differentiation of fee uplift based on performance in the TEF—in other words, a provider's fee cap will not differ according to the different ratings they might be awarded. These amendments mean that, until that point, all English providers participating in the TEF will receive the full inflationary uplift regardless of their rating. As before, it will be up to the devolved Administrations to determine whether they are content for their institutions to participate in the TEF and what impact participation might have on their fees. In practice, that means that differentiated fees will not be introduced until after the independent review has reported to the Secretary of State and Parliament.

I would like to reassure this House today by repeating the commitment made yesterday in the other place by the Minister for Universities that the ratings awarded this year will not be used to determine differentiated fees unless a provider actively chooses not to re-enter the TEF after the independent review. Therefore, this year's ratings will count towards differentiated fees only if, after the review, a provider does not ask for a fresh assessment before their next one is due—an opportunity that will be open to all participants.

Before moving to our other amendments, I reiterate to the House that we remain committed to ensuring that the TEF will evolve to assess the quality of teaching at subject level, as well as at institutional level. I know that many noble Lords feel very strongly, as we do, that the move to subject level needs to happen as soon as possible. However, we recognise that subject-level assessments are more challenging, and that is why the Government have previously announced an extension to the rollout of subject-level TEF, with an additional year of piloting. This follows the best practice demonstrated in the research excellence framework and means that the first subject-level assessments will not take place until spring 2020. I beg to move.

Baroness Brown of Cambridge (CB): My Lords, I rise to speak to the government amendments to the Bill in lieu of Lords Amendment 1, which defined the functions of a university, essentially protecting the use of university title by describing the characteristics of an organisation which could be granted such title.

The several purposes of that amendment included protecting university autonomy; ensuring that institutions able to call themselves universities are engaged in scholarship that both informs and forms an important part of student learning; ensuring that learning takes place in an environment where disciplines meet and meld; and ensuring that universities recognise the special place they hold in society by contributing to our society not only by teaching and disseminating knowledge but by, for example, partnering with charities, schools, colleges and local and regional initiatives to deliver a benefit well beyond their immediate staff and students. International research clearly demonstrates the impact that engaged universities can have on local communities and economic growth. Many other countries—including, for example, Australia, New Zealand, Switzerland, the Canadian provinces, Germany, Spain and India—have a definition of a university, or its functions and activities, in legislation. So an overarching objective of the Lords amendment was to protect the reputation of universities is this country, going beyond the situation in the Bill where the OfS might consent to the institution's use of university title if that institution were a registered higher education provider. That would communicate to the world, which is particularly important at a time when we are leaving the EU, that our higher education system is open for expansion and innovation, but that

[Baroness Brown of Cambridge]
university title in England is not given easily. It would tell potential students about the sort of institution and learning environment they should expect from a university, and it will encourage new entrants to the sector to see that obtaining university title is an important and aspirational achievement.

I appreciate that the Government have worked with my noble friend Lord Kerslake and others to ensure that university autonomy is now a strong and positive feature of the Bill, but I am disappointed that the Government have not accepted the argument for a definition of the key functions of a university in the Bill. However, I am reassured that the government amendments in the other place, in lieu of the Lords amendment, require the OfS to have regard to factors set out in guidance by the Secretary of State when awarding university title and I am pleased that the Secretary of State will consult on those factors.

Indeed, I strongly welcome the comments by the Minister for Universities, Science, Research and Innovation in the other place yesterday, which the noble Viscount repeated, about the consultation being "full and broad" and about the type of factors that would be included in that consultation. I agree that this approach can deliver both widely supported and strong guidance for the OfS on the criteria for the award for university title, so I record my thanks to the Ministers and their team and I put one final question to the noble Viscount today.

In the week that we have heard that China has sent senior government officials into its leading universities because of concerns over government criticism and westernisation, does he not think it would have sent a great message for us to have been positively encouraging, if not insisting, that our universities act as,
"critics of government and the conscience of society",
as the Lords amendment also suggested?

Lord Kerslake (CB): My Lords, I declare my interest as chair of the board of governors of Sheffield Hallam University. I also record that the vice-chancellor of Sheffield Hallam, Chris Husbands, has been leading work on the implementation of the teaching excellence framework on behalf of the Government.

It falls to me to lead the response on this set of government amendments in Motions B and D, but it is important to say that this part of the Bill has been subject to many contributions during our debates. From the start, it has been clear that there is general support for the Government's desire to raise the profile and importance accorded to teaching in our universities. That has not been a point of issue. There has also been a general understanding that fees will, over time, need to rise with inflation.

The concerns have been with the Government's approach to introducing the TEF and the link being made between the TEF and increases in fees—in particular, that the TEF was being introduced with undue haste, that the gold, silver and bronze rankings being put forward were both inappropriate and potentially damaging to the sector, and that the TEF was not the right basis for allowing differential fee increases. The amendments now put forward by the Government in place of our amendments go a considerable way to addressing those strong concerns.

As the noble Viscount said, the review will be independently led and must cover: the process by which the ratings are determined; whether the metrics are fit for purpose; whether the classifications awarded are appropriate; the impact of the scheme on higher education providers; and whether the TEF is in the public interest. By any measure, that is a comprehensive review. We will all await the outcome with interest. It is essential that any future Secretary of State takes full account of its findings and recommendations.

All of the above tests are important, but I place particular emphasis on the review of the rankings and the public interest test. In this context, there is one point I should like the Minister to clarify—I have notified his office in advance of the question I wish to raise. I will be grateful if the Minister can confirm that it will be open to the review to say that we shall either stay within the current rankings, propose an alternative set of rankings, or conclude that ranking of universities of any sort is simply not appropriate in what is a very diverse sector. I look forward to the Minister's response.

The ability to differentiate fee increases linked to the TEF has not been removed from the Bill, as we proposed, but the Government's amendment will delay any differentiation until at least the academic year 2020-21. As the Minister said, this will allow time for the review to be completed and its conclusions properly considered. In the meantime, existing universities involved in the process will get the full inflationary uplift—something all sides of the House supported. This is a significant and welcome movement by the Government and I know it has not been lightly conceded.

There remains the issue of publication of the results of the trial TEF assessment process. I understand, although it would be helpful if the Minister confirmed, that these results will not now be published until after the election and a new ministerial team is in place. I hope that that new ministerial team will consider very carefully how publication should be handled, particularly given that the TEF will be subject to a wide-ranging review.

I said in Committee that I could not think of anyone better placed to lead the work on the TEF than Chris Husbands. That firmly remains my view. He and his fellow assessors have applied themselves diligently and fairly to the task they were given. The fault here, I fear, lay in the way they were commissioned by the Government to undertake their task. The independent review and the delay will provide an opportunity to get this right. In particular, I think the gold, silver and bronze rankings are not long for this world. I hope that what comes out will be a much more sophisticated and evidence-based approach linked to subjects, as proposed by the noble Lord, Lord Blunkett—there is a Sheffield theme here today.

Finally, as I am unlikely to speak again in the debate, I pay tribute to Peers on this side of the House for their valiant work in reviewing and amending this Bill; to the noble Lord, Lord Stevenson, and the noble Baroness, Lady Garden, for their terrific work; and to Jo Johnson and the Minister in this House for being

willing to listen and to respond to our concerns. That is what this House should be about. This is still not the Bill that we might have wanted, but it is considerably improved from when it came into this House. I hope that there will be no further Bills on higher education for a considerable period and that the sector will be given the chance to have the stability it needs to do what it does best: to represent the interests of this country.

12.15 pm

Baroness Deech (CB): My Lords, I share some of the disappointment expressed by my noble friend Lady Brown about the definition of a university, but I take great comfort from a significant step forward which may have escaped the attention of some members of the public. I am extremely grateful to both the Minister in the other place, Jo Johnson, and the noble Viscount, Lord Younger, for having listened to those who have expressed significant concern about the inroads into freedom of speech in our universities and the growth of the most unpleasant racism expressed in the widespread extent of anti-Semitic activity.

I am sure that all Members of the House will support me in expressing gratitude to the two Ministers for having understood that and addressed it, albeit off the face of the Bill. Universities' obligations relating to freedom of speech have been extended and all universities have been reminded by Jo Johnson of the definition of anti-Semitism that has been adopted internationally. That is a great step forward towards repairing the reputation of our universities, which has suffered internally if not internationally.

I also take some comfort from the fact that the last president of the National Union of Students, Malia Bouattia, has not been re-elected—in part, I believe, because some consider that some of her remarks have been racist. I believe that we are moving into a new era as far as that is concerned.

I also take this opportunity to salute Sir Eric Pickles, the Government's envoy for post-Holocaust issues, who joined in the fight to preserve freedom of speech and to stop anti-Semitism. This is very good news. We will miss him sorely.

Finally, it has been evident in the discussions about this Bill just how much expertise there is in this House, especially on these Benches, on higher education. Chancellors, vice-chancellors, administrators and professors have all joined in and we have eventually been listened to. That goes to establish the value of the expertise accumulated in this House. Some of it may be very elderly, but there is a great deal of expertise in higher education, and it has in the end shone through.

Lord Blunkett (Lab): My Lords, I draw attention to my declaration of interests in the register. It is not my intention to repeat the excellent contributions that have already been made, but I want to put on record my commendation for Chris Husbands, the vice-chancellor of what some unwisely call the university in which I am involved "the other university in Sheffield". Chris Husbands' work is of an excellent quality and I hope that we will be able to build on it in the years to come.

However, I will repeat what the noble Lord, Lord Kerslake, said in relation to what happens after the general election and ensuring that nothing is done, particularly in relation to the evaluation and the ratings, that damages in any way the enormous contribution of the higher education sector in this country both to the well-being of students and to our economy and our standing in the world. There can be no doubt after the considerable debates that we have had that there is a deep commitment on the part of the Minister in this House to improving teaching and to recognising the critical role of the teaching excellence framework in ensuring that comparator with the research excellence framework.

It is worth putting on the record at this very late stage that there is still a major tendency to value what will pull in major grants for research, even when the research may be of doubtful value, rather than to balance the commitment to high-quality teaching and learning with the REF. That is why I have expressed to Jo Johnson, the Minister in the Commons, what I repeat today, which is my support for the endeavour to put teaching very much at the top of the agenda.

I commend the Government on having listened. This Bill has been an exemplar of how we can work across the political divide both in this House and beyond. I will refer now to speculation in the more reliable media. I hope that no one will be punished in any way for having been prepared to listen and to debate. The idea that a Minister should not be able to express a view internally within the Government is a disgrace. I do not wish to bring in party-political matters, but I know that some MPs are thought to call the Prime Minister "Mummy". I remember Mummy telling me that she had heard me once, heard me twice and did not want to hear me again—but you cannot conduct government on that basis. Therefore, whatever happens on 8 June, I hope that we will move forward on the understanding that a spirit of co-operation creates better legislation that is more easily implementable and receives a wider welcome than would otherwise be the case, and thus achieves its objective.

I thank the noble Viscount the Minister for repeating the words of Jo Johnson in relation to the move as rapidly as possible to subject rather than institutional comparators. This is an important part of what we were debating on what was Amendment 72, which morphed into Amendment 23 and is back with us in a different form today.

I also want to say, as a new Member of this House, how impressed I have been by the Cross-Bench contributions. I will echo the commendations made by the noble Lord, Lord Kerslake, rather than go through them again. Ministers and civil servants on this Bill have shown that they are of the highest possible calibre by being prepared to listen and respond, and I thank them for that.

Baroness Garden of Frognal (LD): My Lords, perhaps I may associate these Benches with the eloquent words we have already heard. It is inevitable that there will be a measure of disappointment that not all of your Lordships' wisdom has been accepted unequivocally by the other House, but I think we can all agree that we have made immense strides in this Bill, and we are

[Baroness Garden of Frognal]
deeply appreciative of the way in which Ministers have listened and come forward with proposals. Perhaps I may pick up one thing about which we are particularly pleased, which is that there will be a delay in implementing this while a review is carried out. Some really key measures set out in the Bill need more reflection to see whether they are actually the right path to tread, so we appreciate the fact that the delay has been built in. Again, we appreciate the measures that the Government have taken to come towards us on these issues.

Baroness Wolf of Dulwich (CB): My Lords, first, I should declare an interest as a full-time Academic Council member of King's College, London. I had not expected to speak in this part of the debate and I am afraid that I will be speaking again later. But, since I am on my feet, I would like to say that I agree with all noble Lords who have expressed their appreciation of how the Government have listened to opinions and to the House generally. I, too, feel that we have come a long way. In this context, I will bring back a couple of points that were made in the earlier debates by the noble Duke, the Duke of Wellington, and by me in the context of amendments that we had tabled. Since the noble Duke is unable to be here today, I will make them briefly on behalf of us both.

Along with almost all noble Lords here, we strongly welcome the delay in implementing the link with fees—here I endorse the remarks of my noble friend Lord Kerslake. I am delighted to hear that we are moving quickly towards a position where we will have subject-level rather than institution-level assessments. However, one reason we became so concerned about the TEF is that putting a label on an institution is potentially very damaging to it.

One thing that has been rather an eye-opener for me is the extent to which—perhaps inevitably and as someone who teaches public management I should not be surprised—the "sector" is, in the view of the Government, the organised universities and Universities UK, and how few good mechanisms there are for the Bill team and the department to get the voices of students, as opposed to occasionally that of the National Union of Students. Students have been desperately concerned about this, because they are in a world where they pay fees and where the reputation of their institutions is so important. They have been worried about and deeply opposed to anything that puts a single label on them. This single national ranking caused many of us concern.

I will say a couple of things that I hope the incoming Secretary of State will bear in mind. First, as others have alluded to, we have a pilot going on and a system of grades that is out there. I fully understand that that is under way and there are enormous lessons to be learned from it. However, I hope very much that, after the election, whoever the Government may be will think hard about how they use that information, how they publish it, and whether they are in any sense obliged to come forward with the type of single-rank national league table that has caused so much anxiety to students. That is of great concern and it is hard to see how it serves the purpose, also expressed in the current Conservative manifesto, of preserving the reputation of our great university sector.

The other thing, on which I do not have any particular inspiration but about which I would love the incoming Government to think, is how to widen out their contacts with not just the organised sector and Universities UK but the academics and students who are really what the sector is about. We have great universities not because we have activist managerial vice-chancellors but because they are autonomous in large measure internally as well as vis-à-vis the state. That has been of real concern to me. Since we are going to have an Office for Students, it would be very good if, post the election, we could make it genuinely an office for students.

Lord Stevenson of Balmacara (Lab): My Lords, this is a very big Bill. I share the feeling of the noble Lord, Lord Kerslake, that perhaps this subject is one we will not see again for some time to come and so ought to enjoy what we are seeing now. The train passes slowly, but it is a very important one and we should pay regard to it.

We should also bear in mind that the Bill attracted more than 700 amendments and resulted in, at our last count this morning, 31 major concessions made by the Government to the voices raised, in the other place and particularly in here, in relation to some of the issues we heard about today. The noble Baroness, Lady Deech, was right to reflect on the fact that what we have in front of us today, although really important, is the end of the process, not the whole of it. We should not forget that within the list of concessions—"concessions" gives the wrong sense; I mean the things that moved in the Bill—there are important aspects. There is not just freedom of speech, which she mentioned and which is of course tremendously important, but also measures that will improve collaboration within the sector, that will help reverse the decline in part-time students, that will assist mature students who wish to come back, and that pave the way for more work to be done on credit transfer and flexible courses. These are all really important changes to the infrastructure of our higher education system and will make it better. They have not been picked up today because they were dealt with earlier in the process, but they should not be forgotten as they are important.

We have also heard nothing today about UKRI and the developments made in that whole area, which are to change radically the consensus on operating within science and research more generally that has gone on for nearly 30 years in one form or another. It is important that we also reflect that those changes went through after debate and discussion—and some minor adjustments but not many—primarily because there was an effort to make sure that the words used to describe the change were understood properly. A lot of time was spent in going round talking to people and making sure they were happy with that. That was a good thing. Indeed, this whole process, as has been touched on already by a number of noble Lords, is an example of what this House is good at but should be more widely developed within our political debates and discussions: that there is room for civilised debate and discussion about every issue. It does not have to be party political, as my noble friend Lord Blunkett said. It can be small-p political. It can be aimed at

trying to arrive at a better overall solution, and I am sure that what we are achieving today has ticked the box in all these areas.

12.30 pm

I am grateful to the Minister for spending time introducing the four Motions, having been warned earlier not to spend so much time on his feet at the Dispatch Box and to write to us. But the time for letters has ended and therefore it was necessary for him to go through that process. We have all benefited from that because these words are important in understanding the changes that have been made at relatively high speed over the past few days to get the Bill to a point where it could pass through both Houses. I am grateful to him for that. These words are important. As far as I could tell, they were exactly the same as those used in the other place. A close reading of *Hansard* will probably be required, but I am pretty confident that the sensibility there is enough to make sure that we are in the right place on this.

On the definition of a university, I have confidence that what is now in the statute will get us to a point, as the noble Baroness, Lady Brown, said, which will allow us to have a better understanding of what constitutes a university, which will be of benefit to us, both internally in the UK but also, importantly, abroad.

The TEF has been the main concern, and the issues were well brought out by the noble Lord, Lord Kerslake. It is important that we pick out of the flurry of amendments we have here that the net effect is that Parliament retains a lock on how the TEF will be developed, and on the design and implementation of the processes that will accompany it. That is really important. That is partly because of the way in which the review will work and will report back on that, and partly because of the change to affirmative resolution for the regulations necessary for this. That is good and I welcome it.

A number of noble Lords have mentioned the focus that may be behind the changes to come in TEF in relation to subject and course-level issues. I ask the Minister to reflect a little bit on that, if he is able to. I do not think this is an either/or. At least, I do not suppose that is the intention behind it, although I think the consensus view here is that the less that can be said about an institutional measure and the more that can be said about what is actually going on in the courses and subjects that are taught in universities, the better that will be. Perhaps he would like to confirm that that is, at least in part, where the Government are trying to get to. I think that would take a lot of heat out of some of the issues that remain in this area.

On the publication of the pilot results, which the noble Baroness, Lady Wolf, raised, and was also touched on by my noble friend Lord Blunkett and the noble Lord, Lord Kerslake, there are questions about that and I look forward to hearing the Minister's response. It seems to me, reflecting on the issues that we have in front of us, that when you are committing under statute to carry out a review of this whole issue—digging up the drains, examining how these things are put together, what the structure and the architecture are, and reflecting on how it is presented and how it appears in public—it would be injudicious to make too much of an issue about the publication of the pilots, which are only pilots, which we all know are done on imperfect information and will not be the way that this thing runs in the long run. It would be helpful if there was anything that the Minister could say on this point.

There is a fourth Motion before us, which I think is a technical one. It was not referred to very much by the Minister but it is consequential to amendments to change to affirmative resolution and affects the rather narrow issue of accelerated degrees, where an institution wishes to complete in a shorter period of time than is conventionally the case the course or degree that it is teaching, and it will be possible for it to raise fees to compensate for that. This is probably a good thing, but perhaps the Minister could confirm that these consequential amendments do not affect the good, although limited, progress we are making on trying to make a more flexible system available in higher education, which will encourage people to come in and take parts of courses, go out and do some work, and come back again. All the flexibility that goes with credit transfer and flexible courses should not be debarred simply because the course fee structures are inflexible.

Viscount Younger of Leckie: My Lords, I would like to make a few brief comments in response to the contributors to this short debate. I agree with the comments made by the noble Lord, Lord Stevenson, about the spirit in which the Bill has been taken through this House and with pretty well everything he said about that.

I start by addressing some points made by the noble Baroness, Lady Brown, particularly about protecting university title. I thank noble Lords once again for their active engagement in new Clause 1, and particularly the noble Baroness for making strong arguments for the need to protect the value of university title. We recognise the need for strong protections, which is reflected in our amendment in lieu. She also asked about universities acting as critics, by giving critiques of government. I think there was a mention of China in her question. I agree that universities and their staff must have proper freedoms to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, which is why we have ensured that these continue to be enshrined in legislation under the public interest governance conditions, which the OfS will be empowered to impose on any registered providers as it considers appropriate. This is an important point to re-emphasise at this late stage in the Bill, and I thank the noble Baroness for that.

I also thank the noble Lord, Lord Kerslake, for his warm words on the progress that has been made by this House on the TEF. To respond directly to him and to reassure the noble Lord, Lord Blunkett, the noble Lord, Lord Kerslake, asked whether I could confirm that the independent review will be open to recommending the existing rankings, a completely different set of rankings or no system of ranking at all. I am pleased to give noble Lords and this House the categorical answer that, yes, the independent reviewer is required by our amendment to consider the names of the ratings as part of its review and whether those names are appropriate. The reviewer is also required to consider

[Viscount Younger of Leckie]
whether the scheme is in the public interest and any other matters which he or she thinks are relevant. The independent reviewer would therefore indeed be free to recommend the matters the noble Lords described. I hope that that categorical reassurance answers their question.

The noble Lords, Lord Kerslake and Lord Blunkett, asked me to confirm that the trial results of the TEF will not be published until after the election. Yes, I can again confirm that the Higher Education Funding Council for England will publish this year's TEF results after the general election on 8 June.

I say thanks to the noble Baroness, Lady Deech, for her kind comments about the very important issue of freedom of speech and, more generally, for the considerable personal contribution that she has made on these issues.

Moving on to courses, which I think were raised by the noble Lord, Lord Stevenson, I would like to say that it is absolutely desirable to move towards the assessment of courses. As we know, when students look at which universities to go to, they look—or perhaps, thinking about my own children, they should look—at which courses are most suitable for them rather than necessarily which institutions are. That is a very desirable way forward. It is necessary to have the full spotlight on the institutions themselves, which I think was the gist of the noble Lord's question. That is very much in the spirit of what we aim to do.

The noble Lord, Lord Blunkett, praised Chris Husbands, and I agree that he has made a significant contribution towards the TEF, and continues to do so. I thank the noble Lord as well for his contribution to this debate and for his praise for the TEF chair.

The noble Baroness, Lady Wolf, raised some points about not publishing the results of this year's ratings. I point out to her that the first TEF assessments are well under way and that almost 300 providers—I think it is actually 299—have opted to participate, fully aware that by participating they would receive a rating. I should just make it clear that they will be published, given the point that she raised.

I would like to cover one final point, which was raised by the noble Lord, Lord Stevenson. He asked that the changes should not affect the ability for flexible learning and I can confirm to him that they do not. We agree with him about the importance of flexible learning. With that, I beg to move.

Motion A agreed.

Motion B

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

That this House do not insist on its Amendments 12, 209 and 210 and do agree with the Commons in their Amendments 12A, 12B, 12C, 12D, 12E, 12F and 12G in lieu

Commons Amendments in lieu

12A: Page 67, line 12, at end insert—

"(g) regulations under paragraph 2 or 3 of Schedule 2 (regulations prescribing the higher amount, basic amount or floor amount), except regulations to which paragraph 4(2)(b) of that Schedule applies (regulations increasing the higher amount to an amount greater than that required to maintain its value in real terms)."

12B: Page 67, line 16, leave out from "4(2)(b)" to end of line 17 and insert "of that Schedule applies (regulations increasing the higher amount to an amount greater than that required to maintain its value in real terms)."

12C: Page 76, line 36, at end insert—

"( ) But any amount determined as "the sub-level amount" for a description of provider by virtue of sub-paragraph (6A) must be equal to the higher amount where—

(a) the description is of providers who have a rating given to them in accordance with arrangements under section 25, and

(b) the amount is in respect of an academic year which begins before 1 August 2020."

12D: Page 77, line 23, at end insert—

"( ) But any amount determined as "the sub-level amount" for a description of provider by virtue of sub-quotegraph (5A) must be equal to the basic amount where—

(a) the description is of providers who have a rating given to them in accordance with arrangements under section 25, and

(b) the amount is in respect of an academic year which begins before 1 August 2020."

12E: Page 77, line 29, at end insert—

"Accelerated courses

3A (1) The power for regulations to prescribe different amounts for different cases or purposes by virtue of section 113(5)(a) includes power for regulations under paragraph 2 or 3 to prescribe different amounts as the higher amount, basic amount and floor amount in the case of an accelerated course.

(2) An "accelerated course" means a higher education course where the number of academic years applicable to the course is at least one fewer than would normally be the case for that course or a course of equivalent content leading to the grant of the same or an equivalent academic award."

12F Page 78, line 8, leave out from beginning to end of line 19

12G: Page 78, line 20, leave out "(3)(a) and (4)(a)"

Motion B agreed.

Motion C

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

That this House do not insist on its Amendment 15 and do agree with the Commons in their Amendments 15A and 15B in lieu.

Commons Amendments in lieu

15A Page 8, line 26, at end insert—

"(f) a condition requiring the governing body of the provider to take such steps as the OfS considers appropriate for facilitating cooperation between the provider and one or more electoral registration officers in England for the purpose of enabling the electoral registration of students who are on higher education courses provided by the provider."

15B: Page 8, line 32, at end insert—

"( ) For the purposes of subsection (1)(f)—

"electoral registration officer in England" means a registration officer appointed under section 8(2) of the Representation of the People Act 1983;

"the electoral registration of students" means the registration of students on a register of electors maintained by such an officer under section 9 of that Act."

Viscount Younger of Leckie: My Lords, turning to appeals against revocation of degree-awarding powers and university title, we introduced amendments during the passage of the Bill in this House which provide additional safeguards around the revocation of degree-awarding powers and university title by clearly setting

out when the OfS can use these powers. This was in recognition that these are last-resort powers. Amendments were also passed relating to appeals against such decisions.

On Report in this House, the noble Lord, Lord Lisvane, the noble and learned Lord, Lord Judge, and others advanced compelling arguments about the need for strong appeals provisions in cases where the OfS decides to revoke a provider's degree-awarding powers or university title, including permitting the First-tier Tribunal to retake the decision.

We agree that the OfS's powers in this respect need to be subject to the right safeguards. I am therefore pleased to say that the other place has agreed our amendments in lieu, Amendments 78A to 78H. They achieve the same aims as Lords Amendments 78 and 106 but align the wording more closely with that used elsewhere in legislation. The amendments allow an appeal on unlimited grounds and permit the First-tier Tribunal to retake any decision of the OfS to revoke degree-awarding powers or university title. I thank the noble Lord, Lord Lisvane, the noble and learned Lord, Lord Judge, the noble Baroness, Lady Fookes, and all the members of the Delegated Powers and Regulatory Reform Committee for the time, energy and expertise they have put into the scrutiny of this Bill.

In both this House and the other place we have heard powerful and convincing arguments about the importance of student electoral registration. I commend the noble Baronesses, Lady Royall and Lady Garden, and other noble Lords who have spoken eloquently and persuasively on this issue. We all agree that participation in the democratic process by all parts of society is vital for a healthy democracy.

We have thought carefully about the issues raised in this House and in the other place. As a consequence, in place of the amendment passed on this issue on Report, I am pleased to invite this House to agree Amendments 15A and 15B in lieu, which will improve the electoral registration of students. The amendments do this by permitting the OfS to impose a condition of registration upon higher education providers which will require their governing bodies to take steps specified by the OfS to facilitate co-operation with electoral registration officers—EROs—in England. The amendment places this requirement firmly within the new higher education regulatory framework while, equally importantly, maintaining unaltered the statutory roles and responsibilities of EROs to ensure the accuracy of the electoral register. These amendments will complement the existing powers of EROs.

In implementing this condition, the OfS will be obliged to have regard to ministerial guidance issued under the general duties clause of the Bill. This will lay out what the Government expect in relation to the electoral registration condition alongside expectations about other functions of the OfS. In using the term "co-operation" in the amendment, we anticipate that the ministerial guidance will state that, as part of this co-operation, the OfS should require providers to facilitate student electoral registration. We also anticipate that the guidance will state that providers are to co-operate with EROs who make requests for information under the existing powers they possess for the purposes of maintaining the accuracy of electoral registers.

There are many excellent examples across the sector of methods to encourage students to join the electoral register, including models put in place by the University of Sheffield and Cardiff University which provide examples of good practice. I take this opportunity to thank the noble Baroness, Lady Royall, for championing this issue and to recognise the work that she, and others, have taken forward on registration at the University of Bath.

12.45 pm

Through our amendments, the OfS will have a specific power to impose an electoral registration condition to deal with higher education providers that are not doing enough to co-operate with electoral administrators. Where imposed, a condition takes effect as a requirement: it will oblige action to be taken. The clear aim is for the OfS to look across the sector and, where needed, ensure that necessary action is taken. The condition can then require particular steps to be taken so that higher education providers work with EROs to facilitate registration. Non-compliance, as with any registration condition, is enforceable, including through OfS sanctions. I reiterate our commitment that the ability for students to register to vote should be as broad and strong as possible.

To conclude, the Government fully share the aim of increasing the number of students and young people registered to vote. We agree with noble Lords that it is vital that we have a healthy democracy that works for everyone, and that the views of students and young people are reflected in a democratic process. I firmly believe that these amendments will help achieve this goal and I beg to move the Motion.

Lord Judge (CB): My Lords, I will speak very briefly to Motion F. The original Bill produced an appeal system that was far too narrow, and the amendment that I and my noble friend Lord Lisvane proposed suggested that it should be wider. We used words which were reflective of advocacy rather than law, and argued that the ground of appeal should be on the basis that the decision was wrong. That view appealed to this House. We have reconsidered it and discussed it with the Secretary of State and the Minister. The amendment now proposed by the Government makes much better law and, given that, I support it.

Baroness Royall of Blaisdon (Lab): My Lords, I declare my interests as in the register. I am very grateful to the Government for tabling Commons Amendments 15A and 15B and put on record my specific thanks to the Ministers—the honourable Jo Johnson and Chris Skidmore—along with their officials, for their time and willingness to find a compromise following the adoption by the House of my amendment on Report. This issue has been the subject of powerful advocacy by my honourable friend Paul Blomfield MP, who has done much work on the registration of students to vote, and by organisations such as Bite The Ballot and by the APPG on Democratic Participation.

The voice and views of the Association of Electoral Administrators was extremely helpful in supporting my case, and I have to say that the chief executive

[Baroness Royall of Blaisdon]
John Turner expressed some surprise that the Minister suggested on Report that the association did not take a positive view. UUK has been helpful to me personally, although it is divided on the issue. I trust that it will now do everything possible to ensure that all universities comply with this new obligation at the earliest opportunity.

I well understand that we all have the same aim: to enable the greatest number of students to register to vote and thus shape the future of this country so that it works for young people. It will probably not be possible for ministerial guidance to be published before the enrolment of students this autumn, so I hope that the Minister in office, whoever it is, will draw the attention of higher education institutions to the numerous examples of best practice that exist, including those cited by the Minister today. I am very proud of what Bath has done in these endeavours. I am grateful to the Minister for suggesting what will be in the guidance, which is very welcome, but could he say when the guidance is likely to be published and when the Government, if they are a Conservative Government, might expect higher education institutions to comply with the new obligation? Although we might not have another general election for perhaps five years, there will be local government elections in England in May 2018 and my fervent hope is that all HE institutions will have a system in place by then.

I reiterate my thanks and look forward to working with the next Government to ensure that the maximum number of students register to vote so that not only their voices are heard but their views are expressed in the ballot box, thus enabling them to exert maximum influence, as they should, in the democratic life of this country.

As I will not speak again on this Bill, I wish to say that I too think the way in which all Benches have co-operated and collaborated on it has been extraordinary and very welcome. To be partisan for a moment, great thanks go to my noble friend Lord Stevenson and the support he has received from Molly Critchley. I understand that my noble friend is shortly to step down from the Front Bench. He has done the most superb job, not just for the Labour Benches but for the House as a whole, and I look forward to working with him on the Back Benches.

Baroness Garden of Frognal: Having been a staunch supporter of the amendment from the noble Baroness, Lady Royall, and indeed of trying to engage young people in the importance of voting in elections—I think this is a valuable step in enabling them to get involved at university level—I am grateful for the amendment that has come in from the Government. As we are trying to involve young people in voting, would it not be wonderful if we could now think of lowering the voting age to 16 to enable more of them to do so?

Lord Mackay of Clashfern (Con): My Lords, the amendment in this Motion regarding the appeals system is greatly improved, as my noble and learned friend Lord Judge has said. I am delighted that this has happened because it is of vital importance in relation to the very serious matters that the Office for Students has the power to deal with. I thank the Ministers who have been involved. I include in this particular thanks to my noble friend Lord Young of Cookham, for reasons that I shall explain in a moment, and the Minister in the Commons for the very kind way in which various reactions of mine to this extremely important Bill have been handled.

I want to mention a particular matter that does not arise especially under this Motion but, from my point of view, is rather important. When the noble Baroness, Lady Brown, raised the issue of the new power to search the headquarters of higher education providers, she indicated that it was something that the higher education providers anticipated with a degree of apprehension. In response to that, my noble friend Lord Younger of Leckie read out from Schedule 5 the statutory requirements before such a warrant could be granted. I have listened to a lot of the Bill without particularly talking myself, but on that occasion it occurred to me that one of the assurances the academic community was entitled to get was that those restrictions, which are quite powerful and important, would definitely be the subject of consideration by the magistrate. I suggested that the magistrate should sign a document to that effect. I got a letter almost immediately, which is still on the website, to say that such a thing was unheard of.

It is 20 years since I handed over with confidence my responsibilities for this part of what is now the Ministry of Justice to my successor, the noble and learned Lord, Lord Irvine of Lairg, so it is a very long time since I dealt with this particular matter directly. Still, when I got that response, I thought, "Well, in that case the thing to do is to alter the words of the warrant to make it clear that the warrant's signature carries that with it". That was objected to for all sorts of reasons, as your Lordships may remember, and some of them were addressed by my noble friend Lord Young of Cookham on Report. I felt rather strongly about it, as he recognised, and he kindly said the Government would consider it further before Report, giving me an opportunity, which otherwise I would not have had, to raise the matter on Report.

I was still very insistent on this, because I could not see any objection to it. I am particularly obliged to the Minister in the Commons, Mr Johnson, for arranging at the last minute for me to have a chance to deal directly with the Ministry of Justice, from which the objections to my amendments were coming. That afternoon, I was able to meet the official in that part of the Ministry of Justice for which, as I said, long ago I had responsibility. He eventually told me that in fact, the procedure for dealing with warrants had now been altered by order of the Lord Chief Justice, particularly in criminal cases so that, at the end of the application for the warrant—strangely enough—there is a place for the magistrate to indicate whether he or she agrees that the warrant should be granted and, if so, what the reasons are for that decision. He said that he thought that this was probably general practice in relation to warrants in the magistrates' court—because this is not a criminal warrant under the Bill. My

noble friend Lord Younger of Leckie said that that was the position when the Motion was moved on Third Reading.

I therefore express my gratitude to the Minister and the Bill team from the Department for Education for their kind treatment of me in connection with this and other matters. It is important that where a Ministry other than that directly responsible for a Bill gives advice to block an amendment from someone who, after all, was thought of as a government supporter, it should be blocked in a way that depends on Ministers' expertise. With respect to Mr Johnson's great variety of eminence, he would not be particularly interested in the magistrates' courts procedure for warrants, so it is really nothing to do with him. Similarly, for my noble friends Lord Young of Cookham and Lord Younger of Leckie, it is a damaging way of damaging your colleagues without much apparent responsibility. I therefore qualify my thanks for the work that has been done behind the scenes here, modified by that matter, for which the Ministers responsible for the Bill have the right for me to make it clear that it was nothing to do with them; it was from a source for which they have only the responsibility of being in the one Government.

Lord Stevenson of Balmacara: My Lords, I was not going to intervene on this point because the case for accepting the amendments in lieu has been made very strongly by both the noble and learned Lord, Lord Judge, and my noble friend Lady Royall, but that little vignette from the noble and learned Lord, Lord Mackay, put me in mind of two things that I thought it might be useful to share with the House. First, the noble Lord, Lord Lisvane, has been very active on the Bill on a particular narrow issue. As a result, I have got to know him a bit better. He kindly shared with me a speech that he gave recently at a meeting of a rather arcane group of people who seem to be interested in administrative law—the noble and learned Lord probably goes to their meetings every week, but it is the first time I had ever heard of it. They obviously debate serious and important issues. His address was about the quality of legislation going through your Lordships' House. I recommend it to all noble Lords who been involved in this process, because I observe a little of what the noble and learned Lord described. When the annals of this Parliament are written up, I hope that there will be space for this little vignette of persistence over every other aspect of life, which has resulted in a terrific result. He did not quite give the nuance that I thought that he was going to end up with—and I wanted to share that with the House. There were not many of us there late at night at Third Reading when this matter was finally resolved, but it is worth bearing in mind.

The noble Lord, Lord Lisvane, makes the point that, very often in considering legislation, a mentality sets in in the Bill team that is called the "tyranny of the Bill"—an article of faith that the Bill must be right, because the people who have put it together have spent most of their professional lives working on this piece of legislation. In the case of higher education, they have probably waited a generation to get a higher education Bill together. They are not going to give up a comma, let alone a word or a phrase, without considerable resistance. He praised avidly legislators in both Houses getting round that. I mention that point only because, as we have found a lot of times, the results that we are seeing today were not always there; it did not always feel as if we were working in a spirit of co-operation, trying to get the best legislation. Perhaps I should not have said it, but I meant it at the time. It certainly did not feel like that on day 1 in Committee, when there was every opportunity to compromise on a particular issue and the Minister, when offered the chance to take away an issue and look at it again, spent about three-quarters of an hour, it seemed to me, finding every conceivable reason for saying no. I do not think that that was to the benefit of the Bill in the long run—but we have got over that.

1 pm

The point that the noble and learned Lord was making was that he was blocked at every attempt to get this very sensible measure through—a measure on which, although he was too kind to say it, he knew a lot more than anybody else on the planet. They still said that he was wrong, but he persisted and got it to the point when it was finally agreed, but agreed in a slightly craven way—that is the point that I want to make. The Front Bench still resisted the need to amend the Bill to reflect the noble and learned Lord's position, but it found an administrative convenience that allowed it to happen anyway. I am not sure that that is the best way to make legislation, but I shall leave that thought with noble Lords.

Viscount Younger of Leckie: My Lords, I want to make a few brief comments in response to the contributions to this debate. I thank the noble and learned Lord, Lord Judge, for his kind comments in supporting the government amendments. We welcome his support and thank him and the noble Lord, Lord Lisvane, for his work and engagement on this issue. I also thank the noble Baroness, Lady Royall, for her persistence and passionate commitment to the cause of student electoral registration, including at her own university, the University of Bath. She asked me when the guidance on student electoral registration would be published. I reassure her that ministerial guidance to the OfS will be issued alongside or shortly after the OfS is established. The OfS's guidance to providers will be issued in mid-2018, in preparation for the move to the new regulatory framework. The sector will have the opportunity to express its views on the regulatory framework during the public consultation in the autumn of this year.

I listened carefully to the comments of my noble and learned friend Lord Mackay. I thank him for his time and expertise and his engagement in the Bill. He referred specifically to the matter of the warrants. I apologise for any misunderstandings that arose through the process. Rather than being drawn into a further debate on the matter, I hope that he understands that, although it was somewhat protracted, we got there in the end, as they say.

Motion C agreed.

Motion D

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

That this House do not insist on its Amendment 23 and do agree with the Commons in their Amendments 23A, 23B and 23C in lieu.

Commons Amendments in lieu

23A: Page 16, line 14, leave out subsection (5)

23B: Page 16, line 15, leave out subsection (6)

23C: Page 16, line 23, at end insert the following new Clause—

"Report on operation of section 25 schemes

(1) Before the end of the initial period, the Secretary of State must appoint a suitable independent person for the purpose of preparing a report under this section.

(2) A person is "independent" for this purpose if the person—

(a) is not, and has never been, a member or employee of the OfS, and

(b) is not a servant or agent of the Crown.

(3) A person is "suitable" for this purpose if the person—

(a) has experience of providing higher education on behalf of, or being responsible for the provision of higher education by, a higher education provider, and

(b) appears to the Secretary of State to be a person who would command the confidence of registered higher education providers.

(4) As soon as possible after the end of the initial period, the appointed person—

(a) must prepare a report about the operation during that period of the section 25 scheme or schemes which were in operation for the whole or a part of that period, and

(b) must send the report to the Secretary of State.

(5) The report must cover the following in the case of each scheme—

(a) the process by which ratings are determined under the scheme and the sources of statistical information used in that process,

(b) whether that process, and those sources of statistical information, are fit for use for the purpose of determining ratings under the scheme,

(c) the names of the ratings under the scheme and whether those names are appropriate,

(d) the impact of the scheme on the ability of higher education providers to which the scheme applies to carry out their functions (including in particular their functions relating to teaching and research),

(e) an assessment of whether the scheme is in the public interest, and

(f) any other matters that the appointed person considers relevant. (6) The Secretary of State must lay the report before Parliament.

(7) In this section—

"the initial period" means the period of one year beginning with the date on which section 25 comes into force;

"section 25 scheme" means a scheme to give ratings in accordance with arrangements made under that section."

Motion D agreed.

Motion E

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

That this House do not insist on its Amendment 71 and do agree with the Commons in their Amendment 71A in lieu.

Commons Amendment in lieu

71A: Page 25, line 39, at end insert the following new Clauses—

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

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

(a) an order under section 40(1) authorising the provider to grant taught awards or research awards,

(b) a further order under section 40(1)—

(i) varying an authorisation given to the provider by a previous order under section 40(1), or

(ii) revoking such an authorisation on the ground that condition B in section 42(4) is satisfied, or

(c) an order under section 43(1)—

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

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

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

(3) The advice provided under subsection (2) must include the relevant body's view as to whether the provider has the ability—

(a) to provide, and maintain the provision of, higher education of an appropriate quality, and

(b) to apply, and maintain the application of, appropriate standards to that higher education.

(4) The advice provided by the relevant body under subsection (2) must be informed by the views of persons who (between them) have experience of—

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

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

(ii) an English further education provider, and

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

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

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

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

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

(5) Where the order authorises the provider to grant research awards or varies or revokes such an authorisation, the advice provided by the relevant body under subsection (2) must also be informed by the views of UKRI.

(6) Subsections (4) and (5) do not prevent the advice given by the relevant body under subsection (2) also being informed by the views of others.

(7) The OfS must have regard to advice provided to it by the relevant body under subsection (2) in deciding whether to make the order.

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

(9) Where the order varies or revokes an authorisation, the advice under subsection (1) may be requested before or after the governing body of the provider is notified under section 44 of the OfS's intention to make the order.

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

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

(ii) that advice must be regarding those standards as assessed against sector-recognised standards, and

(b) "appropriate standards" in subsection (3) means sector-recognised standards.

(11) In this section "the relevant body" means— (a) the designated assessment body, or

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

(12) Where the OfS is required to establish a committee for the purpose mentioned in subsection (11)(b)—

(a) the majority of members of the committee must be individuals who are not members of the OfS, and

(b) in appointing members of the committee, the OfS must have regard to the need for the advice provided by the committee to meet the requirements of subsections (4) and (where applicable) (5).

(13) In this section—

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

"humanities" and "science" have the same meaning as in Part 3 (see section 105).

Grant of authorisation: notification of new providers

(1) The OfS must, as soon as possible after it has been made, notify the Secretary of State if it makes an order under section 40(1) authorising the provider to grant taught awards, where the provider has not previously operated under validation arrangements.

(2) For the purposes of subsection (1), a provider has previously operated under validation arrangements if, at any time before the date when the order is made—

(a) a student at the provider has been granted a taught award by another provider or the OfS, under validation arrangements between the provider and the other provider or the OfS, or

(b) the provider has granted a taught award on behalf of another provider or the OfS, under validation arrangements between the provider and the other provider or the OfS.

(3) In this section "validation arrangements" means—

(a) arrangements between one English higher education provider and another English higher education provider under which the first provider—

(i) grants a taught award to a person who is a student at the other provider, or

(ii) authorises the other provider to grant a taught award on behalf of the first provider, or

(b) arrangements between the OfS and a registered higher education provider under which the OfS—

(i) grants a taught award to a person who is a student at the provider, or

(ii) authorises the provider to grant a taught award on behalf of the OfS."

Viscount Younger of Leckie: My Lords, our reforms are designed to make it simpler for high-quality providers to enter the higher education market, contribute to greater student choice, and ensure that our higher education sector remains innovative and can respond to changing economic demands. However, we have been clear that encouraging new providers cannot come at the price of lowering the quality bar for obtaining degree-awarding powers. We are absolutely committed to protecting the value of English degrees and, throughout the passage of the Bill, we have added to the legislative protections to achieve this.

At Report in this House, we tabled an amendment, based on a proposal from the noble Baroness, Lady Wolf, requiring the OfS to request expert advice from a "relevant body" on quality and standards before granting or varying degree-awarding powers, or revoking them on grounds of the quality or standard of provision. The role of the "relevant body" would be similar to that of the QAA's ACDAP, and the system that we are putting in place will build on the valuable work that the QAA has been doing over the years. Our amendments further strengthen this requirement for expert advice. In particular, this amendment makes clear that if there is not a designated quality body to carry out the role, the committee that the OfS must establish to carry it out must feature a majority of members who are not members of the OfS. Additionally, in appointing those members, the OfS must consider the requirement that advice be informed by the interests listed in the clause. This will ensure that the advice is impartial and well informed. This amendment also makes it clear that the advice must include a view on whether the provider under consideration can maintain quality and standards. In line with the arguments put forward by the noble Baroness, Lady Wolf, it requires the OfS to notify the Secretary of State as soon as possible after it grants degree-awarding powers to a provider who has not previously delivered a degree course under a validation arrangement.

Let me be clear that, as is already the case, I expect the Secretary of State's guidance to the OfS on degree-awarding powers to continue to require that a provider's eligibility be reviewed if there is any change in its circumstances, such as a merger or a change of ownership. The OfS has powers under the Bill to remove degree-awarding powers from a provider when there are concerns as to the quality or standards of its higher education provision following such a change. I can confirm that we expect the OfS to seek advice from the relevant body on any such quality concerns before taking the step of revocation. I beg to move.

Baroness Wolf of Dulwich: First, I take the opportunity to thank the Minister in this House and the Minister for Higher Education very sincerely for listening so carefully and patiently to the arguments that I and many others put forward on these issues. I follow other noble Lords in saying that, while this has been a grind, it has also been something on which all parts of the House have found a great deal to discuss and agree. In that sense, it has been perhaps not enjoyable but certainly an educational and ultimately a positive process. I repeat that I appreciate the time that everybody in the Lords has put into this, and I very much appreciate the time put in by Ministers and the enormous work put in by the Bill team.

I am very happy to see the clause moving towards the statute book, but it seems to be slightly ill understood perhaps outside this Chamber and certainly outside this building. It might be worth my while reiterating what I think is important about it, and I would be grateful if the Minister would let me and the House know if he disagrees with anything that I am just about to say.

One of the major reasons why the Bill is so important is that it sets out what is happening in the sector, quite possibly for decades to come. That is why we have to

[Baroness Wolf of Dulwich]
take account of both whether it can provide innovation and new ideas and allow the sector to move and whether it can provide guarantees of quality and standards and protect students, many of whom take out large loans, and the whole country against what is always possible: that some institutions and people will not have the interests of the country and the sector at heart. Innovation is a very important part of it.

I also take this opportunity to welcome in this House the fact that the Government have recently given some money to the new model university that is being established in Herefordshire, which is enormously important because of the role it will play in helping to develop engineering skills and in working with small businesses and supply chains. It is the sort of institution that we need many more of, and I am really pleased that the Government have given their support.

It is worth remembering that one thing that has bothered us very much in thinking about how this Bill should go forward is our knowledge that it is only too easy to create a situation in which institutions arise and gain access to public funds but whose existence is very hard to justify and that can do enormous harm. It is not just this country—the United States has given us the largest and most catastrophic bankruptcies, leaving students stranded—but it is, after all, not very long ago that the Home Office moved to investigate and shut down higher education institutions in this country that were, not to put too fine a point on it, fraudulent.

This part of the Bill has always been enormously important. I am extremely happy, because it seems that this new clause will institute a quality assurance process that focuses the attention of the Office for Students on a number of critical issues when it is granting or varying awarding powers, and clarifies the importance of independent advice from outside an institution. This is always important, because an institution creates its own understandings and inevitably becomes defensive against the world. The potential strengthening and improvement of the advice that the OfS will get from outside, which will build on the QAA but will potentially be more independent and therefore both add an additional safeguard and add substantively to the process, is very welcome.

This clause also clarifies for the general public the way in which the Government envisage new institutions coming through. They clearly envisage two pathways. Many people will come through validation, a process that itself has grown up over the years with remarkably little scrutiny, but if an institution is to get degree-awarding powers from day 1, this is something of which the Secretary of State must be aware. The noble Lord, Lord Willetts, pointed out in earlier debates that anything that goes wrong tends to land on the Secretary of State's desk anyway. What seems to be important here is that we have an extra element not just of formal accountability but one that will bring into the process both a clear ability for the Secretary of State to create a new institution that has degree-awarding powers, because that is seen as something of which they are capable from day 1, and something to make the process public and one that cannot slide through unobserved.

This is an area in which we have made enormous progress. Perhaps all this would have happened anyway, but I am extremely happy to see it in the Bill. I finish by expressing my gratitude once again to everybody who has worked on the Bill and listened to our concerns and my appreciation of all the comments, information and hard work that colleagues on all Benches of the House have put into it. I welcome this amendment.

Baroness Blackstone (Lab): My Lords, I speak very briefly just to endorse everything that the noble Baroness, Lady Wolf, has said. On behalf of the House generally I want to thank her for all the hard work and effort that she has put into securing these changes. It is fair to say that this part of the Bill, in its original form, was the one that gave cause to a great deal of worry, and for me personally the most worry of all because in my view it threatened the reputation of higher education not only in this country but overseas. With this amendment, we are now in a much better place.

The only thing that I ask is that there be some monitoring of how it works in practice. It is very important that there should be some evaluation to make absolutely clear to the higher education sector as a whole, and to those who might want to enter it, that there will be rigorous tests of both quality and standards before any institution can have degree-awarding powers and access to grants and loans through the system of financial support that we have. Having said that, however, I am really grateful to the Government and to the Minister for bringing forward this amendment. It is a huge improvement to the Bill compared to what we had originally.

Lord Willetts (Con): My Lords, I intervene very briefly to say that, at the end of the deliberations on this Bill, and on this important aspect of the Bill, we have ended up with a more rigorous, more transparent and more demanding regime for alternative providers in higher education than we have ever had before. I regretted that it was not possible to get legislation during the previous Parliament that would have gone alongside the initiatives that we took on alternative providers, but we certainly have a very significant regulatory regime in place now.

1.15 pm

The noble Baroness, Lady Wolf, has been one of the people pressing for this, but I just question one point that she made in her otherwise admirable remarks. She said that the Home Office had closed down lots of higher education institutions because they were bogus and did not meet proper standards. I think they were colleges, which is an unregistered name—you can call yourself a college—and there were people who were getting into Britain saying that they were going to study at colleges. There has always been a regime for validating degree-awarding powers and, of course, for getting the university title. I think it would be very dangerous in this House if we were to get the idea that there had been lots of bogus higher education institutions, which I do not think has been case; the problem was colleges. Even there, the Home Office occasionally got overexuberant—at least one college that had won the

Queen's award for export was subsequently closed down—but it was essentially trying to stop people coming to study for a vocational qualification in a college environment.

Setting that specific point aside, we now have a very rigorous regime and I hope that we will now see practised the spirit of what the noble Baroness, Lady Wolf, said; we need innovation in higher education in this country. Although it is great when existing providers innovate, we know that in many sectors the best way to get innovation is for new people to come in and do things differently. I hope we can all agree that, especially with this regime in place, we can give a very warm welcome to new higher education institutions and new universities in this country.

Lord Storey (LD): My Lords, we agree on these Benches that as a result of the work that has been done we have a much better regulatory framework. Rigorous tests for degree-awarding powers are important. I was very much taken with the Minister's comment that there should be no lowering of quality in protecting the value of university degrees. There are private providers, and the majority of private colleges do a fantastic job, but let us not kid ourselves: there are still some private colleges—and I would use the term "bogus colleges"—that with these new powers and regulations will not carry on letting down the quality of our university degrees and will not let down university students. It cannot be right, for example, that a student is enrolled to do a degree course that is validated by one of our universities but for which the only requirement is one GCSE. That cannot be right in our higher education system. These new powers will, as a result of what the Minister said, ensure that we can be proud of all our private providers.

Lord Stevenson of Balmacara: My Lords, I echo much of what has been said already, particularly by the noble Baroness, Lady Wolf, who has been a stalwart in fighting this corner. We have supported her all the way on it and I am very glad that we have reached the point where I think we are all happy with where we have got to.

The main focus of the amendments that were laid in Committee and on Report, and those that have been now been presented in lieu by the Government, are about the ongoing arrangements in universities and higher-education providers in order to provide degree-level qualifications. The particularly narrow issue of what happens when an existing provider is taken over, whether by merger, purchase or otherwise, still needs a bit of care and concern, because there is fear within the sector that this might well become a feature, perhaps an unwelcome feature, of what we are doing. We are not against new institutions; we have always said that we will support those, but we want them to be proper institutions that are properly validated, with good procedures and processes in place. We would welcome that. However, where there may be a commercial imperative rather than an academic imperative to acquire a body, could the Minister comment on what he anticipates the arrangement will be should that merger or takeover be in play?

Viscount Younger of Leckie: My Lords, I echo the comments of the noble Baroness, Lady Blackstone. I thank the noble Baroness, Lady Wolf, for making such strong and passionate arguments on the need to safeguard the quality of English degrees, and for her engagement in the Bill's passage overall, which I may not have said so far. I agree with her on the importance of diversity and innovation in the sector. I agree that new providers such as the New Model in Technology and Engineering will serve the interests of students and wider society well.

The noble Baroness, Lady Blackstone, and the noble Lord, Lord Storey, made an important point about quality of standards, which has been a theme throughout the Bill. I agree with them that we must maintain quality and standards in the sector. The Bill is designed to do just that. Our amendment further strengthens the Bill's provisions in that respect, and I hope the House is now behind it.

The noble Lord, Lord Stevenson, at the very end of his brief comments, asked about change of circumstances—in other words, what would happen if a degree-awarding power's holder was sold to someone with no experience, and whether there would be a full review. If the degree-awarding power's holder was sold to a body with no track record, we would expect the eligibility to hold degree-awarding powers to continue, but it would be subject to a full review. Therefore, that review would be implicit.

I finish by thanking my noble friend Lord Willetts for his expert contributions and engagement throughout the Bill's passage. The Bill builds on his work as Minister and the proposals in his original 2011 White Paper, *Students at the Heart of the System*.

Motion E agreed.

Motion F

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

That this House do not insist on its Amendments 78 and 106 and do agree with the Commons in their Amendments 78A, 78B, 78C, 78D, 78E, 78F, 78G and 78H in lieu.

Commons Amendments in lieu

78A: Page 26, line 33, at end insert—

"(1A) On an appeal under subsection (1)(a) against a decision to revoke an authorisation, the Tribunal—

(a) must consider afresh the decision appealed against, and

(b) may take into account evidence that was not available to the OfS."

78B: Page 26, line 34, after "appeal" insert "under subsection (1), other than an appeal against a decision to revoke an authorisation,"

78C: Page 26, line 38, after "appeal" insert "under subsection (1)"

78D: Page 26, line 42, at end insert—

"(4) In the case of an appeal under subsection (1)(a) against a decision to revoke an authorisation, the Tribunal also has power to substitute for the decision any other decision that the OfS could have made.

(5) An appeal under subsection (1)(a) against a decision to revoke an authorisation may include an appeal against the decision mentioned in subsection (1)(b) regarding the date when the revocation takes effect; and in the case of such an appeal, references in subsections (1A), (3) and (4) to the decision appealed against are to be read accordingly."

78E: Page 35, line 5, at end insert—

"(1A) On an appeal under subsection (1)(a), the Tribunal—

(a) must consider afresh the decision appealed against, and

(b) may take into account evidence that was not available to the OfS."

78F: Page 35, line 6, after "appeal" insert "under subsection (1)(b)"

78G: Page 35, line 10, after "appeal" insert "under subsection (1)"

78H: Page 35, line 14, at end insert—

"(4) In the case of an appeal under subsection (1)(a), the Tribunal also has power to substitute for the decision any other decision that the OfS could have made.

(5) An appeal under subsection (1)(a) against a decision to revoke an approval may include an appeal against the decision mentioned in subsection (1)(b) regarding the date when the revocation takes effect; and in the case of such an appeal references in subsections (1A), (3) and (4) to the decision appealed against are to be read accordingly."

Motion F agreed.

Motion G

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

That this House do not insist on its Amendment 156 and do agree with the Commons in their Amendments 156A, 156B and 156C in lieu.

Commons Amendments in lieu

156A: Page 37, line 20, at end insert—

"(5A) The consideration under subsection (5) of what would be helpful to those described in paragraphs (a) to (c) of that subsection must include a consideration of what would be helpful to—

(a) international students on higher education courses provided by registered higher education providers;

(b) people thinking about undertaking such courses who would be international students on such courses;

(c) registered higher education providers who recruit, or are thinking about recruiting, people who would be international students on such courses.

(5B) When the designated body or the OfS determines what is appropriate for the purposes of subsection (1), it must, in particular, consider whether information about the numbers of international students on higher education courses provided by registered higher education providers would be appropriate information."

156B: Page 37, line 22, leave out "subsection (5)" and insert "subsections (5) to (5B)"

156C: Page 37, line 44, after "provider" insert "; "international student" means a person—

(a) who is not within any description of persons prescribed under section 1 of the Education (Fees and Awards) Act

1983 (charging of higher fees in case of students without prescribed connection with the UK) for the purposes of subsection (1) or (2) of that section, and

(b) whose presence in the United Kingdom, and undertaking of the higher education course in question, are not in breach of primary or secondary legislation relating to immigration."

Viscount Younger of Leckie: My Lords, I welcome this chance to discuss once more international students, an issue on which we have heard some of the most passionate debates in this House. I begin by saying, unequivocally, that the Government welcome genuine international students who come to study in the United Kingdom. They enhance our educational institutions both financially and culturally, they enrich the experience of domestic students and they become important ambassadors for the United Kingdom in later life. For these reasons, we have no plans to target or reduce the scale of student migration to the United Kingdom. As I have said before—and as the House will have heard—we have no plans to cap the number of genuine students who can come to the UK to study or to limit an institution's ability to recruit genuine international students, based on its TEF rating or any other basis. That being so, I do not believe that the amendment tabled by the noble Lord, Lord Hannay, is desirable.

None the less, the discussion in this House on this issue has provided us with an important opportunity to reflect on the message we send out to the world about the welcome that international students receive when they apply to study in the UK. We want to promote this offer and ensure that it is understood and communicated. I should like to set out what the new duty is. First, the duty will extend the information publication duty on the designated data body or the Office for Students so that it explicitly covers consideration of what information would be helpful to current or prospective international students and the registered higher education providers that recruit them, or are thinking of doing so.

Secondly, the new duty will also specifically require consideration of publication of information on international student numbers. This goes further than ever before to ensure that international students get the information they need about our offer. Alongside this, we believe that we need a campaign to raise awareness. That is why, in tandem, we are refreshing our international engagement strategy. We will seek sector representatives' views on a draft narrative, which we will be disseminating through the FCO's Global Britain channels, our embassies overseas and through the British Council, as well as universities themselves. This will ensure that the right messages get to the right places. We have a good story to tell, and we are keen that it is told. Not only that but we are committed to ensuring that the UK remains one of the best places in the world for research and innovation. I assure noble Lords that UK Research and Innovation will continue to fund an extensive range of international collaborations, directly facilitating partnerships between UK research establishments and their international counterparts. We expect the UKRI board members, and UKRI itself, to take a clear role in promoting UK science and fostering collaboration internationally, and we have already included the need to take an international perspective in the job specification of the UKRI board, which is currently being recruited. To underline this, I confirm that we will ask UKRI to set out in its annual report what work it has undertaken to foster and support such collaborations. I beg to move.

Lord Hannay of Chiswick (CB): My Lords, first, I respond to the Minister's opening statement on this Motion. I thank him for some of the things he said that picked up one or two of the themes in the amendment which he proposes should be rejected. It is a great pity that they are not in the Bill but he made some helpful remarks.

The Government's amendment that is being moved shows yet again that we are slightly at cross purposes over this issue. This is not a statistical matter. Of course, statistics enter into it but it is not basically a

statistical matter. It is about the public policy purposes we take with regard to overseas students. Therefore, even the suggested improved ways of statistically analysing overseas students do not address what my amendment was meant to address. I hope the Minister will forgive me for not saying anything more about his amendment, to which I have no objection at all, but which I do not think answers the problems addressed by my amendment and the amendment tabled by the noble Baronesses, Lady Royall and Lady Garden, and the noble Lord, Lord Patten of Barnes, the main thrust of which would have been to bring to an end what I regard as an aberrant practice of treating overseas higher education students for public policy purposes as long-term migrants. That, alas, will continue. That amendment was carried in this House last month by a majority of 94 drawn from all groups in this House. Therefore, I am afraid that I speak with deep regret, tinged with some bitterness, at the summary rejection of that amendment.

If the Bill before us had followed a normal course, I believe, although of course I cannot prove it, that a reasonable compromise would have been reached either in the other place, where there was substantial support for the amendment, or through a negotiation between the two Houses. The wash-up process, which we are busy completing, brought to a premature end any such possibilities. The fact that the Government felt it necessary to state that if this amendment was not dropped they would kill the whole Bill, sheds a pretty odd light on their priorities and their intransigence. Altogether, this is a rather shabby business.

Ceasing to treat overseas higher education students for public policy purposes as long-term migrants is not only a rational choice, and one which the chief competitors of this country in the market for overseas students—namely, the US, Australia and Canada—have already adopted, it also has a wide degree of cross-party support from a whole series of parliamentary Select Committees in both Houses, most recently just this week from the Education Committee in the other place. A recent survey by Universities UK shows that a large majority of those polled do not regard overseas students as economic migrants and do not consider that they contribute to the immigration problems which are the focus of so much public debate at this stage in this country. The fall in the number of overseas applications we are seeing at the moment amply demonstrates how we are already losing market share and undermining the future validity of a crucial part of our society and our economy—our universities. This morning I listened with great interest to the Foreign Secretary replying to a question on this on the "Today" programme. He made most of the points I have just made, so I have no quarrel with what he said, merely with what the Government are doing. A bad choice has been made, and no convincing rationale for making that choice has been forthcoming from the Government.

1.30 pm

The problem will not go away, and the rejection will not mean the end of the story. This system of treating students as economic migrants will continue to inflict damage on our universities and on our future soft power assets in the decades ahead. We will certainly need to return to this issue when the Government bring forward, as they have stated they will in their White Paper on the great repeal Bill, post-Brexit immigration legislation. I conclude with the hope that a period of reflection will bring wise counsel as well as the realisation that pyrrhic victories, of which this is one, are of a kind that we in this country could do well without.

Lord Willetts: My Lords, I congratulate the noble Lord, Lord Hannay, on the energy he has put into this issue during the process of scrutinising the Bill. The debates we have had on it have made it absolutely clear that on all sides of the House we strongly support legitimate overseas students coming to Britain to study, because it enhances the academic experience of British students, it is good for the overseas students, and it is a great British export.

What the Minister said in signalling again that the policy remains to attract legitimate overseas students was rather more welcome than the noble Lord, Lord Hannay, accepted, although I fully realise why he made the observations that he did. He says that statistics are not the crucial issue and statistics are less important than policy. However, the point we heard a moment ago from the Minister about this new exercise on statistics has considerable potential value. Aside from all the general arguments, one of the frustrations about this debate is a genuine empirical disagreement about how many students from abroad overstay in this country. A lot of the debate and attitudes in Whitehall are shaped by a view that we have a problem of a lot of overstayers. If there is such a problem, we need to tighten the regime. If, however, there is not a problem of overstayers, and it can be established authoritatively that there is not, that would be a significant contribution to the debate.

The statistics at the moment are very unreliable. If someone comes here to study and tells someone doing one of the surveys that they are here to study, stays on and works for a time, then leaves, answering the question, "What have you been doing?", with, "I've been working", they count as a leaving worker, not as a leaving student. If someone comes here to study, thinking that they will be here for more than a year, but end up leaving Britain after being here for 11 months—many master's courses are advertised as a year long but you can complete them in 11 months—they do not count as one of those one-year students departing. There are lots of problems like this in the statistics, which have proved a bane in the debate about overseas students and their numbers. I very much hope that the important initiative which the Minister announced today, which was discussed in the other House yesterday, will enable us to get to the bottom of those types of empirical questions. That would be an important contribution to the debate, and I hope that the Minister will be able to confirm that those type of questions will be within the scope of this exercise and that we will learn more about it.

I also hope, thinking of all the time that we have spent on attracting overseas students to this country, that we might briefly remind the Government of the importance of encouraging British students to study abroad. Of course, dare one say it, if they were to

[LORD WILLETTS]
study abroad for more than a year, it would reduce net migration—not that that is the most important reason for promoting it. However, when one looks at half a million students coming from abroad to study in Britain and 30,000 British students going to study abroad, especially if we are to be a dynamic global presence, even post Brexit, we need to do better at promoting and encouraging British students to go abroad. One way to do that is to make it easier for them to take out loans to finance their study abroad. I hope that we will look at that.

Finally, as this will be my last intervention on the Bill, I congratulate the ministerial team that has successfully brought the Bill to a conclusion. My noble friend Lord Younger has been courteous throughout this debate, and Jo Johnson has been extraordinarily diligent in spending time in this Chamber observing our debates. This is a substantial piece of legislation. We legislate on higher education only once a generation, and this legislation finally puts in place a regulatory regime that matches the realities of higher education in Britain. We could not have carried on with the old grant-giving body being a kind of informal regulator, using its power of the purse to regulate the sector. This is a much better, more lucid, more transparent and more rule-based system.

In our debates in this House, on all sides, it has been clear that we care passionately about the autonomy of higher education institutions and universities, and the provisions, including the new ones we have debated today, enhance that autonomy. Looking back on this debate, one of my regrets is that while we have tended to look at this from an English perspective. From the conversations I have with vice-chancellors, it is clear to me where the biggest threats to autonomy in our universities lie, and it is not in England. The relationship between the Scottish Government and their universities is far more intrusive and overbearing than anything that would be acceptable in England. We have sometimes had an English Minister with English teaching responsibilities facing challenges about autonomy for which he is not responsible. I hope that in the future we will be avid in securing, scrutinising and protecting the autonomy of Scottish universities, which matters enormously in Scotland and more widely. Therefore, we have a better regulatory regime, we have spoken up for autonomy, and, significantly, the focus on teaching has reminded us of the importance of the educational experience in university. After so much attention has been given to research over the years, it is excellent that we have spent so much of our time focusing on teaching.

I therefore thank the Ministers, and I thank their Bill team for the way in which it has engaged with many of us as we have had questions to make sense of specific proposals and try to engage with them. Indeed, this has been a cross-party debate. We have had excellent interventions from experts on the Cross Benches, people who work in and understand higher education, which has enormously enhanced our debate. We have heard from the Opposition Benches—I agree that the noble Lord, Lord Stevenson, made an important contribution from the Opposition Front Bench—and from the Lib Dem Benches. Occasionally I had to remind myself that we had worked on this together in coalition and that some of the measures that were now proving so controversial could trace their origins to a Government in whom there was even a Secretary of State I worked with who belonged to a certain party opposite. However, all parties have worked together on this, and we can be proud of the Bill that is now going forward.

Lord Bilimoria (CB): My Lords, I echo much of what the noble Lord, Lord Willetts, said, but I want to start with the reference that the Prime Minister made to the "unelected House of Lords" when she announced the election. This unelected House is at its best when it does what it has done with this Bill. It is probably one of the most amended Bills in the history of Parliament, with more than 500 amendments, and that is because of the expertise that exists across the board in this House—a breadth and depth of expertise that no other Chamber in the world comes anywhere close to by a factor of maybe 10. A former Universities Minister has just spoken and we have heard from chancellors and vice-chancellors of universities, former vice-chancellors of universities such as Cambridge and the heads of Oxbridge colleges—and I could go on. Where in the world would you get that? We have had it with this Bill.

I thank the Minister, the noble Viscount, Lord Younger, for having always been polite and decent, and for having listened. We may not be where a lot of us want to be, but the Government have listened and there has been a lot of movement. I, too, acknowledge the commitment of the Minister, Jo Johnson. I have never seen a Minister so assiduous in attending the stages of a Bill in the way that he has with this one, and it shows visibly that he is listening. I also thank the noble Lord, Lord Hannay, for the initiative that he has taken on this amendment. He is a former pro-chancellor of the University of Birmingham, where today I am proud to be chancellor.

Normally, you are not meant to repeat things at various stages of a Bill—you cannot make another Second Reading speech later on. However, in this case new information and new reports have been coming out at every stage. For example, the UUK report suddenly revealed that the contribution of international students is much higher than we had ever thought. Figures of £13 billion or £14 billion were quoted, but the figure is actually £26 billion a year. That is new information to add to what the noble Lord, Lord Hannay, was trying to do with this amendment. On top of that, we have had, hot off the press, the Education Committee's report entitled *Exiting the EU: Challenges and Opportunities for Higher Education*, dated 25 April.

Before I go any further, there is a unanimous consensus around the country—let alone in this House, where we won this amendment by close to 100 votes—that international students should not be included in the net migration figures. The National Union of Students has stated:

"We are concerned that—as long as international students are included within net migration statistics—policies that adversely impact international students owing to the Government's desire to reduce levels of immigration will only exacerbate".

It also said:

"The Government's abject failure to offer anything substantial on removing international students from net migration targets is",

in its words,

"outrageous. There is immense support for doing so, from cross-party parliamentarians, from UK students and from the general public. It is unacceptable that the government continues to ignore this support".

I come to the House of Commons Education Committee's report, which no one has spoken about and which has just been published—on 25 April. It contains a whole section on international students and the migration target. It says very clearly that the 100,000 target still exists, yet we all know that the latest figure for overall net migration is 273,000. The excuse that the Government give every time we challenge them to remove international students from the net migration figures is that the UN rules mean that we have to include them and treat them as immigrants—and those are indeed the UN rules.

The Government's other answer is always, "There is no cap on the number of international students. Any number is welcome". However, the danger lies in the perception that is created by continuing to include them in the figure and treat them as immigrants. The Home Secretary at the Conservative Party conference spoke about possibly reducing the number of international students. That is scary—and it is a message that goes to the outside world. The Commons Education Committee said the majority of its written evidence and witnesses at its meetings were very clear that international students should be removed from the net migration target, which would,

"help offset risks to higher education from leaving the EU".

It continued:

"Our evidence was unanimous in saying that international students were a positive force",

for education, contributing £25.8 billion a year and creating more than 200,000 jobs, and contributing to the richness of our universities, as well as to the UK's soft power.

1.45 pm

There has been poll after poll on this issue. After the referendum, a ComRes poll said that only 24% of the public thought that international students were immigrants, and there was only a 2% difference between those who voted to leave, at 25%, and those who voted to remain, at 23%. So whether they are Brexiteers or remainers, people do not think that international students are immigrants. The report points out:

"71% said they would support policies to boost growth by increasing overseas students".

Our competitor countries have targets to increase the number of international students. The demand from countries such as India for studying abroad is increasing by 8% a year, yet an NUS poll found that slightly over half of overseas students thought that the British Government were either not welcoming or not welcoming at all to international students. There are half as many Indian students in 2015 compared with the number in 2010. Yet in countries such as Australia, Canada and Germany the number is growing by 8% a year.

Can the Minister please answer this question? When the UK's main competitors for international students—the United States, Canada and Australia—all categorise international students as temporary migrants rather than permanent immigrants, why can we not do the same? What are we scared of? The noble Lords, Lord Willetts and Lord Hannay, and the Minister spoke of statistics. What statistics? The statistics are bogus because they are based on the International Passenger Survey. Some estimates suggest that 90,000 international students overstay; others put the figure at 40,000. Yet the *Times* has reported that there is a Home Office-commissioned report that shows that only 1% of international students overstay their visas—only 1,500. But this report has not been released. Can the Minister tell us why?

The figures in the report are supposedly based on the Government's new exit checks. I have been a lone voice in this Parliament and I feel like a lone voice in this country in asking the Government to bring back physical, visible exit checks at all our ports, airports and borders. Tony Blair, when he was Prime Minister, took them away in 1998. That was negligent from a security point of view, negligent from an illegal immigration point of view, and negligent from the point of view of being able to count the number of international students coming in and out of this country. Every passport, EU and non-EU, should be scanned when people enter the country, and every passport, EU and non-EU, should be scanned when people leave the country. If that happened, we would know the correct statistics. Why can the Government not implement this straightaway?

In conclusion, the committee said:

"Over the last few years, six parliamentary committees have recommended the removal of students from the net migration target",

and opinions have been expressed at the highest level. The noble Lord, Lord Hannay, spoke about Boris Johnson. I believe that even the International Trade Secretary, Liam Fox, agrees that international students should not be treated as immigrants and should be removed from the net migration figures.

Margaret Thatcher was famous as the lady who was "not for turning". The Prime Minister, by continually saying that there would be no election until 2020, is, I think, "for turning". So why is she not listening to us? It is such a disappointment. It is ruining the reputation of our country, our universities and our economy—and perception becomes reality. This provision did not need to be in the Bill. The Government and the Prime Minister can still act unilaterally and remove international students from the net migration figures. I remind the Prime Minister and the Government of the maxim that it is better to fail doing the right thing than to succeed doing the wrong thing.

Lord Cormack (Con): My Lords, I will not attempt to emulate the noble Lord, Lord Bilimoria, by making a Fourth Reading speech, but I will make a couple of brief points. I strongly supported the noble Lord, Lord Hannay, when he introduced his amendment and have spoken many times on this subject in your Lordships' House. I deeply regret that the Government have not felt able to accept the amendment and commend it to the other place. I echo everything that has been said about the understanding and capacity for listening both of my noble friend Lord Younger, the Minister in your Lordships' House, and of Mr Jo Johnson, but it is a pity that an opportunity has been lost. I am sure that we will return to this subject, as the noble Lord, Lord Hannay, said, possibly in a future immigration Bill.

[LORD CORMACK]

Although I welcome what the Minister said today and what is in the Commons amendment before us, it does not go far enough. There will be real interest in how the Government are able to produce good statistics. It is 35 years ago almost to the day when a famous BBC reporter in the Falklands said, "I counted them all out, and I counted them all back". We must start doing that with students, and indeed with all immigrants. However, we must not do anything that damages our reputation—however gently—as a place where students at undergraduate and postgraduate level from all over the world can feel welcome. The more we can do to achieve that welcome the better, and we must do everything we possibly can to make sure that there are no implicit deterrents. I am sorry that after a very good morning where the Government have made some very real concessions, for which we are all extremely grateful, the concession on this particular subject is not as great as it should be. I hope my noble friend on the Front Bench will take note of that and that we will come back before too long with a reinforced Government Front Bench and a new determination to accept the logic of the Hannay amendment.

Baroness Garden of Frognal: My Lords, from these Benches we strongly support the amendment of the noble Lord, Lord Hannay, and endorse everything that the noble Lord, Lord Cormack, just said. The noble Lord, Lord Willetts, reminded us of the heady days of coalition when I was his opposite number in this House. I remember the debates that went on between the Secretary of State for BIS and the Home Secretary on this topic: the noble Lord could never get any movement on seeing the illogicality.

What baffles many of us is that the Government reiterate that there is no cap on genuine international students, but then they say, "But we will count them as migrants and we are determined to reduce the number of migrants". It is incomprehensible that the Government cannot see how very unwelcoming it is to put those things together in sequence. We find it completely baffling that we are not getting any movement on this. We recognise that this issue is probably outside the departmental brief of the Minister, but I echo what has been said already: we hope that very soon there will be movement on this. Of course, the noble Lord, Lord Bilimoria, always speaks with great passion and eloquence on this topic, backed with evidence and facts.

This is probably the last time that I shall speak on the Bill, so I reiterate the very sincere thanks to the Minister, the noble Viscount, Lord Younger, and Minister Jo Johnson, to the Bill team and to other colleagues who have been so helpful to us on what has turned out to be a very long and drawn-out discussion on the Bill. The amendments that have come through today have already improved it again. As I said before, it would obviously have been lovely if all our amendments had been accepted, but we recognise that we have actually done a very good job in making this Bill a whole lot better than it was before.

I echo the thanks to the noble Lord, Lord Stevenson, who led a collaboration of the engaged on these issues, made up of Members from these Benches, his Benches, the Cross Benches and occasionally some noble Lords on the Conservative Benches, to try to ensure that we could get the very best possible out of this Bill. I also thank my noble friend Lord Storey, who has been a tower of strength throughout. We have made this Bill much better than when it reached us and I am grateful to the Minister for helping that to happen.

Lord Mackay of Clashfern: My Lords, in relation to what the noble Lord, Lord Bilimoria, said about the Prime Minister's remarks on calling the election, I am relying only on my memory but I do not think that she said "the unelected House of Lords". She referred to unelected Lords who had made it clear that everything they could do to stop Brexit would be done—it was something like that. I do not think that she was referring to the House of Lords as a whole, because apart from anything else it would not fit the description.

I also support what my noble friend Lord Willetts said. He knows much more about the atmosphere in Whitehall now than I do, and he said he hoped that the research promoted in this might well have a good effect in that direction.

Finally, I agree with what has been said about the noble Lord, Lord Stevenson of Balmacara. I hope that he will enjoy the freedom of not being on the Front Bench. I want to thank all his colleagues on the Front Bench and those on the Front Bench of the liberal party and on the Cross Benches for their help with some of my efforts. I have enjoyed their co-operation and for that I am very grateful.

Lord Stevenson of Balmacara: My Lords, the Prime Minister referred to us all as saboteurs more than anything else, which might be a compliment in some ways. We might reflect on that as we go forward.

We must accept that we have made no progress at all on this section of the Bill. It would probably be wrong of me to give too much detail about what happens in a wash-up session. Very few people are privileged to attend them, and I was there only for a small part of it. The rest of the time I was left hanging on a mobile phone in a remote area in which it did not work very well, and I got more and more frustrated about my inability to have any influence in some of the debates. However, one would have hoped that a majority of 94, and the arguments that we have heard rehearsed again today, would have led at least to a discussion about the way forward on this complex and rather annoying area that we seem unable to bring into focus.

In fact, I understand that it was made clear at the very start that the Minister concerned was unable to discuss any concessions in this area: it was ruled off the table from the beginning. In that sense, it plays a little into the conversation that we had earlier: that there is something dysfunctional about Whitehall on cross-cutting issues. We all know the wicket issues that are difficult and that nobody wants to play on. No Minister will take full responsibility for them and unless they get prime ministerial push—and a lot more besides, because Prime Ministers are not always as powerful as public misconceptions would have it—they will not make the progress necessary to achieve something that is genuinely about the whole of government. A hole has been created in this area and we have, I am

afraid, fallen into it. Added to that is what appears to be an uncanny ability of the current Prime Minister to exercise control in a fairly remote part of the Government.

I have two other things to say before we hear from the Minister as he winds this Bill up. The first concerns a little of what the noble Lord, Lord Willetts, said and what was said around the House. We need to use the fact that we have been rebuffed again on this issue to try to get the case right. That would be a good thing to do. Although the statistics are important, I will focus not just on them, because it might be a little ambitious to think that we will get a counting-in and counting-out method just because there is a problem in this area. The real issue is: who actually controls the entry of students to our universities? The noble Lord, Lord Willetts, said that at the end of the Bill we would probably have the best-regulated sector in the UK and possibly in the world. But should we not be trusting our higher education institutions to get on with the job and to recruit the best people they think can benefit from an education here?

The truth is that this is all second-guessed by the Home Office, which has its own teams of people who interview the students nominated by the institutions. They set the quota levels, which are said to be unlimited but are in practice set and increased only on application, and they change the quotas available to every institution if they feel that an institution is making mistakes in the people it recruits. This is not just about the point of entry. What happens to these students after they have left the responsibility of the institutions? When they go out into the wider world if they are able to get a job, or even if they disappear from the statistics, somehow the original institution that brought them in is responsible for them. That seems a double penalty, both for what they are doing and for future recruitment issues. All this has to be picked up and looked at. It is not a good system.

A pilot scheme is ongoing that affects masters courses, not undergraduate courses—deliberately chosen so that the results will be available earlier. Therefore, there is some hope that we might use that system to drive through a different approach to this, so that trusted institutions that are well regulated under a new system that has the support of both Houses can make the decisions necessary to recruit the right students. Those students will benefit from our system and can then fulfil their soft power responsibilities, duties and activities before going back, creating economic activity before they do so and being good citizens here and in the world. Currently, we have failed completely. I really regret that. I have bitterness and regret as much as the noble Lord, Lord Hannay, and I share his pain, but we must move on from here. The issue must not go away; it is too important for the economic future of our country, for the institutions concerned which need these students if they are to be successful and make progress, and for the individuals who are getting the benefit of the education here. I hope we will make progress urgently on the disaster that we now face.

2 pm

Viscount Younger of Leckie: My Lords, the noble Lord, Lord Hannay, spoke after my initial remarks. I understand that the noble Lord and others continue to hold strong views on this matter of international students. I am very aware of that, but I also appreciate his understanding of the current rapid process that is necessary and needed to move forward with cross-party agreement on this Bill, which he and the noble Lord, Lord Stevenson, alluded to.

To give some brief concluding remarks on the Bill, we have had an extremely rich and detailed debate on it over the last weeks and months. As the Minister in the other place noted, this House has contributed immeasurably to the Bill. Noble Lords' deep interest and expertise in these matters has been very clear through not just the record number of amendments tabled, as mentioned by the noble Lord, Lord Stevenson, and others, but the quality of the debate. The Government have reflected deeply on these points throughout the process. I hope the House understands that now, including on the most recent amendments. The voice of the sector has also been heard loud and clear throughout the process, and I am glad that Universities UK and GuildHE were able to give their support to the package of amendments tabled in the other place at the start of this week.

I recommend without reservation that noble Lords support this Bill. As my noble friend Lord Willetts said, it represents the most important legislation for the sector in 25 years and will set the framework for our world-class higher education sector and globally leading research base to continue to thrive in the 21st century.

Motion G agreed.

Motion H

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

That this House do not insist on its Amendment 183, 184 and 185, to which the Commons have disagreed for their Reason 183A.

Commons Reason

183A: Because Lords Amendments 183, 184 and 185 are unnecessary in light of Amendments 12A and 12B.

Motion H agreed.

Digital Economy Bill

Commons Reason and Amendments

2.03 pm

Motion A

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

That this House do not insist on its Amendment 1 and do agree with the Commons in their Amendments 1A, 1B and 1C in lieu.

Commons Amendments in lieu

1A: Page 1, line 12, at end insert ", but may not do so unless—

(a) it specifies the minimum download speed that must be provided by those connections and services, and

(b) the speed so specified is at least 10 megabits per second."

1B: Page 2, line 3, after "as or" insert ", except in the case of the minimum download speed,"

1C: Page 2, line 23, at end insert—

"**72B Broadband download speeds: duty to give direction under section 72A**

(1) The Secretary of State must give OFCOM a direction under section 72A if—

(a) the universal service order specifies a minimum download speed for broadband connections and services and the speed so specified is less than 30 megabits per second, and

(b) it appears to the Secretary of State, on the basis of information published by OFCOM, that broadband connections or services that provide a minimum download speed of at least 30 megabits per second are subscribed to for use in at least 75% of premises in the United Kingdom.

(2) The direction—

(a) must require OFCOM to review and report to the Secretary of State on whether it would be appropriate for the universal service order to specify a higher minimum download speed, and

(b) may also require OFCOM to review and report to the Secretary of State on any other matter falling within section 72A(1)."

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, this Motion covers two areas where the other place has offered amendments in lieu of your Lordships' amendments. Lords Amendment 1 on the universal service obligation challenged the Government to be more ambitious on universal digital connectivity. A broadband USO, set initially at 10 megabits per second, forms part of our plans to make sure nobody is digitally excluded. Lords Amendment 1 would have disrupted those plans. In our view, it would make the USO unworkable and, because of the risk of legal challenge, would lead to delays in implementation.

The USO can work only if it is legally robust and enforceable. EU law requires it to take into account technologies used by the majority of subscribers. Today, 30 megabits per second is enjoyed by fewer than 30%. Two gigabits per second is enjoyed by fewer than 1%. While we may have a majority taking up 30 megabits per second in a few years' time, the Government want to implement the USO now and the Lords amendment would make this difficult to achieve.

I know that a key concern for many is that the whole country should be able to access superfast speeds of 30 megabits per second. We share that ambition. We have therefore proposed an amendment in lieu that a superfast USO will be reconsidered by Ofcom once 75% of premises across the UK subscribe to superfast broadband.

On Lords Amendment 2, the other place agreed with your Lordships' concerns in relation to bill capping and proposed Amendment 2A in lieu. As with the Lords amendment, we provide that mobile phone service customers must have the opportunity to place a limit on their bill. Any limit set cannot be exceeded unless the customer agrees to this. Ofcom is given enforcement powers. The requirement placed on providers to ensure that customers can contact the emergency services will be unaffected.

The Government also reflected on the switching and roaming elements of Lords Amendment 2, but were not convinced of their merits. While it appears to be attractive, we do not believe that roaming is the right solution. I set out our reasons at Third Reading. With regards to switching, the Bill already goes further than the proposed amendment. The provision in the Bill, confirming Ofcom's power to set a condition about switching, relates to operators of all telecom services, including fixed line, broadband and pay TV, not just mobile phones. I beg to move.

Lord Fox (LD): My Lords, as someone who has renovated a Victorian house, I know one thing to be true. It is all very well stripping off the anaglypta and the woodchip, slapping on some Farrow & Ball, improving the coving and putting up a dado rail, but if you do not tackle the fundamentals you are pretty soon raising the floorboards again. It is the roof, the electricals and the plumbing that call you out. I had hoped that the Bill would tackle the fundamentals of the nation's digital plumbing. I hoped that it would put in train a really revolutionary revolution for our digital network and enable the whole country to participate in the digital economy I believe the Bill sets out to achieve. I still hope that is true, but I have my doubts.

Without a requirement for a fast digital delivery and a date for the arrival of that fast digital network, we will struggle. The notion of having a 75% threshold of subscription is a tricky way of going about this. We will have to use the reporting requirements that Ofcom is now obliged to follow—that is a move forward—to get it to report on how it is driving broadband usage. We are using the commercial arms of the same companies being asked to deliver broadband to promote the use of broadband itself. We have a closed loop that does not necessarily have an incentive to drive up to the 75% threshold. I would be more confident in the progress of this country in delivering this network if there was not a dominant player that sits on a Victorian asset of copper wire which it wants to sweat, and quite understandably. It has to be up to the Government and Ofcom to drive their desire to really move forward. We are closing the door on a fresh, shiny new Bill which still smells of new paint, but, just as with my house, I cannot help thinking that we will be raising the floorboards on this issue time and again in Parliaments to come.

Lord Stevenson of Balmacara (Lab): My Lords, we welcome the amendments in lieu in the Motion moved by the Minister. Having said that, I think we are at liberty also to regret that they do not go further.

The issue that we are dealing with here, which I think has been well picked up by the noble Lord who has just spoken, is that 59% of rural Britain has no proper access to the internet and large parts of the country have not-spots. It is a cause for major concern. The root of the problem is that, while a USO sounds good and is an effective way of getting across the argument that the service should be for everyone, the reality is that, unless there are sanctions to make sure that it happens and an incentive in terms of investment to make sure that the funding is available for it to take place at an appropriate time, it will never happen. It is therefore only part of the story.

The narrative that we are unfortunately locked into appears to be one where the Government were initially unwilling even to have anything in statute which provided a floor for the activity here—we now have that with this amendment, although it is a very low floor—but they do not yet have the aspiration, embodied in amendments that this House agreed, to get the speeds up and widen the coverage as quickly as they can.

We are stuck in a situation where the spirit may be willing but the flesh is certainly very weak. We are not in a position where we can say that we will be able to look forward to this in an immediate future.

The root of the problem has another source, which is the reliance on the European Commission's requirements in this area. The Government have made great play of this, but the only legislative framework under which Europe is operating here, which will fall away in 2019 if the new Government get their way, is that there should be non-binding guidance on what constitutes a universal service, yet the Government have chosen to interpret that as a limit on what they do rather than an opportunity to go further. While we welcome what is here, we do not think that the mechanics chosen will do the trick, particularly when Ofcom has recommended a faster basic speed and a cheaper way of doing it, which would be at 30 megabits per second. As we have just heard, we may be back looking at this in very short order.

On mobile bill capping, which will help consumers who get themselves in trouble with their bills, we are delighted that the Government have accepted the amendment made by the Lords at an earlier stage.

Lord Ashton of Hyde: My Lords, I am grateful for those remarks by noble Lords. The noble Lord, Lord Fox, talked about the fundamentals. They are what we have tried to address in this Bill to increase digital connectivity in the country. Measures in the Bill which have been accepted, on the Electronic Communications Code and those relating to spectrum, are part of that. The USO is slightly different. It was never intended to drive increased speeds. We have said separately that we share the ambition of the noble Lord to increase those and stated that we see fibre to the premises as the way forward, but the USO is there to tackle to social exclusion. I can reassure noble Lords that the response to Lords Amendment 1 is not about delaying superfast connectivity or pandering to the communications providers. To the contrary, it is because we do not want to be involved in protracted legal disputes. The fact is that the House can legislate for whatever speed it likes, but it will make a difference to people up and down the country only if it is implemented properly. That means that the Bill must be legally watertight and realistic.

Government Amendment 1A will put our money where our mouth is. As the noble Lord, Lord Stevenson, mentioned, we have now put in legislation that the broadband USO will be set at a minimum of 10 megabits per second and we will ensure that if the minimum has not already been raised to 30 megabits per second by the time take-up of superfast broadband has reached 75% of premises a review must be triggered. That is practical and, interestingly, will give this country the fastest USO in Europe. I hope we concentrate on the benefits we receive from this.

Motion A agreed.

Motion B

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

That this House do not insist on its Amendment 2 and do agree with the Commons in their Amendment 2A in lieu.

Commons Amendment in lieu

2A: Page 88, line 10, at end insert the following new Clause—

"*Billing limits for mobile phones*

Billing limits for mobile phones

In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services) after section 124R insert—

"*Billing limits for mobile phones*

124S Mobile phone providers' duty to enable billing limits to be applied

(1) The provider of a mobile phone service must not enter into a contract to provide the service unless the customer has been given an opportunity to specify a billing limit in the contract.

(2) In relation to a contract to provide a mobile phone service—

(a) a billing limit is a limit on the amount the customer may be charged for provision of the service in respect of each billing period, and

(b) a billing period is one of successive periods specified in the contract and together making up the period for which the contract remains in force.

(3) A contract to provide a mobile phone service must provide for the customer on reasonable notice at any time—

(a) to specify a billing limit if none is specified for the time being,

(b) to amend or remove a limit in respect of all billing periods or a specified billing period.

(4) In any billing period the provider must—

(a) so far as practicable, notify the customer in reasonable time if a limit is likely to be reached before the end of the period, and

(b) notify the customer as soon as practicable if a limit is reached before the end of the period.

(5) A limit may be exceeded in relation to a billing period only if the customer agrees after a notification under subsection (4)(a) or (b).

(6) If the provider continues to provide the service after a limit is reached, the customer's use of the service does not constitute agreement to the limit being exceeded.

(7) The provider must give the customer confirmation in writing of—

(a) the decision made by the customer in accordance with subsection (1),

(b) any decision of the customer under provision made in accordance with subsection (3), and

(c) any agreement by the customer in accordance with subsection (5).

(8) This section applies to agreeing to extend a contract as it applies to entering into a contract, and in that case the reference in subsection (2)(b) to the period for which the contract remains in force is a reference to the period of the extension.

(9) Nothing in this section affects a provider's duty to comply with requirements to enable calls to emergency services.

(10) In this section—

"customer" does not include a person who is a customer as a communications provider;

"mobile phone service" means an electronic communications service which is provided in the course of a business wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

124T Enforcement of duty to enable billing limits to be applied

(1) Sections 96A to 96C apply in relation to a contravention of a requirement under section 124S as they apply in relation to a contravention of a condition set under section 45, with the following modifications.

(2) Section 96A(2)(f) and (g) (OFCOM directions) do not apply.

(3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.

(4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.""

Motion B agreed.

2.15 pm

Motion C

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

That this House do not insist on its Amendment 40 and do agree with the Commons in their Amendments 40A and 40B in lieu.

Commons Amendments in lieu

40A: Page 88, line 10, at end insert the following new Clause—

"Code of practice for providers of online social media platforms

Code of practice for providers of online social media platforms

(1) The Secretary of State must issue a code of practice giving guidance to persons who provide online social media platforms for use by persons in the United Kingdom ("social media providers").

(2) The guidance to be given is guidance about action it may be appropriate for providers to take against the use of the platforms they provide for conduct to which subsection (3) applies.

(3) This subsection applies to conduct which—

(a) is engaged in by a person online,

(b) is directed at an individual, and

(c) involves bullying or insulting the individual, or other behaviour likely to intimidate or humiliate the individual.

(4) But guidance under this section is not to affect how unlawful conduct is dealt with.

(5) A code of practice under this section must (subject to subsection (4)) include guidance to social media providers about the following action—

(a) maintaining arrangements to enable individuals to notify providers of the use of their platforms for conduct to which subsection (3) applies;

(b) maintaining processes for dealing with notifications;

(c) including provision on matters within paragraphs (a) and (b) in terms and conditions for using platforms;

(d) giving information to the public about action providers take against the use of their platforms for conduct to which subsection (3) applies.

(6) Before issuing a code of practice under this section, the Secretary of State must consult—

(a) those social media providers to whom the code is intended to give guidance, and

(b) such other persons as the Secretary of State considers it appropriate to consult.

(7) The Secretary of State must publish any code of practice issued under this section.

(8) A code of practice issued under this section may be revised from time to time by the Secretary of State, and references in this section to a code of practice include such a revised code."

40B: Page 90, line 12, at end insert—

"( ) section (code of practice for providers of online social media platforms);"

Lord Ashton of Hyde: My Lords, I want again to start by saying that the Government accept and agree with the spirit of Lords Amendment 40, but, as drafted, it poses difficulties and risks unintended consequences. For example, it is not clear who would notify social media providers that content contravened existing legislation. The requirement to inform the police if notified that content contravenes any existing legislation could lead to unmanageable volumes of referrals to law enforcement. This would do little to increase public protection, making the code of practice unworkable.

The other place has offered Amendment 40A, which we believe will achieve a similar outcome by setting out the behaviour expected of social media companies while protecting users. As explained in the other place by my right honourable friend the Minister of State for Digital and Culture, good work is being done by some companies to prevent the use of platforms for illegal purposes, but we agree that more can be done by social media to tackle harmful conduct online, particularly bullying behaviour, which can have serious consequences.

Our intention is that the code will set out guidance on what social media providers should do in relation to conduct that is lawful but that is none the less distressing or upsetting. The intention is that the guidance in the legislation addresses companies proportionately. We believe that this code, together with the internet safety strategy, will result in a properly considered, comprehensive approach to online safety and deliver the long-lasting protections that this amendment seeks to secure. I beg to move.

Lord Clement-Jones (LD): My Lords, I have no doubt that the noble Lord, Lord Stevenson, will want to give a more substantive response since this was fundamentally an opposition amendment, but it was supported strongly on these Benches. I accept that the Minister has tried to incorporate the spirit of the original amendment in this amendment coming from the Commons. He made a number of detailed points about objections to the drafting of the original amendment, but there is one thundering great hole in the amendment as brought forward by him, which is that there is no obligation on providers to comply with the code of practice once it comes into force. It is nakedly a voluntary code rather than any code that is able to be enforced by the Secretary of State. That is the major difference between the amendment that this House passed and that which has now come forward.

The Minister mentioned the internet safety strategy and the work being done on it. Many of us are convinced that when the work on that is done the need for an enforcement power in such a code of conduct will become clear. Will the Minister assure us that enforcement will be considered as part of the internet safety strategy and that, if the overwhelming body of evidence is that such a form of compliance is needed, the Government will come forward with amendments?

Lord Collins of Highbury (Lab): My Lords, I will not delay the House but I want to repeat what the noble Lord, Lord Clement-Jones, has just said because the point about no enforcement and no sanctions is important. I recognise the words of the Minister in terms of reflecting the spirit and intent of our original amendment, and I think that that is what the government Motion now seeks to do. It will give notice to the social networks that failure to comply will result in further government action. Like the noble Lord, Lord Clement-Jones, I hope that the Minister will be able to respond positively, in particular on the internet strategy review.

In conclusion, our examination of these issues has been extremely good in the Lords both in Committee and on Report. We now have a clear policy which gives notice to the social networks that we want to ensure that proper standards are maintained and that action will be taken when evidence of abuse is found. It should not be a matter of days or weeks, which has been the case, before offensive material is taken down. We have seen evidence of the horrendous things that have been put up on social networks in the US and Thailand, so we want to ensure that the networks understand fully the gravity of the situation.

Lord Ashton of Hyde: My Lords, I am grateful for the remarks of noble Lords and I shall start by responding to the last comments made by the noble Lord, Lord Collins. I think that the social media companies are in absolutely no doubt about the Government's determination to review what they do and make sure that they live up to their responsibilities. We are all agreed on that and we realise that even when something is technically lawful, it can be very damaging and unpleasant. Anything that sets out to humiliate people has no place in our society. I of course understand why some noble Lords are disappointed that the code of practice is not mandatory, but we should have confidence that it will make a difference if, as I have suggested, both we and the social media companies take it seriously. The code of practice will clearly set out our expectations of social media providers and it is in the interests of a site to be responsible with regard to online safety. It is critical for the future of sites that their users should trust them and that they protect the health of their brand.

I accept that there has been a lot of talk about the internet safety strategy. We have not ruled anything out of the strategy and we have heard the clear views of the House. I can say that we will consider carefully the points which have been raised in the development of the strategy and we will welcome contributions from noble Lords and other interested parties. I shall repeat: my department has absolutely taken on board the views of the House along with those of many other stakeholders in relation to social media companies and we will see what comes of that. The fact is that if this amendment is accepted, the code must and will be produced, and I am convinced that it will have a beneficial effect.

Motion C agreed.

Motion D

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

That this House do not insist on its Amendments 237, 238 and 239, to which the Commons have disagreed for their Reason 237A.

Commons Reason

237A: Because the processes in place for determining the appropriate funding for the BBC are sufficient.

Lord Ashton of Hyde: My Lords, we return yet again to the issue of BBC funding, having debated it at length in Committee and on Report. Honourable Members in the other place have disagreed with the amendments that noble Lords inserted into the Bill at Report stage which sought to establish a BBC licence fee commission. The Government remain clear that they must have a free hand in determining the BBC's overall funding deals and the level of the licence fee following negotiation with the BBC itself.

Noble Lords will appreciate that decisions on the level of the licence fee are a matter for the elected Government. Similarly, we are not convinced that consulting the public on the level of BBC funding is the right approach to determining its funding settlements. The BBC's funding needs are a complicated and technical issue, and not one that lends itself easily to public consultation. Although the Government have persuaded honourable Members in the other place, we have listened to the concerns expressed by noble Lords about the process for setting the BBC's funding settlement and about ensuring that the BBC has an appropriate level of funding. The new charter endorses the BBC's mission and reaffirms the role and independence of the BBC in a much-changed and fast-changing media landscape.

The specific provisions in the BBC charter for setting the next funding settlement should also give some comfort to noble Lords who have concerns. We know exactly when the next funding period will commence. The Government will allow the BBC to make its case and will consider taking independent advice before reaching a final decision. Therefore in moving this Motion, I hope that those noble Lords who supported the noble Lord, Lord Best, at earlier stages will recognise that their efforts and their arguments on this matter have not been wasted. The Government are under no illusion that the next BBC funding settlement must be one that is carefully considered. There is no question of any so-called midnight raids when a five-year settlement which is inflation-protected has been agreed and everyone knows when the next settlement will begin.

I turn now to Motion E, relating to public service broadcasting prominence on the electronic programme guide, an issue which was much debated both in this House and in the other place. The Government have heard the strength of feeling on this issue. Although we have concluded that we can see no compelling evidence of harm to the PSBs, we recognise that this is a fast-moving technological landscape which needs to be kept under review, a point made clearly by the noble Lord, Lord Wood of Anfield, at Report stage. Amendment 242A will therefore place a new requirement on Ofcom to publish a report which looks at the ease of finding and accessing PSB content across all television platforms on both the linear and on-demand basis. The report will focus consumer pressure on the platform providers and TV manufacturers to improve the prominence of PSB on-demand services where this has been identified as an issue. We know that platform providers and TV manufacturers respond most strongly to consumer needs in developing their products and therefore developments in the EPG should be customer-driven.

The new duty will also impose an ongoing obligation on Ofcom to report and require it to review its EPG code by 1 December 2020, and to publish its first report on the ease of accessing and finding PSB content before then. As my right honourable friend the Minister of State for Digital and Culture made clear yesterday,

[LORD ASHTON OF HYDE]
if Ofcom's report makes it clear that there is a problem in this area, one that can be fixed only by legislation, and assuming that the Government are returned in June, we will bring forward that legislation as soon as possible. That, I think, is why the Labour Front-Bench spokesman said that she was happy to support the government amendment. I beg to move.

Lord Best (CB): My Lords, the three amendments which are the subject of Motion D came before your Lordships in the names of myself, the noble Baroness, Lady Bonham-Carter, and the noble Lords, Lord Inglewood and Lord Stevenson. They were passed by noble Lords with a thumping majority but they are now to be rejected with no alternative amendments in lieu.

The issue here concerns the process by which the BBC licence fee is determined. There has been extensive condemnation of the current process from the right honourable John Whittingdale when chairing the CMS Select Committee in the other place and Rona Fairhead, the chair of the BBC Trust, as well as from a range of organisations including the Voice of the Listener and Viewer, the NUJ, and of course our own Select Committee on Communications, which I have the honour of chairing, at least until the Dissolution of Parliament.

What everyone agrees is that the current process has meant the Secretary of State deciding on this vital matter in a most unsatisfactory way, behind locked doors and in secret, on a basis that has on the last two occasions involved freezing the fee for many years and the allocation of portions of it to a range of other purposes—so-called midnight raids—from broadband rollout to free licences for the over-75s. The amendments now to be rejected would not tie the hands of the Secretary of State, who would still make the determination, but the revised process would involve public and parliamentary consultation and expert advice from a specialist BBC licence fee commission.

2.30 pm

On the decision over the licence fee hangs the future of the BBC. It is vital to ensure that that decision is based on both an understanding of what the public want and hard evidence of what expenditure the BBC needs to fulfil its public purposes. I conclude this expression of disappointment with rather limited thanks to the Minister for acknowledging that this is a technical and complicated matter, one on which the Government will consider taking advice. They would be well advised to do so. We have five years until the licence fee is reset. During that time, it may be worth your Lordships returning to this matter.

Lord Lester of Herne Hill (LD): My Lords, about a year ago I introduced a Private Member's Bill that was too low in the ballot to have any chance of being debated or passed. When that became evident, I decided instead to use this Bill as a vehicle to protect the independence and funding of the BBC. As the Minister will, I am afraid, recall painfully, we debated these issues as a result throughout most of the last year.

The first problem that we debated was whether it was proper to have legislation and a charter. The Government originally took the position that they were inconsistent. I am grateful that eventually, having listened to the authority of the noble Lords, Lord Inglewood, Lord Fowler—while he was a free man—and Lord Best, about how a charter is nothing more than what Ministers desire and is not like legislation, the Government eventually concluded that there was nothing incompatible between having a charter and statutory underpinning, too.

The next question was why any statutory underpinning is needed. The answer, if you read the current charter, is that there is no obligation in it upon the Government to provide sufficient funding or even to respect the independence of the BBC. I made it clear before the Bill left the House for the other place that I was not wedded to any particular solution to the problem of ensuring that the Government would provide sufficient funding and respect the independence of the BBC, and would do anything in their power to secure that. As the noble Lord, Lord Best, indicated, one way this House expressed our view was by adopting his rather more moderate approach than mine. His commission would not bind the Government to anything in particular other than to consider the outcome of the review commission. My approach would create an obligation upon the Government as regards funding and a prohibition against top-slicing, the transfer to the BBC of matters that were the obligation of the Department for Work and Pensions, to ensure that that never happened again.

As I understand it, we are now in a position, before we finally approve this Motion, where the Government do not accept any obligations on them with regard to the sufficiency of funding or respecting the independence of the BBC. I asked this of the Minister the last time and he could not answer. I ask him this time please to assure the House that the Government accept that there is an obligation to provide sufficient funds to the BBC, whether through the licence fee or otherwise, to ensure that it can fulfil the public purposes as an independent public service broadcaster that are enunciated in the charter. Do they also accept the obligation to ensure that the independence of the BBC is guaranteed and that there will be no further raids upon it through top-slicing? If the Minister can give those assurances today, I will not feel that I have wasted the best part of the last year in these debates. If he cannot do so—I very much hope that he will—I am afraid that I will have to bring in another Private Member's Bill at the ballot.

Viscount Colville of Culross (CB): I regret that the Government decided not to accept Lords Amendment 242. The Minister in the other place said in his speech yesterday that the technology of broadcasting and internet-based on-demand viewing are completely different. I am afraid that that is not right. The two technologies are merging as television sets become multipurpose computers. We are seeing convergence between television and the internet increasing at a massively rapid pace. It is crucial that the prominence regime should keep pace with changing viewing habits.

However, the response from the other place gives me some heart. At least there is to be an Ofcom review of the PSB prominence guidelines in the internet age. I urge the Minister to ensure that Ofcom starts that

review as soon as possible and not allow it to put that off until 2020. Every month, we see PSB on demand and digital services become more important for broadcasters. I am sure that your Lordships would like viewers to have easy access to programmes that in the BBC's case are funded by public money and in Channel Four's case are publicly owned.

Lord Clement-Jones: My Lords, I very much hope that the Minister will take the threat from my noble friend Lord Lester extremely seriously and will rise to the challenges that he put to the Minister on the questions of funding, independence and carrying out the activities of the BBC.

I agree in particular with the noble Lord, Lord Best, in his disappointment with the Minister's Motion today. As the noble Lord mentioned, my noble friend Lady Bonham-Carter added her name to what we saw as a very important amendment in this House. That was the product of the report of the Communications Select Committee, *Reith Not Revolution*, which urged a much greater level of transparency and independent oversight in the setting of the licence fee. Of course, the Minister pushed back in Committee, on Report and at Third Reading by talking about the licence fee being a tax. However, it is a rather exceptional one: a hypothecated tax paid by the public to fund the BBC. So it is entirely correct that there should be a different mechanism for the setting of that licence fee. This arises because of the midnight raids—the hijacking—by the Treasury of the licence fee process on at least two occasions recently. One of the worrying phrases that the Minister used was that the Government want a free hand following negotiations with the BBC. That is exactly what the original amendment was designed to prevent.

The nub of the concern is about assurances. The Minister gave assurances and used new language on this. However, we have seen what assurances given by the Government are worth when it comes to snap elections. Assurances can be given by government one minute and broken the next. However carefully we scrutinise the Minister's wording today, if his Government are in a position in future to negotiate the licence fee, we have no absolute assurance that those words will be followed. I share the deep disappointment that I am sure is felt all around the House.

In many ways, Motion E is even more disappointing. It was perfectly valid for the noble Viscount, Lord Colville, to express some support for the Ofcom review, but given that the Government could say that whether or not to have a BBC licence fee commission is a political decision, this is much more a question of the facts and perception. On at least two occasions we have had Secretaries of State for Culture, Media and Sport—Jeremy Hunt and Maria Miller—saying that the position of the public service broadcasters is very important and EPG position is a very important way of safeguarding it. The Minister has said that a review will be undertaken by Ofcom, but Ofcom already knows that there is a problem. It recommended in its 2015 PSB review that policymakers should reform the rules for on-demand. Why are we asking Ofcom to do the work all over again? That does not seem a particularly constructive way forward, despite appearances.

A number of questions arise from Motion E. Can the Minister confirm that statutory change will be necessary to bring on-demand PSB content and the connected EPGs, where they are found, into the scope of Ofcom's EPG code? In conversations, the Minister has claimed that it is not possible to have a Henry VIII power that would implement Ofcom's recommendations for on-demand, so I assume that there is no current statutory power and that therefore we would be talking about primary legislation in that respect, but it would be helpful to have that confirmation.

Will the Minister give us an assurance that the Government will act on those Ofcom recommendations? We would not have tabled amendments on EPGs unless we thought that this was a real and present issue that needed to be tackled. This was not a frivolous amendment, but the Government seem to have a completely different view. The earnest of their intentions on this provision is rather important. The amendment sets a 1 December 2020 statutory deadline for the review and the revision of the EPG code, but does the Minister not agree that actually it would be desirable to commence work rather earlier, given the need for statutory changes beforehand, probably, to bring on-demand content into scope?

Finally, it appears that there is a statutory power to ensure the prominence of PSB children's channels on EPGs. Does the Minister agree with that? Does he agree that if Ofcom so recommends, that could be brought in at a much earlier date than the on-demand provision? I very much hope that the Minister can answer those questions.

Lord Stevenson of Balmacara: My Lords, taken together, these two amendments were traps for the Government and, with predictable certainty, they have fallen into both of them.

The amendment that has just been spoken to by the noble Lord, Lord Clement-Jones, on the need for Ofcom to have powers to make sure there is a proper rule about prominence that applies not only to the linear but to the offline world of iPlayer and others, was a test of whether or not the Government believed in public sector broadcasting, in that if they believed in public sector broadcasting they needed to come forward with proposals that allowed the channels that were funded by the public or in a not-for-profit way to have access on a fair and equal basis to commercial channels. By tabling an amendment that is for just a report, without the requirement that there should be legislation in three primary legislative areas, which I think we agree needs to happen, I think they have failed this test.

However, we welcome where they have got to. I support the idea of a further review. I hope it will bring out the complexity of this issue—the changing technology and the difficulties of assessing this—in a way that will make it easier for the Government to honour their commitment given in the other place and repeated here today that if the report does make it clear that there is a problem in this area and it can be fixed only by legislation, the Government will bring that legislation forward as soon as possible. I give the commitment from this side of the House that, if elected, we will do the same.

2.45 pm

On the BBC licence fee, the issue, again, is one of trust. The operations of a royal charter have been gradually devalued over the years. There is a real danger that institutions that seek protection in royal charters from what might be overweening behaviour by a Government of the day will not be able to rely on that as we go forward. The smoke-and-mirrors effect that was always there with royal charters has now gone. Therefore, there is a real problem about the BBC, and the Government—any Government—will be convincing only to the extent to which they can show by their actions that they genuinely believe in the independence of the organisations for which royal charter protection was so important. We have already seen attacks in higher education, where it is no longer possible for those who have guardianship of the funds that we put into research to have royal charters; they are being removed. There is a threat to universities, which will no longer be able to have or to change their existing royal charters. We have to be careful about where we are going on this. The Government have not been very successful in convincing us how they will do both the charter and the fee renewal for the BBC.

I had some hope during discussions on the charter renewal this time round, with the care and consideration the Government gave to the question of how the renewal of the BBC's charter and the settlement of the licence fee would be protected from the electoral cycle, that we would get somewhere with this and that we could continue to trust them. But they have just changed the electoral cycle. We have an election in 2017, which means that the next election will be in 2022, the year the BBC's licence fee is settled. The election after that will be in 2027, the year the charter renewal will take place. Do your Lordships really believe that we have the best system of protection in place if we do not seek more information on transparency about how the Government deal with such an important institution as the BBC?

The noble Lord, Lord Lester, is right that the time has come to think again about how we might want to protect in statute the organisations for which we have a great care. The first step on that might have protected us against the need to move in the direction of a BBC licence fee commission, which after all is not a new idea; it operated in 2005-06. It was successful, so successful in fact that it annoyed the Government of the day because it recommended too high a licence fee, but it did exactly what we wanted: it offered advice on a detailed examination of the case for what the BBC needed to fulfil its charter obligations. That is exactly what we were trying to do with that amendment, and I supported the one that came out of the Communications Committee. It was right at the time it was proposed. It was supported here—in the absence of the trump card, which is the change in the electoral cycle. If we do not get a commitment from the Government today that the whole question of timing will need to be looked at again, we are in a very bad place.

Lord Ashton of Hyde: My Lords, I am grateful for all noble Lords' contributions. I will start with the noble Lord, Lord Best. I am grateful for the limited thanks he gave me. I give him unqualified thanks in return. We have talked about this for a long time, both in and out of the Chamber. The one thing I can say about the Government's view on the BBC licence fee is that we have been entirely consistent.

I say to the noble Lord, Lord Lester, that in conversations over a period of time, both in and out of the Chamber, I have never given him any reason to expect that we would change our view on this. He said he was pathetically optimistic. I hope he remains optimistic in other things but we have been entirely consistent on this matter. As I explained at length, we do not believe that it is right for a tax to be consulted on.

I understand the issues and the strength of feeling in this House. That is why we have made some changes during the charter renewal process. We have outlined, as I said, that we have protected the funding for five years so that we will not have any so-called midnight raids. It is also protected from inflation, which it was not before. We have agreed that we will take in information and expert advice before the process goes ahead in five years' time. I of course take the threat from the noble Lord, Lord Lester, about a Private Member's Bill extremely seriously. I must assume that there is a possibility it will be forthcoming and I look forward to debating it with him. At the moment, I do not believe that our situation is likely to change but of course in 11 years' time, it might. I do not think I will be involved in it at that time.

The noble Lord asked a number of questions about whether the Government will guarantee the independence of the BBC, agree not to top-slice the licence fee and adequately fund the BBC. The new charter endorses the role and independence of the BBC—and increases that independence in a number of ways—and this Government will of course live by the provisions of the royal charter, as far as the independence of the BBC is concerned. On funding, we have agreed to give it a five-year period and will ensure that it is properly funded for the future but a negotiation will take place at that time.

As for the point made by the noble Viscount, Lord Colville, about timing, Ofcom will get going when it feels it necessary. What we have done is to put an end date on that in our amendment, so that it will have to produce its report in about two and a half years' time. That is a great advantage.

Lord Lester of Herne Hill: Did I understand the Minister to have given an assurance to the House just now that the Government regard themselves as under a duty to respect the independence of the BBC, and to provide sufficient funding to pursue its purposes as an independent public service broadcaster? If the answer to those questions is yes, I am extremely grateful and if the answer is no then I say to the Minister: power is delightful and absolute power is absolutely delightful but that should not be his motto.

Lord Ashton of Hyde: What I said was that we of course abide by what we have put in the royal charter, which mentions the independence of the BBC and enhances that independence from what came before. As far as funding is concerned, we have a five-year deal and the funding negotiation will go on

but it is clearly not the Government's desire to prevent the BBC carrying out its purposes. There will be a negotiation—this is a tax to provide for the BBC—and each five-year period will be taken on a separate basis.

The noble Lord, Lord Stevenson, referred to the next funding period and the election cycle. An 11-year cycle was carefully chosen to remove funding from the electoral cycle, I think at the suggestion of this House among others, and it is of course unfortunate that it has been changed by the absence of the fixed term. But the Fixed-term Parliaments Act is not a guarantee of a five-year Parliament—the provisions were written into the Act to make sure that that was the case. The new five-year settlement will be reached before the next election while the funding settlement is based on an 18-month to 24-month negotiation so, assuming the Parliament goes to the full five-year term, it would be in place before the election.

Fundamentally, a long charter allows the BBC to operate with greater certainty and with the freedom and confidence to deliver its objectives. It is also worth remembering that in the course of the BBC's 100-year history, the charter renewal process has coincided with the electoral cycle on a number of occasions. Yet the process has always managed to conclude successfully, to ensure that the BBC can continue to thrive.

Moving on to the EPG, there was a suggestion that we should take a broad Henry VIII power. I think that the noble Lords, Lord Clement-Jones and Lord Stevenson, both mentioned this. It is an unusual situation where both Opposition Front Benches are asking—almost demanding—the Government to take a broad Henry VIII power. I would normally say that I probably agreed but in this case, the problem is that the power would have to be very broad and wide-ranging. Amendments could be necessary to the Communications Act 2003 and the Broadcasting Acts of 1990 and 1996. Depending on what Ofcom recommended, a wider amendment might be needed beyond traditional broadcasting legislation to other areas which we would not necessarily wish to capture, such as other online services. We think this is the best way forward.

The noble Lord, Lord Stevenson, also asked about our belief in public sector broadcasting. We have accepted the arguments from your Lordships' House on listed events, to maintain them on our free-to-air channels, and from the noble Baroness, Lady Benjamin, on children's TV to ensure the adequacy of provision. These are evidence of our support for PSBs.

I know that noble Lords were disappointed about the BBC licence fee. As I said, we were entirely consistent on this. The commitment that we and the Minister in the other place have made on EPG should be some comfort to those who were disappointed with our answers on this. As a result, I hope that they will be able to accept this amendment.

Motion D agreed.

Motion E

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

That this House do not insist on its Amendment 242 and do agree with the Commons in their Amendment 242A in lieu.

Commons Amendment in lieu

242A: Page 83, line 38, at end insert the following new Clause—

"Electronic programme guides and public service channels

(1) After section 311 of the Communications Act 2003 insert—

"311A Report on electronic programme guides and public service channels

(1) It is the duty of OFCOM from time to time to prepare and publish a report dealing with—

(a) the provision by electronic programme guides of information about programmes—

(i) included in public service channels, or

(ii) provided by means of on-demand programme services by persons who also provide public service channels, and

(b) the facilities provided by such guides for the selection of, and access to, such programmes.

(2) When preparing the report OFCOM must consult such persons as appear to them appropriate.

(3) In this section "electronic programme guide" and "public service channel" have the same meanings as in section 310."

(2) After publishing the first report under section 311A of the Communications Act 2003 OFCOM must review and revise the code drawn up by them under section 310 of that Act (code of practice for electronic programme guides).

(3) The revision of the code must be completed before 1 December 2020.

(4) Subsections (2) and (3) do not affect OFCOM's duty under section 310 of that Act to review and revise the code from time to time.

(5) In this section "OFCOM" means the Office of Communications.""

Motion E agreed.

Motion F

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

That this House do agree with the Commons in their Amendment 246A.

Lords Amendment 246

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

"*Duty to provide information about tickets*

Duty to provide information about tickets

In section 90 of the Consumer Rights Act 2015 (duty to provide information about tickets), after subsection (4)(d) insert—

"(e) the ticket reference or booking number;

(f) any specific condition attached to the resale of the ticket.""

Commons Amendment to the Lords Amendment

246A: Line 5, leave out from "tickets)," to end of line 7 and insert "in subsection (4) omit "and" at the end of paragraph (c), and at the end of paragraph (d) insert ", and

(e) any unique ticket number that may help the buyer to identify the seat or standing area or its location.""

Lord Ashton of Hyde: My Lords, we recognise the good intentions behind the original amendment of the noble Lord, Lord Moynihan, and have accepted it, but we need to make some technical amendments. That is the purpose of Amendment 246A. The Government's amendment clarifies that the reference number provided should refer to the unique ticket put up for resale and enable the buyer to identify the location of the ticket within the venue.

Our amendment also removes the provision requiring ticket sellers to provide,

"any specific condition attached to the resale of the ticket".

Many noble Lords have asked me about this, so I want to put on record why. The Government are firmly of the view that, when a secondary ticket seller offers a

[Lord Ashton of Hyde]
ticket for sale, they must already give the buyer clear information about certain conditions attached to the ticket concerning resale. This provision is in Section 90(3)(b) of the Consumer Rights Act 2015. Duplication can add only confusion, whereas we want secondary ticket sellers to be absolutely clear on this point. This amendment is of course in addition to the government amendment which made buying tickets in excess of the maximum amount, using an automated bot, illegal. I beg to move.

3 pm

Lord Moynihan (Con): My Lords, I begin by declaring an interest as co-chair of the All-Party Parliamentary Group on Ticket Abuse and paying tribute to my co-chair Sharon Hodgson in another place for the outstanding work she has done on this subject.

In brief, I welcome the Government's amendment in lieu and the response by the Government to the Waterson review and their acceptance of the recommendations in full, including introducing a criminal offence to stop the use of bots to purchase tickets and the provision of funding to the National Trading Standards Board for enforcement action. Enforcement is weak, and I hope a future Government will work diligently to strengthen enforcement. I also look forward to the outcome of the Competition and Markets Authority's enforcement investigation into suspected breaches of consumer protection law in the online secondary ticketing market. That is very important because the evidence of the secondary ticketing market consistently flouting the law on a daily basis is clear for all to see on many of the online sites.

I welcome the Minister's comment that a ticket should have a unique reference number that people can see on the ticket when they purchase it. That will make it easier to identify the reseller. That has all-party support in this House and is an important step forward.

However, I would like further assurance from the Minister. He said that the original amendment I put forward was not necessary in whole because it included the addition of a requirement for the seller to list any terms and conditions associated with the resale of a ticket. The Government have deleted that provision, contending that it is already covered under Section 90(3)(b) of the Consumer Rights Act. It is important to have absolute clarity on this issue. The Government have argued that Section 90(3)(b) of the Consumer Rights Act 2015, which requires online secondary ticketing websites to provide,

"information about any restriction which limits use of the ticket to persons of a particular description",

effectively means that my amendment was unnecessary and duplicative. Many people understand that Section 90(3)(b) was designed to ensure transparency about any ticket which was for a child or a disabled person or had a restricted view or other similar restrictions and was not about resale terms and conditions, which were not subject to debate in this context when the Consumer Rights Bill was before Parliament.

It may assist the House if I briefly give an example to demonstrate this important point. Metallica have an upcoming UK tour which offers a very strong example of why the scope of the Consumer Rights Act to require secondary ticketing websites to be obligated beyond doubt to provide information about any specific conditions attached to the resale of a ticket is necessary. Metallica are obviously well known to many Members of your Lordships' House. There are strict conditions in place to mitigate ticket touting. Names are printed on tickets to prevent their resale, the photo ID of the lead booker must be presented to gain entry to the venue, accompanying guests must enter at the same time and tickets are limited to four per credit card. This is all made clear when you buy a ticket, and authorised primary ticket sellers have made that clear on their websites.

Do I understand absolutely categorically and without doubt that the Minister is saying that making those terms and conditions clear is mandatory on secondary ticketing market sites and is fully covered by the existing law? I think that is exactly what he said, but it would be very useful if he could confirm that, not least because it would be of assistance to the CMA in its inquiry and to trading standards because it would support and protect the interests of fans of Metallica and of "Hamilton", which will face the same challenges when that show comes on this autumn. With that requirement for a final assurance from the Minister, I conclude by thanking noble Lords on all sides of the House for their support on this and thanking the Minister for the hard work he has undertaken to ensure that we have made progress.

Lord Clement-Jones: My Lords, I join the noble Lord, Lord Moynihan, in welcoming the government amendment. I want to make only a very brief intervention to congratulate the noble Lord, Lord Moynihan, and Sharon Hodgson on their persistence in achieving what we have achieved so far, which is considerable. A great deal of progress has been made in restricting the activities of secondary ticketing sites. We all look forward to the Competition and Market Authority's report, which may well suggest further changes to legislation and will certainly give us a very good idea of whether the provisions of the Consumer Rights Act are being properly enforced. That will be extremely illuminating. I hope the Minister will be able to answer the question asked by the noble Lord, Lord Moynihan, about whether it is really duplication or whether we have thrown something out with the Commons amendment.

Let me end by saying that in the Digital Economy Bill we have not, in the words of my noble friend, taken up the floorboards today, but we have certainly given it a decent lick of paint in the process. It is not a very ambitious Bill, and many of us could argue at length about what other aspects it should have covered, but I thank the Minister for his unfailing helpfulness throughout the course of the Bill and I thank the Bill team. I very much welcome not only the movement today, which is perceptible—that is not always the case with wash-up or ping-pong—but some of the movement that was made in the course of the Bill. The noble Lord, Lord Moynihan, talked about the outlawing of mass online purchasing with bots, which is a very significant change, as are the site-blocking appeals, the new Ofcom powers in respect of children's programmes, which are particularly welcome to my noble friend

Lady Benjamin, remote e-book lending and the amendment on listed events. There has been movement in this House as a result of amendments in this House and the discussions we have had. I am grateful, and I look forward to a new digital economy Bill before too long.

Lord Stevenson of Balmacara: My Lords, this marks another stage in the campaign led by the noble Lord, Lord Moynihan. It was led until her death by Lady Heyhoe Flint whom we all want to recognise because she played a huge part in this and her memory is still fresh today. Wherever she is playing cricket, I am sure she is scoring a hundred as we speak.

The noble Lord, Lord Clement-Jones, and the Minister mentioned bots. We should not ignore the fact that that will make a huge change to the secondary ticketing market. The solution the Bill team came up with is very creative, and I hope it works as well as they intend it to. A first step has been taken, and this will crack down on the worst excesses of secondary ticketing.

I hope the Minister will answer directly the question asked by the noble Lord, Lord Moynihan, about whether the conditions apply because they are not drafted quite like that in the original legislation.

In its original formulation, Amendment 246 simply inserted the words,

"and any unique ticket number".

The final version before us states,

"any unique ticket number that may help the buyer to identify the seat or standing area or its location".

That raises the question of what "may" means. Does it in some sense imply a voluntary obligation? If it does, it would be very unfortunate. Could somebody argue that they did not include the unique ticket number specified because in their view it did not help the buyer identify a seat or a standing area or its location? Or is it a variation on the word "must" so that it is a requirement that a ticket number that could help a buyer identify seats or standing areas or their location must be included? I will be grateful if when the Minister responds he will mention that.

Lord Ashton of Hyde: My Lords, I am very grateful to, especially, my noble friend Lord Moynihan and other noble Lords. We have to some extent overcome the great disappointment of the noble Lord, Lord Clement-Jones, on the previous group.

Noble Lords have been very clear in this debate that they want to see tougher action to deal with the serious problems in the secondary ticketing market, and the Government are taking action. That is why we have provided funding for National Trading Standards to take further enforcement action, as the noble Lord, Lord Clement-Jones, mentioned. We have facilitated the ticketing industry's participation in joint industry-government cybersecurity networks, and the CMA has launched an enforcement investigation into suspected breaches of consumer protection law in the online secondary ticketing market. I am sure that the noble Lord, Lord Moynihan, and other noble Lords will continue to keep this issue under the spotlight, and we will make progress together on protecting consumers and supporting our national sporting and cultural assets.

The noble Lord, Lord Moynihan, asked a specific question about that. As my right honourable friend the Minister in the other place made clear, the Government are firmly of the view that, under the Consumer Rights Act, when a secondary ticket seller offers a ticket for sale they must give the buyer clear information about certain conditions attached to the ticket. We said the proposal was duplicative because that is what our advice told us. I would say in particular to my noble friend Lord Moynihan that the Explanatory Notes to the Consumer Rights Act 2015, referring to Section 90(3)(b), make clear that,

"the buyer must be given information about any restrictions that apply to the ticket".

In respect of the following wording in the amendment,

"any unique ticket number that may help the buyer to identify the seat or standing area or its location",

the noble Lord, Lord Stevenson, asked whether the "may" makes this voluntary. The answer is no, it is mandatory. This is technical language to link this to the previous subsection in Section 90 of the Consumer Rights Act. We have merely used the same language that was in there before. I hope that answers the question.

I reiterate what the noble Lord, Lord Clement-Jones, said about some of the advantages and gains that the Bill has had from your Lordships' House and indeed from the opposition amendments and suggestions in the other place as well. I say this to acknowledge their input into it but also to show that we have been flexible in many things. We have made progress in areas suggested by the Opposition in both Houses: on the extension of public lending rights to e-books; on children's television, as the noble Lord mentioned and as was proposed by the noble Baroness, Lady Benjamin; on the accessibility of on-demand services, including subtitles; on maintaining the capability to retain listed events, which was first tabled in the Commons; on bill limits for mobile phones, as we talked about earlier; on the code of practice for social media; on supporting the separation of BT from Openreach with the Crown guarantee amendment; on internet filters, which protect children; and on the review of the electronic programme guide, although not quite to the extent that some noble Lords wanted.

The Opposition have also supported things that will allow great advances in the digital economy, such as: the Electronic Communications Code, which is very technical but a crucial change; age verification for online pornography, where we listened and adjusted the regime to address the concerns of the Opposition; the extension of age verification for pornography on on-demand television, so that 18-certificate material is kept away from children; government data sharing, which will enable us to deliver better services to the vulnerable; and the repeal of Section 73 of the Copyright, Designs and Patents Act, which I think was accepted all round the House as a very good thing.

I mentioned my thanks to many noble Lords at Third Reading, and I repeat those, especially to the noble Lords, Lord Stevenson and Lord Clement-Jones, who headed their various and quite large teams in the House. I am very grateful to all those noble Lords.

Motion F agreed.

Specified Agreement on Driving Disqualifications Regulations 2017

Motion to Approve

3.15 pm

Moved by ***Lord Ahmad of Wimbledon***

That the draft Regulations laid before the House on 9 March be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, this statutory instrument is being made to reintroduce an agreement to allow for the mutual recognition of driving disqualifications between the United Kingdom and the Republic of Ireland. Noble Lords may recall that our previous arrangement on this matter under the 1998 European Convention on Driving Disqualifications ceased to apply in the UK from 1 December 2014, when the UK exercised its right to opt out of various EU police and criminal justice matters under the treaty of Lisbon.

The United Kingdom has one of the best road safety records in the world, and this co-operation between the Administrations of Great Britain, Northern Ireland and the Republic of Ireland will improve it further. This measure is particularly important for the people of Northern Ireland, who share a 310 mile-long border with Ireland, where around 15,000 people cross at 300 crossing points on a daily basis, travelling between the two. Last year, traffic accidents caused 68 people to needlessly lose their lives in Northern Ireland.

In summary, if a British or Northern Irish driver receives an instant disqualification from driving while travelling in the Republic of Ireland—say, for example, for drink-driving or for causing a serious injury to another road user—the disqualification can follow the individual back home. The same is true for Irish drivers disqualified here in Britain or in Northern Ireland.

The treaty that my officials have negotiated with the Irish is almost identical to the now defunct European Convention on Driving Disqualifications—but with one important difference. The convention gave rise to a loophole in its wording, whereby some drivers could escape a ban following them home by falsely claiming normal residence in the country where the offence occurred. We have amended the wording accordingly, to close this loophole. This will ensure that those unscrupulous individuals trying to escape punishment can no longer do so.

The mutual recognition process is straightforward. When a British or Northern Irish court determines that a driver is to be disqualified, and that driver is normally resident in Ireland—the driver can be the holder of any particular driving licence, whether Irish, EU or another—the driver will be able to appeal the decision. If an appeal is either heard and rejected, or not filed, the DVLA will write to the Road Safety Authority in Ireland and inform it that a driver resident in Ireland has been disqualified. It is then that the case is referred to the Irish courts, and judges there can elect to uphold the ban. Again, the same is true of British and Northern Irish drivers disqualified in Ireland.

These measures are not to be considered as a double punishment. Drivers have the right of appeal against the initial ban, and indeed against the ban applying in the country of normal residence. But a driver who commits an offence serious enough to merit instant disqualification needs to be taken off the road both in the UK and Ireland for the appropriate duration. If the Irish court imposes the additional punishment of being forced to resit a driving test or taking an extended driving test, we in Great Britain and Northern Ireland will similarly impose such additional punishments. Any driving disqualifications arising from the totting up of penalty points are not covered in this series of measures. However, Ireland and Northern Ireland are continuing to engage on a bilateral basis, through discussions in the North/South Ministerial Council, for the mutual recognition of penalty points.

The agreement on the mutual recognition of driving disqualifications between the UK and Ireland will not be affected by the United Kingdom's decision to leave the European Union. Indeed, as the Prime Minister herself stated on 30 January following a meeting with the Taoiseach, for the people of Ireland and Northern Ireland the ability to move freely across the border is an essential part of daily life. That is why the Taoiseach and the Prime Minister have both been clear that there will be no return to the borders of the past. Maintaining the common travel area and excellent economic links with Ireland will be important priorities for the UK in the talks ahead. I look forward to the brief debate this afternoon.

Lord Rosser (Lab): I note that the Minister referred to the "brief debate" this afternoon. I take it that that is a statement of hope on his part—although, judging by the numbers in the Chamber at the moment, perhaps we have both misjudged the situation and the debate on the Specified Agreement on Driving Disqualifications Regulations 2011 really is packing in noble Lords. I thank the Minister for his explanation of the purpose of these regulations, which we support, and the background to them—but I have one or two queries that I would like to raise.

The Explanatory Note indicates that mutual recognition of driving disqualification between the UK and Ireland was previously in operation between January 2010 and December 2014, pursuant to the European Convention on Driving Disqualifications. It indicates that, following the Lisbon treaty, we opted out of the convention from December 2014 as part of a block opt-out under the treaty. It states that the purpose of this instrument is to specify a bilateral agreement dated 30 October 2015 between the UK and Ireland on the mutual recognition of driving disqualifications imposed by either state for certain specified road traffic offences, which, as I understand it, and indeed as the Minister has confirmed, do not include disqualifications arising from the totting-up process. Now that the Minister has confirmed that that is the case in relation to the totting-up process, I invite him to say a little more about why.

In the Commons the government Minister said that Northern Ireland and Ireland were engaged in bilateral discussions through the North/South Ministerial Council

about the mutual recognition of penalty points, but added that it was still work in progress. Is this such a big problem that it still cannot be resolved some 18 months after the bilateral agreement dated 3 October 2015, even accepting that penalty points are assessed in a different way in Ireland? Frankly, how much longer is it going to take?

However, the main point I want to clarify is the length of time for which there has been no mutual recognition of driving disqualification between the UK and Ireland. On the understanding that the previous arrangements ceased on 1 December 2014, I simply want to clarify—although I think I know the answer—that they were not then reinstated through the signing of the bilateral agreement dated 30 October 2015, and that the impact of that agreement is being brought into effect by these regulations only some 18 months later and some two and half years after they ceased to apply. That appears to be the situation, and I think it is what the Minister has indicated.

If indeed these arrangements have not applied for that lengthy two-and-a-half-year period, why has it taken so long? Presumably, the Government had decided well in advance of the 1 December 2014 opt-out date that they would be making the block opt-out from the Lisbon treaty, and surely steps that would at least have reduced this apparently lengthy gap could have been put in train much earlier. I would like an explanation from the Government of why this whole process could not have been expedited more quickly. It does not look as though it has been given very high priority even though it relates to road safety, and even though the opt-out led to a weakening of legislative powers on road safety for which there was no supporting evidence or justification on road safety grounds.

What happened to the mutual recognitions on disqualifications then in force under the convention when we opted out? Did they remain in force, or did they then no longer have any legal standing? What is the Government's estimate of the number of people who could have been disqualified under the mutual recognition arrangements had these not apparently been brought to an end in 2014 with the opt-out, in respect of whom who it has not been possible since then to apply the mutual recognition arrangements because they have no longer been applicable since the opt-out? In particular, how many people to date have we had who have been able to drive in the United Kingdom who would not have been able to do so if we had not opted out of the convention on the mutual recognition of driving disqualifications? How many of those people have subsequently committed road traffic offences in the United Kingdom?

If the Minister thinks that I am asking for somewhat obscure information, I am certainly not; this is about road safety and potentially about people who should not be driving around on the roads in the United Kingdom. I ask for this specific information particularly in the light of paragraph 7.2 of the Government's own Explanatory Memorandum, which accepts that it,

"is important to the UK for reasons of road safety to ensure that drivers so disqualified in Ireland cannot drive on UK roads".

It appears that they have been able to drive on UK roads for the last two and a half years.

Lord Ahmad of Wimbledon: My Lords, maybe I was a bit presumptuous in my opening remarks, but from the response from your Lordships' Chamber perhaps I was right that this would be a short debate. I thank the noble Lord, Lord Rosser, for his support for this measure. He has raised a number of important points. I would not for a moment suggest that his points at this time, or indeed any that he raises with me at the Dispatch Box, are not important. I of course align myself totally with his sentiments about the importance of road safety.

I shall take some of the issues that the noble Lord has raised in turn. First, on the question of why it has taken since 2014 to do this, and with regard to the European convention itself, the 1998 convention ceased to apply in the EU in December 2016. With regard to the mutual recognition between ourselves and Ireland, the only way that we could introduce these arrangements was via the treaty. The Irish constitution itself forbids agreements of this nature to be made by items such as an MoU, for example, or similar informal instruments. Such matters therefore take time to be agreed. I believe the provisions from the Irish side were carried within a wider Bill that was subsequently passed by the Irish Parliament.

On the issue of penalty points not being included, there are different methods of calculating points between the UK and Ireland. To give some practical examples, they are legally incompatible, and the UK counts one way and the Irish count the other. As to actual enforcement, different points are applied to different defences. If I may, I will get the Northern Ireland Office to write further about specific arrangements between Northern Ireland and Ireland.

On the numbers of drivers, I can tell the noble Lord that about a hundred people per year from Ireland were banned under these measures in Great Britain and Northern Ireland, and about an equal number were banned under these measures in Ireland.

I think I have answered most if not all the questions that the noble Lord asked. I emphasise to him once again, as he raised the importance of this issue, that here we are on the last day of term, so to speak, and the Government are putting this forward again. That underlines the importance that we attach to ensuring these provisions can be made and translated into statute.

Lord Rosser: Did the disqualifications in force under the mutual recognition arrangements at the time of the opt-out in December 2014 continue to apply, or did they no longer have any legal status following the opt-out? Could the Minister, whatever the reasons may be, confirm that it has been a two-and-a-half year period during which people have been driving around on the roads in the UK who would not have been able to do so if that opt-out had not been made in 2014?

Lord Ahmad of Wimbledon: As I said, the convention continued and ceased to apply in the EU in December 2016. On the specific issue raised by the noble Lord about the number of people who may or may not have been driving through any intervening period, I will get that information to him in writing. I emphasise once again that the reason why there has been a delay, as he sees it, between 2014 and the date that we are now

[Lord Ahmad of Wimbledon]
putting forward is that we were respecting the other side of the discussion, the Irish side, in ensuring that it could go through its appropriate due process to ensure that it could implement this legislation.

Motion agreed.

Education (Student Fees, Awards and Support)(Amendment) Regulations 2017

Motion to Regret

3.29 pm

Moved by ***Lord Clark of Windermere***

That this House regrets that the Education (Student Fees, Awards and Support) (Amendment) Regulations 2017, which pave the way for students of nursing, midwifery and allied health professionals to receive loans rather than bursaries, have already been seen to discourage degree applications by a quarter, at the same time as Brexit has already reduced European Union migrant nursing and midwifery registrations by over 90 per cent; and that these factors risk turning an increasing problem in the National Health Service into a chronic one that potentially puts at risk safe levels of staffing (SI 2017/114).

Relevant document: 26th Report from the Secondary Legislation Scrutiny Committee

Lord Clark of Windermere (Lab): My Lords, it is particularly appropriate that the final debate of the Parliament in this House is on a matter of such concern to the British people: our National Health Service. If there is one group of people who always top the approval ratings among the British people, it is nurses. I will not say where we politicians are.

It is widely accepted that the National Health Service provides real value for money. In fact, we get health on the cheap in this country. We spend less on health than any other member bar one of the G7 nations, and I am not sure that that can continue for much longer. I think we will have to spend more on health, with our ageing population and the growth of what is technologically possible.

In a sense, we have been helped in this debate by the report of a Select Committee of this House on *The Long-term Sustainability of the NHS and Adult Social Care*. It draws to our attention how we have failed over the years to have long-term planning for organising staff. We must remember that approximately 150,000 people work for the health service. It is a fascinating organisation. It is a labour-intensive organisation—which applies in one way to nursing—married to and working alongside cutting-edge technology and science. It works, and we must continue to ensure that it works. The key is the staff at every level.

Anyone who follows the press or talks to doctors, nurses or the other health professionals knows that our National Health Service is in deep trouble and is functioning safely only due to the work level of the staff and their intense dedication to the service in which they work. That cannot continue indefinitely. Repeatedly, the royal colleges of nursing, midwifery and all the other medical disciplines tell us that we are getting towards breaking point. The strain is intense; the morale is low.

Let us take just nursing. Currently, we are about 24,000 nurses short—I think there is no disagreement with that. That affects not only our National Health Service but another big issue at the moment, the after-care service. A number of care providers, nursing providers and Care England have contacted me to say that they have had to close beds because they cannot get nurses to staff them. We tend to neglect that, and I mention it only in passing today because I want to concentrate on the health service.

I gather that the Government have had a report available to them in March which is not yet public which suggested, on a worst figure scenario—I emphasise that—that by the early 2020s we would be not 24,000 but 42,000 nurses short. Morale is not helped by the fact that nurses were not well paid to start with. They are highly qualified. All nurses are now graduates. They have to do professional work. Increasingly, they are doing work traditionally done by doctors. They are able and skilled do it, and we benefit greatly from that. The 1% annual pay increase which they have had to accept since 2010 is having a massive effect on morale, especially when people are having to work so hard.

We get by only because we import nurses from overseas. We have traditionally done that—I am not just blaming the Government in this case—but the problem is now acute. Of those nurses from overseas, 20,000 originate from European Union countries. Despite effort and pleading by me and others, we cannot get the Government to commit to those 20,000 people who work so hard in our National Health Service being allowed to stay in Britain. That will be easy to do: we need only to tweak the residency rules. That could be done without causing any problem, yet it would be of great benefit in retaining those nurses. I believe that we should offer them permanent residency in this country, as they have dedicated so much effort to providing healthcare for our population but, at the end of the day, we must train more home-grown nurses. The supply is there, because for every person who is accepted on to a nursing course at university, twice as many people apply. There is the quality and quantity of individuals who want to train nurses. The reason why they are not is because the Government have insisted on a cap on the numbers. Universities are not allowed to accept more nurses than has been agreed with the Government. By imposing this cap, we are exacerbating the problem.

I challenge the Minister that we are only really talking about saving money. That is what is dominating the Government's approach to the training of nurses.

To recap a little, the bursary system that has been developed meant that nurses who went into training did not pay fees. The quid pro quo was that most of them went on to work in the care services or the National Health Service. That system worked well and was fully subscribed. Under the proposals we are debating today, those individuals will have to pay £9,000 per year in fees for three years which, with their

living costs, will mean that nurses enter their profession not well paid and with £50,000 minimum hanging on their shoulders. I doubt that that is a sensible approach.

We must accept that nursing students' courses at universities are very different from most courses. It is not just lectures and library work. At least half the time of nurses in training is spent on the job, on clinical training. In most hospitals, most patients could not determine who is a student nurse and who is a qualified nurse, because student nurses are doing the work of trained nurses, except in a few technical, specialist areas.

Lord Forsyth of Drumlean (Con): I am most grateful to the noble Lord. On his point about the number of nurses who previously got bursaries and about financial controls on the bursaries, what proportion of those applying were unable to get bursaries and, therefore, unable to get training places?

Lord Clark of Windermere: As I understand the question, anyone accepted on to the course got a bursary—so they all got the bursary. I am pretty sure that I am right on that. But the point I was making about the course being different was not only that it is more intensive and about working on the job—the course is also longer. The average course length at universities for nursing, midwives and allied health professionals is 39 weeks a year, much longer than the average student course. So it is a different course; they have no opportunity, or little opportunity, to do any extra-curricular work, because of the nature of the job. Yet while they are working on wards, they work as a team.

In essence, the Government are insisting—for, I think, the first time in decades—that nurses pay for working in the health service. They are paying £9,000 a year to work as unpaid nurses. That is absolutely scandalous. Even before the new system came in, going back 50 years, you were accepted on a nursing course and went to the hospitals where you were trained. There was a mixture of blocks in the hospital and working on wards; that is how it traditionally went, but the nurses did not have to pay to perform those tasks. It is outrageous that this Government are insisting that nurses should pay for their own training.

The Government's justification for this change is to increase the number of nurses being trained, which we all welcome—we all want the number of nurses to be increased. It would help in so many ways. Virtually every hospital now survives by using agency nurses, paying far more by the hour than the NHS staff nurses get paid. We could save billions of pounds if we had sufficient nurses to staff our NHS and aftercare services. So what I am arguing for makes financial sense. The Government say that they are prepared, if nurses pay for their own education—and this is perhaps the point that the noble Lord was making—to lift the cap, so the universities could train as many students as they want. I hope that works; I want the system the Government are proposing to work. But then we come to the problem that it is easy enough for the universities to expand their lectures and provide library facilities; the difficulty comes when the National Health Service has to provide mentors, tutors and practical oversight of students when they work on wards and in clinical situations. There is no provision, as far as I can see, by the Government to provide extra money to hospital trusts to perform that critical part, which is at least half the cost of nurse training.

I want the proposal to work but it is highly risky. We are dependent on nurses from the European Union—and the latest figures are that there was a 90% fall in the registration of nurses from European Union countries since last December, which is an ominous sign. Then we have the figures from the Government, which show that the number of applicants to health courses was down by 23%. I accept the Government's point that those were applicants, not people who had actually been accepted on to a course. What worries me is that, if it follows through, and if the Government do not get students prepared to enrol at universities, we will find that we make no inroads at all into the shortage of 24,000 nurses.

3.45 pm

I believe that the Government's approach is a high-risk one; when you have such a large shortage, there must be other ways to deal with it. Why can we not for a number of years lift the cap on universities and say, "Look, train as many as you possibly can."? If the Government are not prepared to drop the scheme, why do they not say to nursing students who go on to spend a number of years working in the NHS, low paid as it is, that they will write off their tuition fees? That would be one way around it; it is belt and braces, I accept, but I do not believe we can risk what the Government are proposing. It is high-risk indeed, and that is why it should be debated, as it is now. It is interesting and important that we have a full debate on this issue.

Baroness Watkins of Tavistock (CB): My Lords, I declare my interests as outlined in the register and I believe that this afternoon I am the only registered nurse in the House. Nursing is the largest profession in the UK, with some 500,000 people on the professional register. It is vital that the international shortage of nurses and allied health professionals is recognised and that more investment is given to meet the demands for healthcare in the future. I agree with the noble Lord, Lord Clark of Windermere, about the need to spend more on health and social care—but not necessarily with his solutions.

There is a need for at least three pathways to becoming a registered nurse. As a profession, we have supported the introduction of an associate nurse route, which should enable people to be paid while learning and working and to proceed ultimately, if they wish, to train for the register through a sophisticated apprenticeship-style route. We have the pilots in progress at the moment. The second important development in the NHS's recent five-year plan is support in principle for a graduate entry route similar to Teach First, to be known as Nurse First. This is likely to be piloted in mental health and learning disability branches this autumn and would provide an alternative route into nursing.

The third route, which the majority of students follow, is a three-year university programme with clinical placements within both the NHS and other health

[Baroness Watkins of Tavistock]
care providers. The emphasis on hospital placements is not nearly as important at the moment as the need to ensure that students have experience in community settings and care homes—many of which are in the independent sector—because that is where a lot of people are cared for now, as well as at home. I therefore do not believe that we should reinstate the bursary, as we know that a lot of people applied to go to university because the bursary was there and we had a very high drop-out rate in year 1—I was a dean when that was happening, so I speak from experience. There were also some who completed the course but never had any intention of going into clinical nursing. They wanted to go into HR or to become an air stewardess—neither of which I think is a bad thing—but used the bursary structure to get their degree as an entry into those programmes rather than with the intention to spend a lifetime caring.

It would be preferable to invest in the three methods of education leading to registration and to seriously consider giving a bursary for the third year of training when—I agree with the noble Lord, Lord Clark—most students give a huge amount to the NHS and are often pretty indistinguishable in their final six months from a registered nurse. I also fully support consideration of the concept of forgivable student loans following a period of employment in the NHS on qualifying, rather like those granted to some nurses and medics sponsored by the forces during their education provision.

The other thing I want to draw the House's attention to is that there are 500,000 nurses in the four countries that make up the United Kingdom and that we have invested very little in return-to-nursing programmes and in encouraging them back to work. That action might be the fastest route to getting more registered nurses back into practice.

Finally, I support the concept that the noble Lord has just addressed. Public sector salaries have been significantly tightened in the last few years and there is a definite case that initial starting salaries in the NHS for nurses and allied health professionals should be increased to recognise that they will be expected to repay their student loans from 2020. As a woman, I get very fed up with hearing both in this House and the other House that very few nurses will have to pay back much of their loan because they do not earn very much. That is not the right approach.

I urge any future Government to invest further in health and social care in order to recruit and retain healthcare professionals. Currently, the ratio of women to men in nursing is nine to one and has remained unchanged for many years. We spend significant time and money on recruiting female engineers; perhaps we should do similarly to encourage more men into nursing and the allied health professions—but I accept that this will be possible only if there is fair remuneration for nurses' work and funding for continued professional development, as currently happens in medicine. I believe that what I have outlined would be a more strategic approach to the challenges that we face than the straightforward reintroduction of bursaries in the first two years of university programmes leading to registration.

Lord Forsyth of Drumlean: My Lords, I rise briefly as I realise that Members opposite are anxious to get away to campaign for their leader in the forthcoming general election. Thirty years ago, as a junior Minister responsible for health in the Scottish Office, I was asked to support something called Project 2000 and the move that all nurses should be graduates. As a junior Minister, I thought it was a rather silly idea. I could see that there might be a case for having some health professionals with degrees, but getting rid of the old state registered nurse system seemed to me a huge mistake.

However, the chief nurse was a particularly formidable person and my Secretary of State did not agree with me. Over the last 30 years, some people have argued that we needed people who would do not the less important—these are some of the most important tasks—but the more menial tasks, such as emptying bedpans, spending time with patients and providing the general care that was so much a part of the health service, and that you did not have to have a university degree to achieve that. I very much hope that the Government will think about that again. The noble Baroness, Lady Watkins, has almost got there—I do not mean that in a rude sense—in terms of offering a path forward which might address this problem, but I do not believe that everyone needs to be a graduate.

The reason that I interrupted the noble Lord to ask him how many of the people who applied to become nurses ended up doing a degree and becoming a nurse was because I knew the answer to my own question, which is that it is a small proportion. The noble Lord's speech contained a number of very important points with which I agreed. We will have to train more nurses as a result of leaving the European Union. That is clearly important. We will have to train more nurses because of the demands upon the health service. However, it seems to me that what the Government are proposing in these regulations, which is to remove the cap and to provide the funding through a loans scheme, will provide for that and address the problem.

Whether the Government are prepared to consider the admirable suggestion of the noble Baroness, Lady Watkins, that there may be a case at a stage in a nurse's career when they have served the health service for a longer period for forgiving the loans is another question. The Economic Affairs Committee has looked at the representations we have received on student loans and I would not be surprised if that did not represent a better deal for the taxpayer than continuing with the repayment where people are not receiving substantial salaries. So, while I think that the noble Lord has identified some real issues, I very much hope that noble Lords will not vote for this Motion, which would set us backwards and not provide the opportunity for more nurses to be trained and brought into our health service. I also hope that the Government will consider whether it is absolutely necessary for people to have university degrees in order to perform nursing duties in our health service.

Lord Willetts (Con): My Lords, in the absence of a voice from the Opposition Benches I will briefly intervene in the debate. I declare an interest as a visiting professor

at King's College London, which has a major role in medical education through Guy's and St Thomas'.

The noble Lord, Lord Clark, is of course right about the importance of nurses and about the lack of a suitable supply of nurses in the old regime. We heard a very constructive intervention from the noble Baroness, Lady Watkins. I say to the noble Lord, Lord Clark, that nurses should not be worried about a model of fees and loans with graduate repayment. We went through all these concerns when we shifted mainstream higher education into fees and loans. In the first year, there was a decline in applications—but that stopped as soon as the students understood that they were not paying up front, and that it was a repayment scheme where they would pay back only if they started to earn more than £21,000 a year, and through PAYE. In other words, the so-called debt was nothing like a bank overdraft or a credit card debt; it was repayment through the income tax system if they were earning enough. That tackled their concerns, and since then we have seen an increase in the number of students applying to university.

My second point very much follows on from the excellent intervention of my noble friend Lord Forsyth. The reason we are short of nurses is that successive Governments have rationed the number of nurses. They have done that because nursing places have been financed out of public expenditure and the way to control public spending was to control the number of nurses. Back in 2004-05, we funded 25,000 nurse places a year. That has been in steady decline under successive Governments for a decade and is now down to around 17,000.

If we look at the evidence of what has happened in the past decade, there is no prospect under any Government of having more nurse places under the old system. A crucial part of these reforms is to remove the cap on places so that we will have more nurse places under the new system. The new system delivers more cash to cover nurses' living costs during their nursing education. It delivers more money per nurse through the fees and loans system for universities providing nurse education and it removes the cap, thus providing the NHS with more trained nurses in total. That is a constructive reform of the NHS. It is progress on tackling the long-standing problems in nursing to which the noble Lord, Lord Clark, drew attention—and it is why I fear that this Motion is misconceived.

4 pm

Baroness Walmsley (LD): My Lords, this is a terrible time for the Government to undertake a highly risky revision of the funding of student nurses. We are already short of nurses, as the noble Lord, Lord Clark, told us, and of course midwives, and the imminent Brexit has already made that worse with, as we have heard, a 90% drop in the number of applications from EEA nurses. In addition, we are losing nurses due to overwork and poor morale.

The Government's so-called consultation focused only on implementation rather than looking carefully at alternative ways of funding nurse training to ensure both fairness and a stable increased supply of nurses. The excellent speech by the noble Baroness, Lady Watkins of Tavistock, clearly demonstrates that there are many different ways of doing that, and I am not convinced that the Government have taken all those proposals into account. They ought to stop in their tracks and look at all those alternatives before going ahead with this regulation. We are still waiting for information about how or whether the practice placements will be funded, wherever that is—in the NHS or in the care services. As we have heard, nurses have to do 2,300 hours in a clinical placement. This requires considerable resource input from the hospitals or care placements, and most hospitals are already in deficit. Without proper resources there is no way that the system can accommodate 10,000 extra student nurses, even if, as we all hope, the Government are right and universities do offer that many additional places.

I understand where the noble Lord, Lord Willetts, is coming from. Clearly, the tuition fees and loans system has not put off students on most university courses. However, nurses are different from other students, so it is not a given that they would respond like students on other courses to the need to take out loans and pay fees. They are more predominantly from lower socioeconomic groups and have a higher proportion of mature students with family commitments. They spend nearly half their course time in supernumerary placements in hospitals and have a higher number of contact hours and weeks than other students. That makes it more difficult for them to get a part-time job to fund their living expenses, as other students can do. Indeed, because they are not highly paid, it has been calculated that the vast majority of them—I apologise to the noble Baroness, Lady Watkins—will not have paid off their student loans over 30 years, so they will be written off. It makes me sad to have to say that but it is a fact. Some even have other student loans from other courses that they have previously undertaken. So this strategy of the Government will not necessarily save much money in total but will simply shift the debt off the books, which I suppose was the objective of the exercise.

The Government have been very hasty. Instead of arbitrarily removing the bursaries we need a thoroughgoing investigation into the factors affecting nurse recruitment and retention, because the latter is a very important factor. It is no use filling up the bucket if there is a great big hole in the bottom—and in this case there is. Retention of student nurses to the end of their course is poor, and retention of nurses and midwives beyond the first two years after qualification is also poor. Therefore, not for the first time I ask the Minister whether he will ensure that attrition data is collected in a consistent way so that we can identify those settings that are good at keeping their students, nurses and midwives and those that are not. We can then learn from the best practice and spread it.

The impact of the Government's plans on admissions, student numbers and quality and on the stability of the qualified workforce is yet unclear, and the Government have not said how they intend to monitor the impact on the workforce. Without a solid evidence base this policy should not go ahead. I therefore support the regret Motion in the name of the noble Lord, Lord Clark, and call on the Government to think again.

Lord Watson of Invergowrie (Lab): My Lords, when, in February, I was granted a topical Question on this subject—which, incidentally, I very much appreciate my noble friend Lord Clark raising—the Minister, the noble Lord, Lord O'Shaughnessy, chose to characterise my opposition to the Government's damaging proposal as a sign that I did not support the policy of student loans. He was being disingenuous because, when student loans were first introduced by a Labour Government in 1988, those studying for nursing, midwifery and allied health professions were specifically excluded.

As tuition fees rose and student loans followed, successive Governments—Labour, coalition and, until now, Conservative—maintained that exclusion. We do not need to ask why. My noble friend Lord Clark and other speakers in this debate have made it quite clear that students building a career in those professions are quite unlike the wider student population. Perhaps the most revealing statistic on that—I will not repeat the others—is that 41% in those categories are over the age of 25, compared with 18% of the total student population. That sets them apart. As the noble Baroness, Lady Walmsley, has just said, they are unable to support themselves as other students can do, and often need to do, during their studies because of the hours required of students in nursing, midwifery and allied health professions.

However, none of that was taken into account by the Government—a Government anxious to make only "savings". Worse, despite having those facts set out before them, they have declined to alter the course on which they are so dogmatically set. As my noble friend Lord Clark said, the nursing workforce already has severe shortages—up to 25,000 and rising—and already we know that fewer nurses from the EU are coming to work here and that by 2020 nearly half the workforce will be eligible for retirement.

So what do the Government do? They end the established practice of providing nursing students with bursaries and tell them to take out loans that will leave them with debts of at least £50,000 by the time they qualify. I heard what the noble Lord, Lord Willetts, said about loans—it is an argument that he repeated during the passage of the Higher Education and Research Bill. None the less, it is a fact that for those seeking to study for nursing, midwifery and allied health professions on the basis that they would have a bursary, it is quite a shock to find that that is not the case. Those going through school and going to university for what one might term more mainstream courses have known all along that that would be the situation. This is a sudden shock brought about by the Government, and it will have a detrimental effect on those wanting to study.

We like to think that, whenever we need the NHS, it is there for us and our families, but we are naturally anxious when we or our loved ones need to spend time in hospital, and we require an adequate number of nurses for that treatment. The Government are failing the NHS. A further example was provided just today when, in response to my noble friend Lord Hunt, counsel's opinion was that the Government are acting illegally by not compelling NHS England to treat the required 92% of patients within 18 weeks. My noble friend Lord Hunt has submitted a Motion—for those noble Lords who are interested, it appears on page 4 of *House of Lords Business*—and I think that that highlights the fact that the Government are cavalier in the way they are allowing patients to be treated.

As we heard in February, the applications for nursing courses starting in September last year were down by some 23%, and the latest data available for March show that that decline is continuing. Although the ratio of applicants to training places is still 2:1, the fall in the number of applications could compromise the quality of candidates applying, as well as geographical provision, which of course is important in the long term. Moreover, it could deter prospective students once they understand fully the implications of the student loan system.

Janet Davies, the general secretary of the Royal College of Nursing, said:

> "The nursing workforce is in crisis and if fewer nurses graduate in 2020 it will exacerbate what is already an unsustainable situation. … The outlook is bleak".

Those are her words. She is the general secretary of the Royal College of Nursing—she should know. The National Health Service Pay Review Body in its 29th report said that,

> "The removal of bursaries for student nurses could also have a disruptive impact on supply or the quality of supply",

and that,

> "the removal of the incentive of the bursary could have an unsettling effect on the number and quality of applications for nursing training places".

They, too, should know. Why are the Government certain that, as always, they have a monopoly on wisdom? Why do they think they know better than the professionals in the NHS?

We should also ask why the Government are doing it. They have given two reasons. The first is the claim that it will add an extra 10,000 nurses up to 2020. But as I have said, far from encouraging additional training places by that time, cutting NHS bursaries will discourage many from becoming a nurse, midwife or allied health professional because of the fear of debt. The House of Commons Public Accounts Committee said in its report entitled *Managing the Supply of NHS Clinical Staff in England* that,

> "the changes could have a negative impact on both the overall number of applicants and on certain groups, such as mature students or those with children".

If the student numbers are not there, higher education institutions will be worse off because of the decline and the need to finance access bursaries under the Office for Fair Access guidance.

The Government's proposal also stated that it will ensure sustainable funding for universities, but as yet there has been no indication of an increase in funding that the Government provide for clinical placements. Yet a study by London Economics, a leading policy and economics consultancy used by the Department for Education, found that higher education institutions would be worse off by around £50 million per cohort. Approximately half of that decline will be as a result of the decline in student numbers to which I referred. As a result, there is a real danger that some universities may decide to stop running some health-related courses

altogether if they are deemed to be unsustainable. That is related to another government objective—to widen access to nursing training. I want to make clear that we are not opposed to that, but not at the expense of the traditional route through university.

The Government have also said that scrapping NHS bursaries will save the Treasury money. But there will in fact be no cost savings to the Exchequer because most nurses will not earn enough to repay the entire loan and the decline in numbers entering nursing will increase agency nursing staffing costs to cover shortfalls. London Economics also estimated that, with those increased agency costs to cover staffing shortfalls, there will be more than an additional £100 million cost by trusts per cohort wiping out any potential cost savings.

These proposals should not be proceeded with, at least until the Government have published the results of the second stage of their consultation on these measures—a point made and expanded on by the noble Baroness, Lady Walmsley. That consultation has been delayed and of course we will not see it now until the other side of the election, if we see it at all. That is entirely unsatisfactory. It is confirmation of what is no more than a leap into the dark. That is no way to treat the career development of some of our most valuable public servants. These changes are high risk at a time when the NHS is ill-equipped to manage such risk. We support the Motion in the name of my noble friend Lord Clark because it is a risk that should not be taken.

I end by responding to the rather dismissive jibe by the noble Lord, Lord Forsyth. Yes, we are keen to get on with campaigning for the leader of the Opposition. That is what we will do to encourage the people of the UK to elect a Government who will properly fund the NHS and properly value its dedicated staff. Bring it on.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, I thank all noble Lords who have contributed to this debate and congratulate the noble Lord, Lord Clark of Windermere, on his prescience in scheduling this debate several weeks ago. He clearly has admirers in the Leader of the Opposition's office if they have taken his proposal and put it in their manifesto. I leave it to others to judge whether having a policy adopted by Jeremy Corbyn is a good thing or not.

Noble Lords: Oh!

Lord O'Shaughnessy: While the noble Lord may have been prescient and influential, I fear that on this issue he, the Labour Party and the Liberal Democrat party are wrong. They are wrong because the system that we are introducing for student nurses matches that experienced by other undergraduate students—a system that has been the primary driver of the big expansion of higher education and improved participation among disadvantaged young people—and wrong because of the fears of the impact of Brexit that he has evoked. I thought that the Labour Party was in favour of leaving the European Union, although having heard the tortured exposition of Labour's policy earlier this week that is anyone's guess. But I reassure the House that this Government not only understand the difficult choices that need to be made to ensure that our NHS has the resources and personnel that it needs to thrive, but, if we are fortunate enough to be re-elected, intend to make a success of Brexit and, as immigration is reduced, to bring more of our domestic workers into the NHS to meet the challenges ahead.

I join other noble Lords in paying tribute to the amazing work that more than 2.5 million people working in the NHS and care systems do every day, often in challenging conditions. They represent values to which we all aspire—service, hard work, compassion—and are an inspiration to us all. There can be no person in this country who does not have cause to give them thanks for their expertise and commitment.

The Government are taking action on several fronts to support that workforce so that it can deliver excellent patient care through flexible working, good leadership, expanded routes into practice and new career structures. As part of these changes, from August 2017 new full-time students studying pre-registration nursing, midwifery or one of the allied health subjects will have access to the standard student support system for tuition fee loans and maintenance loans.

These reforms will enable more money to go into front-line services—around £1 billion a year to be reinvested in the NHS. Additionally, they will help to secure the future supply of nurses and other health professionals in several ways, such as by removing the cap, identified by my noble friend Lord Willetts as being a feature of the current system, so that more applicants can gain a place. Universities will be able to deliver up to 10,000 additional training places. The changes also enable a typical provision of a 25% increase in living-cost support for healthcare students and put universities in a stronger financial and competitive position so they can invest sustainably for the long term. The noble Baroness, Lady Watkins, in her excellent and of course, expert and well-informed speech, also pointed out that they remove a perverse incentive of the current system where it is the sole degree that is subsidised in that way. That brings with it a number of benefits, including addressing the issue identified by the noble Baroness, Lady Walmsley, of the retention on courses of people who are fully committed to taking part in a nursing career.

Successive Governments' reforms to student finance have put a system in place that is designed to make higher education accessible to all, as my noble friend Lord Willetts pointed out in his excellent intervention. This has allowed more people than ever to benefit from a university education and has spread more fairly the burden of costs between society at large via the taxpayer and the individuals who benefit financially from the degree course. As a consequence, disadvantaged people are now 43% more likely to go to university than in 2009, and for the last application cycle the entry rate for 18 year-olds from disadvantaged backgrounds is at a record high: 19.5% in 2016, compared with 13.6% in the last year of the Labour Government in 2009. That is what we mean by a country that works for everyone. It is precisely because of these positive effects that moves towards a loan-based system have been supported by political parties across the House.

[LORD O'SHAUGHNESSY]

They were introduced by a Labour Government, extended by a Conservative and Liberal Democrat Government and taken on by this Conservative Government.

Turning to the applications for nursing and midwifery courses, the latest data published by UCAS on 6 April show around a 22% fall in the number of applicants to nursing and midwifery courses in England compared with the same point in the 2016 application cycle. However, as my noble friend Lord Willetts pointed out, in previous cases when fees have been introduced application numbers have gone down but rebounded in future years. The same UCAS data also show that since January there have been more than 3,000 additional applicants for nursing and midwifery places, taking the current total to more than 40,000 applicants for around 23,000 places in England. The chair of the Council of Deans of Health, Dame Jessica Corner, has commented on the situation, saying:

"It is to be expected that there would be fewer applications in the first year following the changes to the funding system, but we would expect this to pick up in future years".

The Chief Nursing Officer, Jane Cummings, said:

"Despite the drop, the level of applications received suggest that at a national level, we are still on track to meet this target in England although we need to monitor this very carefully. We are also introducing a number of opportunities to support future applicants including additional routes to become a graduate nurse".

Based on all of the information available, Health Education England is confident that it will still fill the required number of training places for the NHS in England.

On the issues raised around Brexit, future arrangements for student support after the UK leaves the EU will need to be considered as part of wider discussions about the UK's relationship with the EU. However, the Government have confirmed that EU students starting their courses in 2017-18 or before will continue to be eligible for student loans and home fee status for the duration of their course.

On numbers of non-UK nurses, it is correct that the Nursing and Midwifery Council has seen a reduction in the number of registration applications from nurses in the European Union. At the moment, it is unclear whether the drop is attributable to the introduction of more robust language testing by the NMC, rather than as a result of the decision for the UK to leave the EU. The drop in the number of applications is balanced by a reduction in outflows from the profession, meaning that, while monthly fluctuations continue, the number of EU-born nurses is broadly the same. Indeed, slightly more nurses from the EU are working in NHS trusts and CCGs than in June 2016, the time of the referendum.

Lord Watson of Invergowrie: Will not the figure that the Minister has just cited be significantly skewed by the immigration skills charge, where, for every overseas person coming in on a type 2 visa, the NHS will have to pay £1,000? Will that not have an effect on nursing figures?

Lord O'Shaughnessy: I am not going to speculate on the impact of that. What I can tell the noble Lord is that, despite the scare stories that numbers will have been affected, there have been more EU-based nurses in the past year. That is the point that I wish to get across.

The real issue at stake is whether the number of staff in the NHS is increasing to meet the growing demands on it, and here the Government have a strong record. Over the past year, the NHS has seen record numbers of staff working in it. The most recent monthly workforce statistics show that, since May 2010, there are now over 33,000 more professionally qualified full-time equivalent staff in NHS trusts and clinical commissioning groups, including over 4,000 more nurses.

Health Education England's Return to Practice campaign has resulted in 2,000 nurses ready to enter employment and more than 900 nurses back on the front line since 2014. There has been a 15% increase in the number of nurse training places since 2013, plus the introduction of up to 1,000 new nursing apprenticeships and the creation of nursing associate roles—the kind of non-graduate nursing roles that my noble friend Lord Forsyth pointed out as being such a crucial part of the mix. These all form part of our plan to provide an additional 40,000 domestically trained nurses for the NHS. These new and additional routes into the nursing profession will allow thousands of people from all backgrounds to pursue careers in the health and care sectors and, critically, allow NHS employers to grow their own workforce.

I will end as I began. I believe that this regret Motion is misguided. The extension of the loan-based system to nursing and midwifery training is a natural development of reforms that have received cross-party support, successfully expanded higher education, dramatically improved the participation of disadvantaged groups and provided a fairer distribution of the costs of funding higher education.

Despite the pessimism of some, the decision by the British people to leave the European Union, which this party respects, has not had a material impact on the workforce. Furthermore, and paid for in part by the resources freed up by our changes to student finance, this Government have put in place a series of programmes that have successfully increased the number of staff in the NHS and provided more training places than ever, allowing us better to grow our own workforce among UK residents.

The true source of regret is that the Opposition have used this opportunity to run scare stories about both the impact of sensible funding changes we have made and the impact of leaving the European Union on the NHS workforce. I urge all Members of this House to vote against the Motion.

Lord Clark of Windermere: My Lords, I have listened very carefully to the Minister. I wanted to be persuaded; I am not persuaded. I believe that the Government are taking a big risk. They have gambled before. It may not be known, but in 2011, 2012 and 2013, they reduced the number of nurses in training because they thought we had sufficient. As a result, several thousand nurses were short-trained in those three years, because the Government got the figures wrong. I believe that they have got the figures wrong again. It is a big risk that we do not need to take. It is unfair on the nurse's

career, but, most of all, it is unfair to potential patients in the National Health Service. I want to test the opinion of the House.

4.22 pm

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Ryder of Wensum, L.
St John of Bletso, L.
Seccombe, B.
Selborne, E.
Selsdon, L.
Sharples, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Skelmersdale, L.
Smith of Hindhead, L.
Sterling of Plaistow, L.
Stowell of Beeston, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.

True, L.
Tugendhat, L.
Vere of Norbiton, B.
Verma, B.
Wasserman, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

4.35 pm

Lord Taylor of Holbeach (Con): My Lords, I think it best if we adjourn during pleasure until 5.15 pm, to enable the Chamber to be adjusted for the ceremony that now follows.

Sitting suspended.

Royal Commission

5.15 pm

The Lords Commissioners were: Baroness Evans of Bowes Park, Lord Hope of Craighead, Lord Fowler, Lord Newby and Baroness Smith of Basildon.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it not being convenient for Her Majesty personally to be present here this day, she has been pleased to cause a Commission under the Great Seal to be prepared for proroguing this present Parliament.

When the Commons were present at the Bar, the Lord Privy Seal continued:

My Lords and Members of the House of Commons, Her Majesty, not thinking fit to be personally present here at this time, has been pleased to cause a Commission to be issued under the Great Seal, and thereby given Her Royal Assent to divers Acts which have been agreed upon by both Houses of Parliament, the Titles whereof are particularly mentioned, and by the said Commission has commanded us to declare and notify Her Royal Assent to the said several Acts, in the presence of you the Lords and Commons assembled for that purpose; and has also assigned to us and other Lords directed full power and authority in Her Majesty's name to prorogue this Parliament. Which commission you will now hear read.

A Commission for Royal Assent and Prorogation was read, after which the Lord Privy Seal continued:

My Lords, in obedience to Her Majesty's Commands, and by virtue of the Commission which has been now read, we do declare and notify to you, the Lords Spiritual and Temporal and Commons in Parliament assembled, that Her Majesty has given Her Royal Assent to the Acts in the Commission mentioned; and the Clerks are required to pass the same in the usual Form and Words.

Royal Assent

5.30 pm

The following Acts were given Royal Assent:

Finance Act,
Parking Places (Variation of Charges) Act,
Broadcasting (Radio Multiplex Services) Act,
Homelessness Reduction Act,
Intellectual Property (Unjustified Threats) Act,
National Citizen Service Act,
Children and Social Work Act,
Pension Schemes Act,
Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act,
Technical and Further Education Act,
Neighbourhood Planning Act,
Bus Services Act,
Criminal Finances Act,
Health Service Medical Supplies (Costs) Act,
Northern Ireland (Ministerial Appointments and Regional Rates) Act,
Local Audit (Public Access to Documents) Act,
Merchant Shipping (Homosexual Conduct) Act,
Guardianship (Missing Persons) Act,
Farriers (Registration) Act,
Higher Education and Research Act,
Digital Economy Act,
Faversham Oyster Fishery Company Act.

Prorogation: Her Majesty's Speech

5.34 pm

Her Majesty's most gracious Speech was then delivered to both Houses of Parliament by the Lord Privy Seal, in pursuance of Her Majesty's Command, as follows.

My Lords and Members of the House of Commons, my Government have pursued a programme that has delivered stability, security and strong leadership, and begun the task of making Britain a country that works for everyone. My Ministers have brought forward measures to build a stronger economy, a fairer society, and a more united nation, while also acting to counter threats to national security and to build a more outward-looking global Britain.

The defence of the Realm has remained an utmost priority for my Government. Legislation was passed to ensure that law enforcement, security and intelligence agencies have the necessary powers to disrupt terrorist attacks within a framework of robust oversight.

My Government have continued with a programme to reform the criminal justice system. New legislation passed in this Session will help to make the police and fire services still more capable, efficient and locally accountable.

Building on the success of last year's London Anti-Corruption Summit, legislation was introduced to strengthen powers to tackle money laundering, seize criminal assets and combat terrorist financing.

To build a stronger economy, my Government have taken forward a range of measures as part of their plan for a stronger Britain, so the country is well placed to exploit new opportunities in the global economy and to ensure the benefits are spread throughout the entire country.

To ensure that the United Kingdom remains a leader in developing new technologies, draft legislation was published setting out a new framework to support

the growing commercial spaceflight industry. To foster innovation and to support the creative industries, legislation was enacted to reform the law on intellectual property.

My Ministers have continued to prioritise investment in infrastructure projects to ensure that the economy and local communities can continue to grow and prosper. Legislation has been passed to support the building of a high-speed railway from London to Birmingham and to allow for better local bus services in England.

My Government has also legislated to ensure that all households can access fast broadband and allow new telecommunications infrastructure to be rolled out across the nation. Legislation has been passed to give communities more control over housing developments in their area.

To build a fairer society, my Government has brought forward measures to protect the most vulnerable and to drive greater social reform so that every child has the chance to make the most of their talents. To this end, legislation has been passed to enable a world-class technical education system that will provide opportunities for all young people.

Legislation has been passed to improve children's social care in England and to put the National Citizen Service on a permanent footing. My Government also supported legislation to tackle the scourge of homelessness and domestic violence.

Provision has been made to help the lowest-income families save for the future with a new Help to Save scheme, to help young people save for the long term with a Lifetime ISA, and to protect pension schemes. In recognition of the important role charities play, legislation has been enacted to help charities and community amateur sports clubs by simplifying the Gift Aid Small Donations Scheme.

A new Act will enable the National Health Service, and the taxpayer, to secure better value for money from the growing cost of medicines.

To build a more united nation, my Government has made it a priority to strengthen the union between all parts of the United Kingdom. Legislation was passed to establish a long-term devolution settlement in Wales and, in England, significant new powers have been devolved to directly elected mayors. My Government has taken steps to enable the resumption of devolved government in Northern Ireland when an agreement is reached between political parties to form an executive.

To deliver the result of the 2016 referendum, Parliament approved legislation allowing the United Kingdom formally to signal its intent to withdraw from the European Union.

My Government has worked to ensure that a global Britain plays a leading role in world affairs and provided assistance to British citizens overseas.

In order to bolster the United Kingdom's role in developing countries, new legislation will allow further investment to create more jobs and boost economic growth in the poorest countries in Africa and south Asia. Legislation was also enacted to protect cultural property in times of war.

The Duke of Edinburgh and I were pleased to welcome His Excellency the President of the Republic of Colombia in November, strengthening the United Kingdom's friendship with an important partner in Latin America.

My Ministers have established a close relationship with the new Administration in the United States of America.

My Government has continued to play a leading role in the global coalition against Daesh and deployed British forces in Estonia and Poland as part of NATO's Enhanced Forward Presence, while maintaining the European Union consensus in favour of sanctions against Russia.

My Ministers have pursued a campaign against modern slavery and helped to secure pledges of £4.6 billion for the humanitarian crisis in Syria during a conference in Brussels in April.

Members of the House of Commons, I thank you for the provisions which you have made for the work and dignity of the Crown and for the public services.

My Lords and Members of the House of Commons, I pray that the blessing of Almighty God may rest upon your counsels.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords and Members of the House of Commons, by virtue of Her Majesty's Commission which has now been read, we do, in Her Majesty's name, and in obedience to Her Majesty's Commands, prorogue this Parliament to the 2nd day of May, to be then here holden, and this Parliament is accordingly prorogued to Tuesday, the 2nd day of May.

Parliament was prorogued at 5.42 pm.