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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 24 April 2018

2.30 pm

Prayers—read by the Lord Bishop of Norwich.

Gaza
Question

2.36 pm

Asked by ***Lord Hylton***

To ask Her Majesty's Government what proposals they have for processes by which Israel might be held accountable for its treatment of the inhabitants of Gaza.

Baroness Stedman-Scott (Con): The United Kingdom is deeply concerned about the recent violence in Gaza. Israel has the right to protect its borders, and Palestinians have the right to protest. There is a need to establish the facts, including why such a volume of live fire has been used and what role Hamas has played. All sides must now commit to restraint and peaceful protest. The UK remains committed to a two-state solution which ends the conflict.

Lord Hylton (CB): My Lords, I thank the noble Baroness for her reply, which deals more with the present situation. I am concerned with the background. Do the Government agree with United States Senator Bernie Sanders, who is Jewish, and who said last week:

"Hamas's … violence … cannot excuse trapping … two million people inside Gaza"?

He added that the United States,

"must play a … role in ending the Gaza blockade".

If Israel will not change its policy, how can it be held accountable for breaches of international law—for example, collective punishments? Will the Government consult the United Nations General Assembly about a possible tribunal?

Baroness Stedman-Scott: As I said, the Government remain gravely concerned about the humanitarian situation in Gaza and continue to monitor it closely, including the effect that electricity shortages are having on the health sector. We are supportive of the Palestinian Authority resuming government functions in Gaza, helping to improve the dire humanitarian and economic situation. We continue to call on the Israeli Government to ease restrictions, and for Israel, the Palestinian Authority and Egypt to work together to ensure a durable solution for Gaza. We share the commitment of the United States to improving the situation in Gaza and bringing forward a viable peace plan. We remain committed to a two-state solution which ends the conflict and alleviates the suffering of the Gazan people.

Lord Collins of Highbury (Lab): My Lords, I do not know whether the Minister has had the opportunity to read the leader in yesterday's *Guardian*, which summed up the situation extremely well. For the two-state solution to be viable, we have to articulate very strongly why it is important. If people in Israel think that by destroying and harming the Arab cause in the way that they are doing now will help with peace and the long-term security of Israel, they are mistaken. We need to make the case for a two-state solution strongly, and we need to argue it very strongly with the current Government in Israel. If they continue with their current policy, they will undermine the cause of peace but also ensure that the Arabs will stand up and fight back strongly.

Baroness Stedman-Scott: The noble Lord paints a true picture of the situation and of the angst and frustration at the fact that we seem unable to bring about a two-state solution; the angst of that is palpable. I have not read the leader in the *Guardian*, but I will make sure the officials get me a copy and I will make sure that I read it. People are continually trying to make the case that the actual motivation and desire to achieve peace in a two-state solution must come from the individuals involved, in Israel and Palestine, and we will do everything we can to help that happen.

Baroness Northover (LD): Does the noble Baroness think it acceptable that Israel is not allowing out for treatment those who have been wounded in the recent protests to which she referred? Have the Government made any assessment of whether the sniper rifles and components given export licences and sold to Israel by UK firms have been used on protestors?

Baroness Stedman-Scott: Of course, such behaviour is unacceptable. The information I have is that we take our responsibilities for the export of defence arms extremely seriously. We approve only equipment that is for Israel's legitimate self-defence, and all applications for export licences are assessed on a case-by-case basis against strict criteria. We will not issue a licence if there is a clear risk that the equipment might be used for internal repression.

Lord Hannay of Chiswick (CB): My Lords, in her answer, the Minister referred to the Government welcoming the United States' support for the people of Gaza. Can she tell us what that consisted of? I seem to have missed it. Perhaps she can say what support the United States is now giving to the people of Gaza. Once again, can she explain why the Government rejected the view of the International Relations Committee of this House that the best way we could show our support for a two-state solution is by recognising the state of Palestine?

Baroness Stedman-Scott: On the support that the United States is giving to Gaza, I will need to write to the noble Lord about the detail of that. On the two-state solution, given the lack of experience on my part in Foreign Office matters, all I will say is that everything I have learnt about this confirms that it is indeed a two-state solution that we look to. It is complicated and difficult, but I remind noble Lords of the debate we had on Syria where the noble Lord, Lord Roberts of Llandudno, spoke. Of course, one likes to think that the situation in Syria can be resolved, but it looks

[BARONESS STEDMAN-SCOTT]
hopeless. Quoting Nelson Mandela, the noble Lord said—I paraphrase—that everything looks impossible until it happens. We must hope that we can get the peace that we need in these two states.

The Lord Bishop of Norwich: My Lords, can the Minister say whether the Government support the UN Secretary-General's call for an independent investigation into the recent bloodshed in Gaza?

Baroness Stedman-Scott: I can confirm that there is an urgent need to establish the facts. The UK is supportive of accountability and transparency, and we welcome Israel's commitment to investigate the conduct of operations. We urge for those findings to be made public and, where wrongdoing is found, for those responsible to be held to account.

NHS: Artificial Intelligence

Question

2.45 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government what steps they are taking to encourage the adoption of artificial intelligence in the National Health Service.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government believe that artificial intelligence, or AI, has the potential to transform health and care services. Our work to support this includes £4.2 billion of spending to update hospital IT infrastructure as well as the digital health technology catalyst, which provides funding to help small and medium-sized enterprises turn innovative ideas into reality. In addition, the Industrial Strategy Challenge Fund is supporting AI programmes in digital pathology and radiology, with winners of the wave 3 competition announced next month. We will continue to ensure that our regulatory frameworks protect patients while enabling the benefits of AI to transform care.

Lord Holmes of Richmond (Con): My Lords, does my noble friend agree that the potential benefits to the National Health Service from AI go far further than just the clinical setting? For example, DNAs currently cost the service in excess of £1 billion. What more can be done to generate proofs of concept and work, not just in London but across the country, to ensure that AI machine learning, with all its benefits, can be put into making the NHS the greatest health service, not only in patient care but in taking up all the advantages of the fourth industrial revolution?

Lord O'Shaughnessy: My Lords, I thank my noble friend for his question and congratulate him and the rest of the committee on the excellent report, *AI in the UK: Ready, Willing and Able?*, which has a substantial chapter on AI's application in healthcare. The potential to transform every element of health and care is susceptible to artificial intelligence. A couple of areas outside the clinical setting that I would highlight are workforce planning and triaging patients between different forms of care. As for support, in addition to the items in my first Answer, I highlight the work of the Topol review, which is designed to make sure that staff are fully equipped and trained to take advantage of these technologies as they come through the system, rather than letting them sit with a few early adopters and not becoming more widespread in the NHS.

Baroness Thornton (Lab): My Lords, it is quite clear that the use of big data and AI will have transformative outcomes for patients. There are at least two challenges. The first is investment, which the Minister has already mentioned. What framework of accountability and transparency is in place to deal with that level of investment? How will we know whether it is being sensibly invested? The second is safeguarding and protecting data, and I use my local hospital as an example. A partnership between Google DeepMind and the Royal Free Hospital trust resulted in a breach of the Data Protection Act and the personal data of more than 1.6 million patients was transferred to the Google subsidiary as part of the creation of Streams, an app to diagnose and detect acute kidney injury—which we would, of course, all support. This suggests inexperienced procurement and negotiation skills in the NHS and the potential for the Googles of this world to run rings round them, to all our detriment. What are the Government doing to safeguard patients and their data?

Lord O'Shaughnessy: The case the noble Baroness highlighted brings to the fore both the potential benefits and risks. There are tremendous benefits in having personalised healthcare, and we all want to see that delivered. At the same time, if data is not used safely and securely we lose the public's trust. If we do not have that trust, we will not be able to get the changes that we want. The Government respect the decisions made by the Information Commissioner and National Data Guardian in their judgments about poor practice at the Royal Free. I am pleased to say that the hospital has responded well to these. We are doing a couple of things to make more systematic changes. First is implementing the proper data standards of the GDPR in one month's time. We will also make sure that National Data Guardian's 10 data standards are written into every NHS contract so that, when it comes to procurement, there is understanding about the kind of things they should and should not be doing to safeguard data.

Baroness Grender (LD): My Lords, does the Minister agree with the recommendations of the AI Select Committee, regarding NHS data, that a framework for the sharing of data is now urgent or needs to be delivered by the end of 2018? Does he support the need to digitalise, in consistent formats, by 2022? Evidence received by the committee suggests that failure to do so risks our missing out on profound opportunities from AI, because the current approach to data storage—especially among different NHS trusts—is outdated and piecemeal.

Lord O'Shaughnessy: The noble Baroness has highlighted two of the recommendations from the report. I support the proposal for a regulatory framework; it is a piece of work that I have kicked off in the department. I cannot put a timing on that, but I understand the need to provide a safe operating environment so that people who want to get into this field, whether from NHS trusts or businesses, can do so knowing that they are operating on a legal basis. That is something that we are working on.

On digitalisation, she is quite right: the £4 billion programme known as Personalised Health and Care 2020 is trying to deliver before 2020—as the name suggests—the kind of digitalisation that will enable AI to bring those benefits across every corner of the health and care systems.

Viscount Ridley (Con): My Lords, is the Minister aware that many parts of the world envy Britain's strengths and opportunities in AI, particularly in the health area, and that government procurement could turn this early lead into a golden opportunity for the UK?

Lord O'Shaughnessy: Yes, I absolutely agree with that. As the report highlights, we have a unique opportunity because of the nature of the way that the NHS was set up and its potential for realising a comprehensive data set of 65 million people. It is not just about those procurement rules; we have talked about having the right framework. It is about providing reassurance within the system—at a time when the public are beginning to understand just what data can do for good and for bad—that the NHS will use their data safely, securely and legally so that they can trust that it is being used for proper purposes from which they will benefit.

Lord Kakkar (CB): My Lords, I declare my interest as chairman of University College London Partners. Does the Minister believe that there is a sufficiently robust mechanism for the diffusion of the innovation associated with digitalisation and artificial intelligence across the NHS? In particular, what role does the Minister think the academic health science networks should play in that process?

Lord O'Shaughnessy: Of all the innovations, diffusion is probably one of the greatest challenges that the NHS faces, as the noble Lord knows very well. We are doing a couple of things. First, we are supporting the global digital exemplars, which are providing that digitalisation at trust level, to make sure that they have the infrastructure there. Secondly, he talks about academic health and science networks. They have just been relicensed and are now to have a national remit to promote innovation. AI is absolutely part of the work that we are expecting them to do.

Schools: Integrated Communities Strategy

Question

2.52 pm

Asked by ***Viscount Ridley***

To ask Her Majesty's Government what contribution schools can make to the policies outlined in their Integrated Communities Strategy green paper.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, schools play a critical role in promoting integration and widening opportunities for all communities. Many schools already do this successfully, creating inclusive environments where our children are able to learn the values that underpin our society. We want to ensure that this is the case for all schools and other types of education setting. This is why, as part of the Green Paper issued in March, we announced a strengthened package of support for schools and measures to deliver quality education across all settings.

Viscount Ridley (Con): I thank my noble friend for that encouraging reply. Given that the *Integrated Communities Strategy* commits to supporting schools,

"to increase diversity to ensure they are more representative of their wider area",

and in light of the evidence that religious selection by schools divides children along not just religious lines but ethnic and socio-economic lines, with potentially worrying consequences for society, what are the Government doing to ensure the promotion in schools of the universal humanist values of the secular enlightenment and to break down barriers between children of different religious and cultural backgrounds?

Lord Agnew of Oulton: My Lords, in addition to promoting the fundamental British values of democracy, the rule of law and individual liberty, all schools are required to promote mutual respect and tolerance of those of different faiths and beliefs. As part of teaching a broad and balanced curriculum, all state-funded schools are required to provide religious education. Turning to integration, the *Integrated Communities Strategy* sets out a package of measures to help increase integration among children. It includes working with admissions authorities, where we are piloting five areas to increase diversity of pupil intakes, funding the schools linking programme, which is twinning schools of different faiths, and strengthening expectations for all new free schools on how they improve integration further.

Lord Blunkett (Lab): My Lords, as the Minister is aware, the Select Committee on Citizenship and Civic Engagement, ably chaired by the noble Lord, Lord Hodgson, published its report last Wednesday. We were able to comment on the Green Paper at the end of our deliberations, including the staggering revelation that the Government had failed to mention citizenship education at all in the strategy document. This is a rhetorical question: how can the Minister persuade his colleagues in the Department for Education that schools cannot meaningfully contribute to shared British values, to the integration that we seek and to the aspirations he has laid out this afternoon if they are so uncommitted to citizenship education in our system?

Lord Agnew of Oulton: My Lords, I commend the work of my noble friend Lord Hodgson and his fellow members of the committee that has just reported. I extend an invitation to any of those members to meet me to discuss their recommendations and any criticisms

[Lord Agnew of Oulton]
that they have of our handling of this area. One of the most vital parts of the future of this country is to ensure that schools become the integration engine for our society. We are doing a lot to achieve that. Citizenship is part of the key stages 3 and 4 curriculum and, as the noble Lord will know, recently in our integrated strategy document we encouraged a number of additional methods to push this further forward.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that the underlying cause of religious extremism is the aggressive assertion that one system of belief is better than another? Will he further agree that, while we are all free to believe what we like, schools should emphasise respect for different faiths and the exploration of the many commonalities between them?

Lord Agnew of Oulton: My Lords, most dogma is based on ignorance, therefore a good education system is important because it tackles ignorance. All state-funded schools, including faith schools, have a legal obligation to promote community cohesion and to teach a broad and balanced curriculum. They are required to promote the fundamental values of democracy, the rule of law and individual liberty, as I mentioned in answer to an earlier question. We are looking at the moment at how faith free schools can pay more attention to how they attract pupils from different faiths and backgrounds.

Lord Watson of Invergowrie (Lab): My Lords, the Green Paper highlights the fact that 60% of minority ethnic pupils are in schools where they are in the majority. It goes on to say:

"This reduces opportunities for young people to form lasting relationships with those from other backgrounds and can restrict pupils' outlook and education".

Yet last year's Conservative manifesto contained a pledge to remove the 50% cap on faith schools admissions. Surely all our state schools must be open, inclusive, diverse and integrated, and never exclusive, monocultural or segregated. The duty of the education system should not be to emphasise and entrench such differences in the eyes and minds of young people but rather to emphasise the common values, to which the Minister himself referred and which we all share. Will the Minister give an assurance now that the backward step of removing the faith schools cap is no longer government policy?

Lord Agnew of Oulton: My Lords, the matter of the faith cap is still under consideration, so I am afraid that I am not able to give the noble Lord the assurance he seeks at this moment. However, referring to the recent *Integrated Communities Strategy* document; on education specifically we are addressing eight separate issues which all link to integration: admissions, the free school point I made a moment ago, school linking, fundamental British values, independent schools and registered schools, out-of-school settings and home education. All of them are addressed in this document, and we seek to ensure that integration remains at the heart of our policy.

Lord Pearson of Rannoch (UKIP): My Lords—

Baroness Pinnock (LD): My Lords—

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I note that the noble Lord, Lord Pearson, has been trying to get in for some time and has graciously given way each time.

Lord Pearson of Rannoch (UKIP): I am most grateful. Do the Government know what is being taught in our some 2,000 madrassas, which are not inspected by Ofsted, and which teach Muslim children about Islam and to recite the Koran for perhaps 20 hours a week? If the Government do not know what is going on there—and Written Answers to me confirm that they do not—should they not find out?

Lord Agnew of Oulton: My Lords, we gave additional powers and budgets to Ofsted in January 2016 to carry out inspections of what we might consider to be unregistered schools. In that time, they have inspected 208 out-of-school settings. They identified 51 as being unregistered schools in the formal sense, and have closed 44 of them. There are seven still under active investigation. We have just renewed the contract with Ofsted to carry on the work. I accept that it is a problem, but we are alert to it and we are investigating it.

Probation: Voluntary Sector

Question

3 pm

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government whether they plan to increase the contribution made by the voluntary sector to the delivery of probation services, following publication on 17 April of the report by HM Chief Inspector of Probation, *Probation Supply Chains*.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the report of 17 April from Dame Glenys Stacey is one for which we are grateful. The voluntary and charitable sector has a viable role to play in helping to reform offenders. We recognise that community rehabilitation companies have faced financial challenges, which means that many of them have not been able to develop their engagement with the voluntary sector to the extent envisaged. We will carefully consider the inspectorate's recommendations as we work to improve probation services.

Lord Ramsbotham (CB): My Lords, I thank the Minister for that Answer. The Chief Inspector of Probation has repeatedly drawn attention to the failure of the transforming rehabilitation reforms—rushed, rather than thought through, by Chris Grayling—to protect the public or satisfy the needs of offenders under probation supervision. In her latest report, she draws attention to the reduction of the contribution contracted from the voluntary sector, an essential partner under the old system, and the failure of community rehabilitation companies to analyse the needs of those under their supervision, a given for all former probation trusts. Can the Minister please tell the House what the Government are doing to rectify this, and whether the chief inspector's particular recommendations to the Ministry of Justice and Her Majesty's Prison and Probation Service will be actioned?

Lord Keen of Elie: My Lords, if I may, I will quote from the chief inspector's report of 17 April:

"We found that the quality of services was variable, but reasonable overall".

We intend that the service should be more than reasonable, and we are considering her recommendations.

Lord Marks of Henley-on-Thames (LD): My Lords, the report demonstrates that probation services have been going badly wrong, with a failure to involve the voluntary sector on anything like the scale envisaged. Allowing the community rehabilitation companies to design and implement their own delivery models was a mistake and has led to uneven and inadequate delivery. Do the Government now plan to tie CRCs to more rigorous contracts by variation, or on renewal? Might this not also enable CRCs to provide much more in the way of needed services to the National Probation Service?

Lord Keen of Elie: My Lords, the community rehabilitation companies faced unexpected difficulties when it was found that the financial float of those companies was less than had been planned for. We have already discussed the terms of the contracts with the CRCs and they are the subject of further consideration. We are certainly determined that there should be a diverse provision so far as probation is concerned, and one that does involve third sector organisations.

Lord Beecham (Lab): The chief inspector has stated that the present system is fundamentally flawed and that she doubts whether the service can ever be restored to the standard we should accept. Will the Government now join with her, the relevant trade unions and the judiciary to examine how the performance and reputation of a critical part of our system can be restored?

Lord Keen of Elie: My Lords, with regard to the present provision it should be noted that the community rehabilitation companies have reduced the number of people reoffending. Indeed, our reforms mean that they are monitoring 40,000 offenders who had previously been released with no supervision.

Baroness Corston (Lab): My Lords, will the Minister accept that one of the reasons why it is very difficult to know what is going on in the community rehabilitation companies is that, under the Grayling legislation, as it was previously referred to, they are specifically excluded from the Freedom of Information Act?

Lord Keen of Elie: My Lords, I do not consider that a material consideration, given that they are subject to the very report that we are discussing presently, Dame Stacey's report of 17 April.

Lord Beith (LD): My Lords, the Minister should not speak about unexpected difficulties, given that the likelihood that the amount of work going to the CRCs would be lower than the Government predicted was something of which the Justice Committee warned, along with many other things.

Lord Keen of Elie: My Lords, the flow of work between the NPS and the CRCs was indeed lower than the Government had anticipated when they implemented these measures.

Lord Beecham: My Lords, could the Minister perhaps answer the question that I put to him? Will the Government sit down with the trade unions and the judiciary to deal with the crisis in the system?

Lord Keen of Elie: My Lords, with respect to this reference to crisis, I remind the noble Lord of what the chief inspector said in her report:

"We found that the quality of services was variable, but reasonable overall".

We aim to improve that. We do not intend to sit down at present with particular parties, but we are addressing the recommendations in the chief inspector's report, which is the proper way forward.

Lord Bassam of Brighton (Lab): My Lords, perhaps the Minister can tell us what the current recidivism rate is.

Lord Keen of Elie: I am not in a position to answer such a general proposition but I will undertake to check the relevant statistics in that area and to write to the noble Lord in due course. I will of course place a copy of the letter in the Library.

Lord Harris of Haringey (Lab): My Lords, the Minister said that, for some reason, the CRCs did not need to be subject to the Freedom of Information Act because there was a chief inspector. Could he explain exactly why the chief inspector is a substitute for citizens posing questions to and seeking information from the CRCs?

Lord Keen of Elie: It may not be a substitute for citizens seeking information, but it is a means of ensuring that the conduct of the CRCs and the results of their work are put into the public domain by those who have a clear understanding of how the work should be performed, and are the subject of published reports.

Iran: Nuclear Deal

Private Notice Question

3.07 pm

Asked by ***Lord Campbell of Pittenweem***

To ask Her Majesty's Government what representations they have made to the United States government concerning their continued support for the Iran Nuclear Deal, in light of the meeting between the President of France and the President of the United States to discuss the issue.

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

The Earl of Courtown (Con): My Lords, the UK's position on the JCPOA is clear: we regard it as a crucial agreement that makes the world a safer place by neutralising the threat of a nuclear-armed Iran. The deal is working. There is no better alternative plan. We are engaging all partners following President Trump's 12 January speech and working hard at all levels towards a strong agreement for the continued success of the JCPOA. We are clear that the deal is not rewritable.

Lord Campbell of Pittenweem: I am grateful to the noble Earl for that Answer, but I hope he will excuse me when I say that it does not convey the necessary urgency. If this agreement is renounced by President Trump, it will strike yet another grievous blow to the issue of nuclear arms control. President Trump opposes a renewal of the strategic arms control treaty with Russia, and Russia is already in breach of the intermediate nuclear weapons treaty fashioned by Gorbachev and Reagan in Iceland. The truth is that we are witnessing the fabric of nuclear arms control collapsing before our very eyes. Why are the Government not more vocal on these issues?

The Earl of Courtown: My Lords, I agree with much of what the noble Lord, Lord Campbell, said, and he makes a number of important points. I should also add that we are in regular discussion with our partners on this issue. The E3 is working with the US to address President Trump's concerns by agreeing a joint framework and we are holding regular high-level and expert meetings with French, German and US partners to agree a joint approach for the deal. The Question refers to the visit of President Macron to the United States this week, and later this week Chancellor Merkel will be there as well. All will be putting pressure on President Trump and the United States Administration to get this deal sorted out.

Lord Collins of Highbury (Lab): My Lords, at the heart of this is the 12 May deadline. We have seen the markets this afternoon, certainly the oil markets, reacting as if they know that Trump is going to stick to this deadline. What are we doing as a Government to support our allies? The Minister referred to the visit of President Macron and of Chancellor Merkel. We have just had a meeting of G7 Foreign Ministers. What is our Foreign Secretary doing to ensure that we have a clear common voice to ensure that this agreement, agreed across the board, is maintained and not unilaterally torn up on 12 May?

The Earl of Courtown: My Lords, there is common agreement on the E3+3 group as far as the United States is concerned. We expect developments in the coming days and plan to update Parliament when we know the facts, but this is unlikely to be before President Trump has made an announcement. The noble Lord also mentioned the G7 Foreign Ministers meeting. I have not had a readout of that meeting as yet, but I understand that this was discussed.

Lord Howell of Guildford (Con): My Lords, in agreeing with the point of the noble Lord, Lord Campbell, about urgency, does my noble friend accept that this is a question not just for the western alliance but the whole comity of nations concerned with the proliferation of nuclear weapons? It boils down to the simple question: do we or do we not want Iran to develop as a nuclear power, with nuclear weapons, and destabilise the Middle East even further? We recognise that it is doing all sorts of undesirable things in the Middle East, but this is the specific question of nuclear proliferation. Can we be sure that our Ministers and those of our allies will continue to press President Trump to revalidate the agreement, rather than open up a new area of danger in the Middle East?

The Earl of Courtown: My Lords, I can assure my noble friend that we are making every effort to put pressure on the United States Administration to validate this agreement. My noble friend is also right on the proliferation of nuclear weapons—we cannot afford any proliferation of nuclear weapons. I should also add that, so far, this deal is working. Iran has given up two-thirds of its centrifuges and 95% of its uranium stockpile. Our priority is working with the deal and making it deliver for our shared security interests.

Lord Hannay of Chiswick (CB): My Lords, will the Minister confirm that, whatever decision is reached by President Trump on 12 May, the British Government will stand by the JCPOA and will not allow that action by the US—unilaterally taken and in the face of the IAEA inspections showing that Iran is in conformity with the agreement—to carry the day?

The Earl of Courtown: My Lords, I agree with the noble Lord, Lord Hannay, that we must stay behind this JCPOA. We must also work and put enough pressure on the United States Administration to get their agreement.

Lord Robathan (Con): My Lords, while the deal is probably the best we will get and it took a huge amount of work to get it, I counsel the Government not to be starry-eyed about Iran. It is currently involved in Yemen, Syria and Lebanon, causing trouble and mischief-making. We should always hold its feet to the fire, and not trust it until we have seen proof that it is to be trusted.

The Earl of Courtown: My Lords, my noble friend is correct in much of what he says. In parallel with our efforts to keep the nuclear deal, the UK is firm in the need to tackle Iran's destabilising behaviour in the region, including its ballistic missile programme, but we are clear that the matter needs to remain separate from the JCPOA.

Lord West of Spithead (Lab): My Lords, I am sure that the noble Earl is aware that before the JCPOA was signed, we were on a track that could well have ended up in a war in the Middle East because of the Israeli reaction against Iran as it became more aware of what was going on. Can the Minister confirm that we are also talking with people from Mossad and others about this issue because the loss of the JCPOA would be very dangerous and could lead to a war in the Middle East?

The Earl of Courtown: I could not agree more with the noble Lord about the importance of the JCPOA. As he is only too aware, discussions with other security agencies are never detailed at this point, but all Ministers are bringing up this issue in order to try to get some agreement.

Lord Lamont of Lerwick (Con): My Lords, I draw the attention of the House to my entry in the *Register of Lords' Interests* both as chairman of the British Iranian Chamber of Commerce and as the Government's trade envoy to Iran. Does the Minister not agree that in answer to the powerful and important point made by my noble friend Lord Robathan, none the less, the way to get Iranian co-operation in other areas of the Middle East is not to start by tearing up an agreement that the Iranians have themselves signed in good faith? When President Trump says that Iran is not in compliance with the agreement, that is incorrect, as the International Atomic Energy Authority has repeatedly certified.

The Earl of Courtown: Yes, my Lords, I agree with my noble friend. However, he will also know that trading with Iran presents a difficult scenario, although there are a number of success stories where trade from the United Kingdom is progressing well.

Baroness Deech (CB): My Lords, do the Government consider that the country has scored an own goal by refusing to deal with President Trump in the way that President Macron has? Difficult though it may be, it would have been better had we extended more of a hand of friendship and welcome to President Trump, given the need to influence him regardless of personal feelings.

The Earl of Courtown: My Lords, the noble Baroness mentions our relationship with the United States Administration, with whom we are in continual contact. Our contacts with the US Administration are very important. The noble Baroness has talked about our relationship with President Trump, one of our closest allies. The fact is that we continually engage with the Administration and no doubt that will continue.

Lord Browne of Ladyton (Lab): My Lords, a US pull-out and the reimposition of tough sanctions on Iran will lead to those very firms that we have encouraged to trade with Iran, as well as our banks making contact with Iranian banks, to potentially suffer devastating losses of financial support by commercial banks. Last Thursday, when EU foreign Ministers met, at least some of them were contemplating an emergency line of credit of support for EU businesses trading with Iran. Do our Government intend to support that initiative if it is necessary to do so? If not, how do they intend to support our businesses?

The Earl of Courtown: I thank the noble Lord for raising a very important point. As I have said, the business environment in Iran is incredibly difficult and the opportunity for due diligence is equally so. The noble Lord mentioned a number of details which I am not aware of, and therefore I will have to write to him.

Automated and Electric Vehicles Bill

Committed to Committee

3.18 pm

Moved by ***Baroness Sugg***

That the order of commitment of 20 February 2018 committing the bill to a Grand Committee be discharged and that the bill be committed to a Committee of the Whole House.

Motion agreed.

Haulage Permits and Trailer Registration Bill [HL]

Third Reading

Relevant documents: 15th and 20th Reports from the Delegated Powers Committee, 11th Report from the Constitution Committee

3.18 pm

A privilege amendment was made.

Motion

Moved by ***Baroness Sugg***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, in moving that the Bill do now pass, I am grateful to all noble Lords who contributed during its passage. Following our debates and the report of the DPRRC, I am pleased that we have been able to introduce government amendments to improve parliamentary scrutiny, consulting and reporting. We will consider further in the other place the amendment tabled by the noble Lord, Lord Tunnicliffe, on trailer safety. The Government agree that trailer safety is an important issue, and as I have set out, my department will produce a report on it. I should like to thank the Bill team, which worked for many months on the detail of this legislation and will continue to do so as it progresses through the other place and regulations are drafted. This Bill will enable the Government to make important and responsible contingency plans for the haulage industry following our exit from the European Union. I beg to move.

Lord Tunnicliffe (Lab): My Lords, I will briefly comment on the Bill. This is the third transport Bill that the Minister and I have worked on together. They have been conducted very efficiently by virtue of the efforts of the Minister and the Bill team. Virtually all issues have been settled by debate and consensus. I also thank my Bill team, which is half of one person, Katherine Johnson, especially for the brilliance of the amendment she crafted, which was supported in this House because of the care of the wording. I am sorry that we have that amendment between us, but I am very pleased with the way things have gone. I wish us both luck with the next transport Bill, which we are about to start.

Baroness Randerson (LD): My Lords, I will not detain the House with a great long speech, but I endorse the words of the noble Lord, Lord Tunnicliffe. I thank the Minister for her courtesy and the care with which she has dealt with the Bill.

Baroness Sugg: I thank the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Randerson, for their comments and constructive engagement throughout the passage of the Bill.

3.21 pm

Bill passed and sent to the Commons.

Civil Liability Bill [HL]

Second Reading

3.21 pm

Moved by ***Lord Keen of Elie***

That the Bill be now read a second time.

Relevant document: 22nd Report from the Delegated Powers Committee

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Bill makes important changes to our personal injury compensation system. It is about making that system fairer, more certain and more sustainable in the future for claimants, defendants, the taxpayer and motorists. This builds on our wider reforms to cut the cost of civil justice claims and strengthen the regulation of claims management companies.

The first part of the Bill will deliver a key manifesto pledge: to support hard-working families by bringing down the cost of living through a crackdown on exaggerated and fraudulent whiplash claims, which lead to higher insurance costs. The second part of the Bill will provide a fairer method for setting the personal injury discount rate. It will, for the first time, use a new, regular, more transparent mechanism in which the Lord Chancellor consults independent experts before setting the rate. We aim to provide full compensation for seriously injured claimants while being fair to those, particularly the National Health Service, who bear the cost of paying. We believe that the Bill will provide a compensation system that meets the rightful needs of claimants while saving the public money, both as consumers and taxpayers. About three-quarters of the United Kingdom motor and liability insurance market has already committed publicly, through a letter published on 20 March, to ensure that any savings resulting from enactment of the Bill will be passed on to the public.

I begin with the issue of whiplash. DWP data shows that around 650,000 RTA-related personal injury claims were made in 2017-18. That is nearly 200,000 more than in 2005-06—a rise of 40%. If we take the 10 years following 2005-06, the rise is around 70%. We estimate that around 85% of these are for whiplash-related injuries—higher than in any other European jurisdiction—yet Department for Transport figures show that in the decade up to 2016-17, reported road traffic accidents went from around 190,000 to around 135,000—a fall of 30%. Many claims will, of course, be genuine and the Government would never seek to deny justice to those who suffer injury; it is absolutely right that individuals are compensated for genuine injuries. However, by 2016-17, there were around 670,000 whiplash claims in the United Kingdom. That number is too high and the costs to motorists and consumers too great. It comes despite major improvements in motoring safety, such as the increased use of integrated seat and head restraints. We must ask ourselves what is going wrong.

The reality is that some of these claims are not genuine. Last year the insurance industry identified 69,000 motor insurance claims that it considered fraudulent. By their very nature, these claims are difficult to detect, so I ask the House to consider that the problem goes much further than this already significant number. That the number is so high is indicative of an ever-pervading compensation culture in this country. The knock-on effect of this has been to drive up insurance premiums. I would go as far as to say that, for some, it has become socially acceptable to make a whiplash claim for little or no injury. Noble Lords may have seen examples in the media of exaggerated or fraudulent whiplash claims, such as the man making a claim after his car was slowly reversed into in a supermarket car park. It transpired that he was not in the car at the time.

As the House will no doubt agree, the purpose is to compensate those for whom genuine injury has occurred. Our reforms seek to reduce and control the costs of whiplash claims and to disincentivise people making fraudulent or unmeritorious claims. The level of compensation paid out for such claims is, in the Government's view, out of all proportion to any genuine injury suffered, especially when balanced against its effect on the price of premiums paid by ordinary motorists. Insurance industry figures show that in 2017 car insurance premiums rose at the fastest rate ever. Though there are other contributing factors, without reform to whiplash claims those increases are estimated by the ABI to continue at an alarming rate—potentially 10% per year. For many people—particularly those in rural communities—owning a car is not a choice: it is a necessity. Higher insurance premiums hit young and elderly motorists particularly hard. That is why we pledged in our manifesto to bring down the cost of motoring. The Bill can and will do that.

The measures in the Bill relating to whiplash will therefore address a number of issues. They will introduce a ban on settling whiplash claims without medical evidence. This will discourage fraudulent claims and encourage insurers to investigate claims properly, providing fairness and certainty for claimants, so they do not feel pressurised into accepting an offer before knowing the true extent of their injuries. They will provide for a new system of fixed tariffs for payments for pain, suffering and "loss of amenity" in whiplash claims. This will give claimants proportionate compensation while controlling the costs of claims. The final tariff figures will be set in regulations to be debated via the affirmative procedure by Parliament following Royal

Assent. The judiciary will have discretion to increase the compensation payable in exceptional circumstances, with the cap set in supporting regulations. The whiplash reform programme also includes measures not in the scope of this Bill, to increase the small claims track limit for road traffic accident personal injury claims to £5,000 and for all other personal injury claims to £2,000.

The measures in the whole reform programme are fair and proportionate. They will prevent fraudulent and unmeritorious whiplash claims from driving up insurances costs, allowing insurers to pass on savings of about £1.1.billion a year to consumers. This would mean an average reduction in car insurance premiums for consumers of around £35 a year. As a Government we fully intend to hold the market to account in making sure that happens.

I now turn to the second part of the Bill, the personal injury discount rate. Fairness and sustainability are at the heart of our reforms. With any change to the system for compensating the seriously injured, we must keep in mind the person behind every claim. The Government continue to support the aim that seriously injured people should receive 100% compensation to meet expected future financial losses, including medical and care costs. The way compensation is calculated must be fair to both claimants and defendants, including the National Health Service.

This Bill will reform the personal injury discount rate, which adjusts a compensation lump sum to allow for the return a claimant is expected to receive by investing it over the period of the award. Currently at minus 0.75%, we have one of lowest rates in the world. In Germany, it is 4%; in France it is 1.2%, and in Ireland it is 1%. The current rate consistently compensates for injury at more than the 100% required by law. Awards currently average 120% to 125% even after management costs and tax. This is putting huge pressure on the National Health Service in claims for clinical negligence. Last year, the NHS spent £1.7 billion on such cases, a cost that has almost doubled since 2010-11, with an unsustainable average increase of 11.5% every year.

The current legal framework requires the Lord Chancellor to assume claimants to be very risk-averse investors, and the discount rate has been set since 1998 with reference to returns on very low-risk investments—index-linked UK gilts. This is unrealistic. In reality, claimants do not behave as very low-risk investors; they invest their compensation in diversified low-risk portfolios and on average receive higher returns than is assumed under the present law. This results in inflated payments for claims which overly penalise defendants.

Every pound spent on overcompensation could instead be spent on front-line public services: in our hospitals, our schools and our Armed Forces. We will therefore do a number of things in the Bill. We will provide for the discount rate to be set in future by reference to how evidence indicates claimants actually invest, giving a more realistic rate that will mean that injured parties with low-risk investment appetites still receive full and fair compensation and ensure that defendants, including the NHS, are not left shouldering the burden of overcompensation.

We shall provide for the first time that the Lord Chancellor should set the rate regularly—at least every three years—and must do so after expert advice from an independent panel which protects the interests of claimants, as well as defendants, by ensuring that the rate is grounded in investment practices and market conditions.

Transparency and fairness in setting the rate were two of the main concerns voiced by the Justice Select Committee, and we have responded to that in setting out our position in the Bill. Changes to the discount rate will affect only lump-sum payments for future financial loss. They will not affect periodical payment orders, which account for a significant proportion of the compensation paid for future loss in the cases involving the most serious and long-term injuries.

Periodical payment orders are annual, risk-free payments providing a steady stream of income which is not affected by the discount rate, allowing claimants to plan for their long-term needs. PPOs are available from the National Health Service in all negligence cases, including those involving brain damage during birth, and in almost all cases where the defendant is insured by a UK-regulated insurer. A court is able to provide protection by ordering a PPO where it believes that it is in the claimant's interest. In any event, for serious long-term injuries, claimants will continue to be able to rely on the National Health Service as any other person would.

These reforms will reduce spending pressure on the NHS. The NHS Confederation and other influential medical bodies have described how the change last year in the discount rate exacerbated the financial impacts of clinical negligence claims. These higher litigation costs against the NHS are now unsustainable.

This fairer approach to setting the discount rate could, assuming a rate between 0% and 1%, save the taxpayer between £250 million and £550 million per year and, in turn, mean savings to insurers of between £0.5 billion and £1.5 billion per year, to be passed on to consumers in the form of lower insurance premiums.

Alongside our wider work to reform the civil justice system and, through the Financial Guidance and Claims Bill, strengthen the regulatory regime for claims management companies and ban cold calling, the reforms contained in the Civil Liability Bill are needed to put personal injury payments on a fair, more certain and sustainable footing for the future. In turn, they will save the NHS and consumer money. Legislating to ensure that genuine whiplash claims are backed by medical evidence, and that claimants receive proportionate compensation, will reduce the number and cost of whiplash claims. This will allow insurers to pass on savings to consumers, and, as I have said, three-quarters of the UK motor and liability insurance market has already publicly committed to doing so.

In changing the system by which the discount rate is set we want to continue to ensure fairness, so that those who suffer catastrophic personal injury get 100% compensation, within a more informed and transparent system in which the rate is set by the Lord Chancellor

[LORD KEEN OF ELIE]
at regular intervals, with the benefit of independent expert advice, in the interest of claimants. I commend the Bill to the House and I beg to move.

3.35 pm

Lord Beecham (Lab): My Lords, I begin by referring to my interest as an unpaid consultant with my former solicitors' firm, and to a paternal interest, inasmuch as my daughter is a barrister and a part-time deputy district judge.

This Bill, as the noble and learned Lord has reminded us, covers two discrete areas of personal injury law: claims for damages for whiplash injuries, and the way compensation for financial loss in serious injury claims, by way of lump sums, is to be calculated. The former is, in effect, a response to exaggerated claims. Exaggeration is, however, not confined—as the media, the insurance industry and the Government would have us believe—to claimants and their advisers. A small number of insurance companies, operating under a variety of labels in the market, constantly claim that the number and cost of damages claims for whiplash injuries is rising, with a consequential impact on premiums, which would otherwise be lower.

We are all familiar with the benevolent intentions of the industry and its heartfelt aspiration to reduce premiums. A degree of scepticism about the industry's case, is, however, justified. In his seminal report, *The Operation of Health and Safety Laws and the Growth of Compensation Culture*, the noble Lord, Lord Young of Graffham, who it was a pleasure to see in the House yesterday, declared:

"The problem of the compensation culture prevalent in society today is, however, one of perception rather than reality".

Road traffic accident claims have fallen by 14% since 2013 and by 10% in the past year, while last year the number of claims relative to the number of vehicles on the road was the lowest since 2008. Interestingly, the latest data published—just today—by the Compensation Recovery Unit records a fall in the number of motor cases registered to the unit from 780,000 in 2016-17 to 650,000 in 2017-18. The numbers between 2010-11 and 2017-18 ranged from 828,000 to 761,000. Settlements recorded by the CRU were, at 683,000, the lowest since 2011. Moreover, the cost of such claims in the UK is in the lower half of the European league table of such costs.

There is a legitimate concern, to which the noble and learned Lord has referred, about the activities of claims management companies—and indeed of "McKenzie friends", a growing feature in the courts these days in this and other areas—about which little or no action has so far been taken, either by the Government, or, in relation to connections between solicitors' firms and such companies by the Law Society, which I find somewhat deplorable.

In any event, in practice the proposals will impose a tariff system for compensation for pain and discomfort ranging from £235 for up to three months to £3,910 for 18 to 24 months—respectively 76% and 49% less than the guidelines prescribed by the Judicial College. Crucially, the system is entirely based on the timescale, and not the severity, of the pain and suffering endured. These replace, for road traffic cases, payments which the MoJ—without adducing any evidence—regards as "out of all proportion" to the level of injury suffered. Having said that, I welcome the provision that no case should be settled without a medical report.

Someone suffering a comparable injury sustained otherwise than from a road traffic accident—for example, a workplace accident—with effects lasting two years, could recover £3,000 more in damages and the costs of the claim, which, in RTA cases, would in future have to be paid out of the damages and not by the defendant.

Some noble Lords may be aware that a few weeks ago I sustained an injury, which left me with a colourful presentation around my eye, when I was thrown to the floor in a Tube train that made a violent, sudden halt. It was not a soft-tissue injury but if it had been—I suppose it could have been in those circumstances—any claim would not have been affected by the provisions of the Bill, whereas it would if I had been a passenger in a road vehicle. Some friends of mine recently experienced precisely that kind of accident. The question arises: why should comparable injuries not attract comparable awards, and comparable recovery of the cost of a claim, whether they are incurred in a road traffic accident or any other accident for which a defendant is deemed liable?

There are, moreover, serious questions to be asked not just about the scale of damages deemed recoverable but about how the level of damages is to be determined and by whom. The 22nd report of the Delegated Powers Committee asks some salient questions and makes some powerful comments on the way the Government are proceeding. It poses what it describes as two central questions:

"What is meant by 'whiplash injury'?",

and:

"By how much are awards of damages to be reduced?".

The answer it divines is:

"'Whiplash injury' means whatever the Lord Chancellor says it will mean, in regulations to be made by him or her at some future date",

with "a full definition" emerging once the Bill is enacted and not before. It also observes:

"Given the complex physical and psychological components of whiplash injury, it is not satisfactory that these matters should be left to regulations rather than being subject to a rigorous debate in Parliament"—

a refrain all too frequently heard in this House in relation to secondary legislation. As to the second question, about the quantum of damages, the committee points out that the reduction,

"will be whatever the Lord Chancellor says it will be, in regulations to be made … at some future date".

The Government pray in aid the need for what they say is,

"flexibility … to reflect possible changes in society's perception of the value of",

pain, suffering and loss awards over time and a possible need,

"to change the parameters of the categories of the tariff to adjust or refine the approach to different severities of injury should this become necessary in future and in the light of experience over time".

Those are two possible candidates, I suggest, for the Nobel Prize for vacuity. Unsurprisingly, the committee was less than impressed by these responses and in five sub-paragraphs it demolished the Government's position, pointing out that the need for possible updating figures or mechanisms does not justify a failure to include them initially in primary legislation.

Rather than relying yet again on unamendable statutory instruments, Acts of Parliament are to be preferred for this, and for quantifying damages, and are equally preferable where,

"society's perception of the value of",

pain, suffering and loss claims changes over time. Equally, it said:

"The need to refine the tariff in relation to different severities of injury",

can be accommodated by a new Act.

Crucially, the committee avers that the judiciary, with its long experience of personal injury claims, should determine the provision for damages or, failing that, responsibility should be undertaken by independent medical experts. Its emphatic conclusion is that,

"it would be an inappropriate delegation of power for damages for whiplash injury to be set in a tariff made by Ministerial regulations rather than on the face of the Bill",

and that the initial tariff,

"should be set out on the face of the Bill, albeit amendable by affirmative statutory instrument",

in the future, following further recommendations by the judiciary or an expert panel. This of course echoes repeated expressions of concern about the use, and indeed abuse, of delegated legislation, with the limited opportunities afforded to persuade Governments to think again and respond to concerns expressed in either House. Will Ministers delegate the decision on this critical issue, as suggested by the committee, albeit subjecting any recommendations for approval under the affirmative procedure? My suggestion would be that the decision should be made by an advisory panel or the judiciary. Then, if we are proceeding by the secondary legislation procedure, the Lord Chancellor should embody that recommendation in an affirmative order.

Much is being made of promises made by the insurance companies that savings will be passed on to their customers. Indeed, the Minister has repeated that today. Can he say what estimate of such savings has been made over time and what is their current level? How will we ensure that the industry delivers on the promise, and in what form? The Minister has said that it will, but how will that be ensured? Can he also tell us how much the Government have raised in the form of insurance premium tax since the standard rate rose from 5% in January 2011 to 12% in 2017, and for the higher rate from 17% to 20% in the same period? I recall once suggesting a small percentage increase in insurance premium tax some years ago to fund a reduction in the savage cuts to legal aid made by the coalition Government, but that, unsurprisingly, never materialised. The Minister may not have those figures to hand, but it would be interesting to see them in due course.

There is real concern about the pending increase in the small claims level, which, apart from the £5,000 limit chosen for whiplash claims—however loosely defined—will now be set at £2,000 by the Lord Chancellor. Below that figure, noble Lords will be aware that costs are not awarded. This is significantly higher than would be the case if the existing level was increased to reflect inflation. I have seen two suggested figures for that: £1,400 and £1,600, but these are still significantly lower than the £2,000 now prescribed. If we are to retain the system, should it not be on the basis of RPI or CPI, reviewed every three years as a matter of course? Interestingly, I understand that Scotland has chosen not to apply its version of the small claims regime, known as the simple procedure, to personal injury claims up to £5,000 such that, successful parties in these cases, described as "summary causes", can recover their costs. Given the Minister's role as Lord Advocate and his deserved reputation as one of the most eminent Scottish lawyers, would he encourage the Lord Chancellor to look again at the small claims limits?

In light of the current impossibility of successful claimants claiming costs or obtaining legal aid, has the Ministry of Justice made or received any assessment of the impact on the court system of more unrepresented claimants in this area of the law? There is existing concern, which has been voiced several times in your Lordships' House and elsewhere.

Finally, in relation to this part of the Bill, I revert to the issue of claims management companies: a parasitic growth in our justice system, seemingly able to pursue potential clients via cold calling and seek disproportionately large fees out of the modest damages recovered. I understand that the Government are looking at this matter, but can the Minister indicate how this unacceptable approach might be curbed?

Part 2 of the Bill deals with the discount rate, which is, as the Minister explained, the rate used to calculate the level of damages to be awarded in the most serious cases, having regard to investment returns and inflation. We are looking here at cases of very serious injuries with life-changing consequences that might last a very long time. The Government are proposing a change from very low-risk investments to low-risk as the basis for calculating compensation. It is, however, inherently difficult to predict what future loss or cost of care or treatment would be occasioned in such cases. Greater reliance on periodical payment orders, to which the Minister referred, would help. Can he update us on government thinking on this aspect and how they might be promoted? His evidence to the Justice Committee implied support for this approach, and that is welcome.

The NHS is in a curious position on the issue of damages. Treatment in such cases can be expensive and the NHS must be compensated for costs incurred where the damage is inflicted by a third party, but sometimes the NHS is the defendant, as in clinical negligence cases, but also potentially in other cases, where the negligence is not related to clinical error. Accidents can take place on NHS premises, for which the NHS is liable.

It is in all our interests that the NHS should not see its resources reduced by the requirement to pay large sums to unfortunate patients who have suffered from clinical negligence. However, surely such compensation payments should be funded out of general taxation

[LORD BEECHAM]
rather than being avoided by requiring the victims of clinical negligence to take greater risks in investing the proceeds of damages. We surely all agree that the NHS should be protected but the question is: by what method? My submission is that the method that the Government are proposing will ultimately perhaps be at the expense of the people who have been injured rather than of the community collectively, and I invite the Government to think again about that aspect.

The House will wish to give careful consideration to the changes proposed in the Bill. I trust that in doing so we will put the interests of the victims of negligence at the top of our deliberations, but also that we will ensure that crucial decisions are made not by ministerial fiat but with the full involvement of the judiciary and are subject to proper parliamentary scrutiny.

3.50 pm

Lord Sharkey (LD): My Lords, I will deal first with the proposal to reform the compensation for whiplash arising from road traffic accidents. Let me say at once that I agree with the remarks made by the Delegated Powers Committee in its report of last Friday. It concluded, as the noble Lord, Lord Beecham, has said, that there should be a definition of whiplash in the Bill, as should the tariff for damages. The committee says bluntly that it would be,

"an inappropriate delegation of power",

for either of these matters to be handled by secondary legislation. The definition of whiplash is so central to any discussion of the Bill and any assessment of its consequences that I am very surprised that the Bill should have been brought before us with that definition absent. It is clear that the issue of how to define whiplash has been under consideration by the Government for some time. Surely it should be possible either to produce the definition for the Bill or to delay the Bill until the definition is available.

That is certainly a matter that we want to raise in Committee, as is the issue of the tariff and who should set it. Should it be, for example, the Judicial College? The impact assessment sets out the proposed tariff, but why is the proposed tariff not in the Bill? The structure and levels of the tariff will certainly influence our debates, and Parliament should be able to decide on the initial tariff, amendable later by secondary legislation.

In the case for reforms set out in the assessment there are many appeals to evidence, a lot of which is vigorously contested. That throws some doubt on the case for reform, but it would be very helpful if the Minister was willing to discuss these contested areas before we reach Committee. For example, there is the assertion that the number of whiplash claims is somehow too high or too fraudulent. The Access to Justice Foundation has published calculations showing that claims in total are already falling. In fact, as the noble Lord, Lord Beecham, has pointed out, CRU data for 2016-17 shows a 10% decline in whiplash or whiplash-related claims since 2012-13. The Motor Accident Solicitors Society has strongly questioned the view that a high proportion of claims are fraudulent. It has said that, when proven and suspected fraud figures are disaggregated, proven fraud drops to 0.25% of all motor claims, while fraudulent whiplash claims will be a small percentage of that already small percentage.

The principal justification in the impact assessment for reforms is economic—specifically, that there are three market failures that must be addressed. The first failure is one of asymmetric information. Only a victim can really know the extent and duration of pain or suffering caused by a whiplash injury. The Government see this as an incentive to make false or exaggerated claims but, as I have mentioned, the incidence of such claims is highly contested.

The second market failure alleged by the Government is the creation of perverse incentives. Legal costs are recoverable by successful claimants from the defendants. The Government say that if legal fees were not, or less, recoverable, claimants would bear more of the cost of bringing such claims, which would help to bring down their volume to a level that was,

"optimal for society as a whole".

Leaving aside the question of what "optimal" might mean or how it might be calculated in this context, there is the problem of access to justice, as noted by the Law Society in its comments on the Bill. The Access to Justice Foundation has estimated that the proposed new tariff would deny 600,000 people injured on our roads each year the right to legal advice when seeking compensation. The figure comes from a July 2017 study by Capital Economics. Then there is the question of whether, or more likely to what extent, making medical report costs unrecoverable impedes access to justice.

The third identified market failure is what the impact assessment calls, "negative externality"—a phrase that is clearly weapons-grade management speak. This refers to the practice of insurance companies settling claims without medical proof of injury. Here, I entirely agree that this drives market failure, and I support the provisions in the Bill that will ban this practice.

In addition to the reduction in access to justice likely to be brought about by these reform proposals, there is the obvious issue of fairness. If someone is involved, as the noble Lord, Lord Beecham, has said, in a road accident, under the Government's reform proposals they would be entitled to £3,500 for a neck injury lasting 24 months. They would also be unable to recover the cost of a lawyer to assert their rights. If someone suffered an identical injury at work, they would be entitled to £6,500 and would be able to recover costs. How is this fair, reasonable or coherent? I should be very grateful if the Minister could address this issue when he replies.

In all the very comprehensive information supplied to us by the Minister and his officials, I have been unable to find any mention of vulnerable road users. They are cyclists, motorcyclists, horse-riders and pedestrians. These people seldom suffer whiplash, and I have seen no evidence of fraud, yet they will all be caught by the proposed new system. I hope that the Minister will agree to remove them from the scope of this Bill.

Then there is the question of who benefits from these proposed reforms. The impact assessment estimates a total net benefit of £130 million. Within this, motorists

gain £1.1 billion by way of reduced premiums; insurers gain £190 million; HMT—the Treasury—loses around £140 million; and claimants lose £980 million. The impact assessment also sets out the risks assumed in calculating these figures. It explicitly acknowledges the risk that CMCs will produce more unmeritorious claims to offset the reduction in claims pursued as a result of the reforms. We all know how very vigorous and fast moving the claims industry can be, and as we speak, the Government are busy in the other place dismantling the reforms that we voted through to try to suppress cold calling.

However, the major risk surely lies in the percentage of savings to insurance companies that is passed on to motorists in reduced premiums. The impact assessment gives a figure on this and says it will be 85%, but it does not explain why. Is it, for example, that 85% of all savings will be passed on by 100% of insurers or that 100% of savings will be passed on by 85% by value of insurers? Perhaps the Minister could tell us which it is. In either case, what grounds are there for confidence that the insurers will pass on any particular percentage?

I note that the insurance companies which wrote to the Lord Chancellor in March ended their letter by saying that they,

"publicly commit to passing on to customers cost benefits arising from Government action to tackle the extent of exaggerated low value personal injury claims".

Leaving aside the issue of whether cost benefits are the same as savings—I have no idea whether they are—is the promise to pass on all or only some of the cost benefits? Who decides what is a cost benefit for the purpose of passing it on, and how transparent will this decision be? What mechanism will there be for checking the sums actually passed on, and what remedy will be available if they turn out to be lower than expected?

I now turn to Part 2 of the Bill, dealing with the personal injury discount rate, and I should say at the outset that I agree there is an urgent need to change the basis on which the rate is calculated. But I have several concerns. The first is to do with timing. It is clear that the current discount rate needs amending, but the process proposed in the Bill means that there would be no change until 2020. This is three years after the implementation of the minus 0.75% rate, which is obviously wrong and is causing very significant financial damage to both private and public sector organisations. For example, the Minister will know that the National Audit Office has highlighted that the estimate from NHS Resolution, at the current discount rate, will add £500 million to the cost of claims in the year 2017-18 and £3.5 billion in overall provisions accrued. Clearly, it would be better to spend this money on front-line NHS services. Why wait? Surely there is enough information held by the Government and their advisers to enable a faster change.

My second concern is with the review period of three years that is proposed in the Bill. This may be too short. It may mean that a review is undertaken unnecessarily, incurring cost and creating market uncertainty. A three-year period may also create real incentives for gaming the litigation process by whichever side believes its objectives are most likely to be met by an impending rate change. A five-year review period, I suggest, would mitigate the risks associated with this. We will probably want to discuss this further in Committee.

My third concern is with having the Lord Chancellor make the decision on the rate, as at present. Under the new system, he or she will have the recommendation of the expert panel to take into account, but this will not be binding. How is this materially different from the current situation? Of course, the basis for setting the rate will have changed, but it will still be the Lord Chancellor who decides. In fact, there is a strong case for removing the decision from the political arena altogether and handing it over to an expert panel. The impact assessment reports that, of the respondents to the consultation on the matter, 35 favoured an expert panel, 17 favoured a co-decision between an expert panel and another person, and 48 favoured a Minister, based on advice from an expert panel. To put this another way, the majority of respondents to the consultation were in favour of not having the Minister make the decision. This kind of system works well for the economy as a whole, with the MPC setting the base rate quite independently of politicians. Perhaps the Minister can say whether he has considered this option and, if he has, why he has rejected it.

Finally, I would like to make a suggestion to the Minister. He will know that many Members of this House believe that we should repeal Section 2(4) of the Law Reform (Personal Injuries) Act 1948, which has the effect of greatly increasing the sums that the NHS must pay out in settlement of clinical negligence claims. The Public Bill Office has confirmed that any proposal to repeal this section via this Bill would be out of scope. Nevertheless, repeal is an urgent necessity, and suitable legislative vehicles are likely to be extremely rare. This Bill could be used for repeal if the Government were to agree to an out-of-scope amendment granting the right to repeal Section 2(4). In closing, I ask the Minister to consider this, and whether he would be prepared to meet to discuss this further with me and other interested Members.

4.03 pm

Lord Hope of Craighead (CB): My Lords, I do not wish to say very much about the general principle that lies behind Part 1, which deals with damages for whiplash injuries, except to make three points. First, we have been subjected to quite a bit of lobbying by those who object to the measures that it contains. Some, I have noted, say that they are punitive and arbitrary—words which I myself would not attribute to Part 1 as I read it. Indeed, the noble and learned Lord has said enough to persuade me that it is necessary to do something to try to minimise the abuse that has given rise to such a large and disproportionate number of whiplash claims. The abuse has been going on for some considerable time, and it is time that something was done to address it.

My second point is that I particularly welcome the provisions in Clause 3 for an uplift beyond the tariff amount in exceptional circumstances and the provision in Clause 2(8) which deals with the situation where a whiplash injury is combined with other injuries which also require to be compensated. Those are sensible precautions against the risk of unfairness in particular

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cases. Thirdly, I associate myself—at least for the time being—with the remarks of the noble Lords, Lord Beecham and Lord Sharkey, on the need for thought to be given to putting the definition of the phrase "whiplash injury" in the Bill, rather than leaving it to delegated legislation, because it is so central to the whole system set out in this part. There is something to be said for at least the starting point of the tariff to be in the Bill too, although, of course, amendable in as simple a way as possible by statutory instrument.

My reason for speaking in this debate is that I would like to say a bit more about the personal injury discount rate provided for in Part 2. My reason for doing so is that I was one of the members of the Appellate Committee which heard the case of Wells v Wells 20 years ago in May 1998. Power was first given to the Lord Chancellor to set a discount rate by Section 1 of the Damages Act 1996, when the noble and learned Lord, Lord Mackay of Clashfern, was Lord Chancellor. I very much look forward to hearing what he has to say when he contributes to the debate later. I hope to be in the Chamber when he speaks, although I have other things to do. For reasons that he may be able to explain, he did not set a discount rate before the Government changed shortly after the Act came into force.

The baton passed to his successor, the noble and learned Lord, Lord Irvine of Lairg, who was here earlier but is no longer in his place to listen to the rest of the debate. He did not indicate that he was willing to exercise that power. One might sympathise with him, because of the difficulties in finding a solution to it. In that situation, it was left to us in Wells to deal with the issue and to devise what we thought would be a firm and workable principle which the courts could apply. The solution which we derived in that case set out the basic principle which was applied by the Lord Chancellor when, in due course, the power was exercised in June 2001 and again in March last year, resulting in the figure to which the noble Lord, Lord Beecham, referred. As is stated in the Explanatory Notes, Wells provided the basis for the calculation of the discount rate which has been followed ever since.

I certainly do not wish to quarrel with the proposition that a fresh look needs to be taken at this problem. It is, of course, an inescapable fact that the lower the discount rate, the higher the award will be. So there is a tension between those who wish to raise the rate so as to reduce the burden on those who have to bear the cost of the award and those who do not wish to see a reduction in the general level of damages where the award has to provide compensation for future loss. The Explanatory Notes say that the basis of calculation which was held in Wells to be appropriate is that the claimant is a very risk-averse investor. I do not think that any of us on the Appellant Committee used those very words, but the thrust of our judgment was similar to what the Explanatory Notes say, for reasons that I will explain.

The Bill seeks to change this assumption by substituting that which is set out in paragraph 3(3)(d) of the proposed new Schedule Al to the Damages Act 1996. This is that the damages will be invested adopting an approach which involves more risk than a very low level of risk, but less risk than would ordinarily be accepted by a prudent and properly advised investor. How one reacts to that proposal may well depend on how essential it will be for the claimant to be able to rely on the award to provide for his or her needs for the rest of their life. Claims that require recourse to the discount rate vary widely, from those in which the main element is to make good a relatively small element of future wage loss to those where the award has to provide for the future care and support of those who are very seriously injured.

As it happens, the claimants whose cases we were dealing with in *Wells* had all sustained very serious injuries of the kind which are normally classified as injuries of the maximum severity. In one case, the claimant had suffered serious brain injuries, as a result of which she was no longer capable of working or looking after herself or her family. In another, the claimant had been injured before birth, was suffering from cerebral palsy and was very severely handicapped.

It was against that background that, in my speech in *Wells,* I said that the assumptions that had to be made were, first, that the lump sum would be invested in such a way as to enable the claimant to meet the whole amount of the losses or costs as they arise as the years go by during the entire period for the assumed lifetime while protecting the award against inflation, and, secondly, that the losses or costs will have to be met entirely out of the relevant proportion of the lump sum. Those assumptions indicate the challenge that lies behind the exercise that we are contemplating. I went on to say that this meant that the rate should be one that is to be expected where the investment is without risk and which takes full account of the effects of inflation.

As Lord Lloyd of Berwick, who was with us on the committee, said, if the claimant has to realise capital from investments in a depressed market—and, as we know, the markets go up and down—the depleted fund may never recover. We were aware that a lower rate of discount would lead to increased insurance premiums. We were not addressed in detail on this subject, so we were not in a position to form a view about the wider consequences of our judgment. However, it is worth noting that the noble and learned Lord, Lord Steyn—who was also on the committee—pointed out that if the right decision was that the discount rate should be modified to ensure that victims were compensated as nearly as possible for the consequences of their injury, by and large the public would have to pay for the increase in awards. He said that because he was applying the principle which lies at the heart of the assessment of damages at common law, which is to provide injured parties with a sum which will be adequate to cover their loss over the whole of period during which the loss is likely to continue: no more, but certainly no less.

The noble and learned Lord talked about transparency and fairness, but there is no doubt that Part 2 seeks to alter the balance in favour of the public and thus, to an extent, undermine the principle that lies behind the common law. Reasons have been given as to why that might have to be done. For my part, I would have been very much more concerned as to where this reform

was leading us if there had not been the provision in new Clause A1 of the 1996 Act which is set out in Clause 8(1) of the Bill. This is a clause which would allow a court to take a different rate of return into account, including a lower return, if any party shows that it would be more appropriate in the case in question.

I have in mind—and I have never forgotten it—a case I once had to deal with where a highly talented young woman had been rendered tetraplegic as a result of a road accident which was certainly not her fault. The injury was so severe that she was almost totally paralysed. She could not move any part of her body below the neck. She could breathe but she could not speak. She could communicate only by sucking and blowing through a tube to spell out words on a screen in front of her. For her, the award was assessed on the assumption that it would be necessary to provide and pay for 24-hour care and attention every day, and for the accommodation and equipment she needed to sustain any kind of reasonable comfort, for the rest of her lifetime.

It would seem quite wrong for someone in her condition to be required to expose the award to risks to any degree just because, without that, her award may bear more heavily on the defendants and their insurers—and perhaps through that, on the general public. So I not only welcome the new clause as a safeguard against the risk of unfairness in these extreme cases; without it, the Bill would risk, in the more extreme cases, giving rise to an injustice which ought never to be contemplated.

4.15 pm

Lord Hunt of Wirral (Con): My Lords, I declare my interests as detailed in the register, in particular as a partner in the international, commercial law firm DAC Beachcroft and as chairman of the British Insurance Brokers' Association. It is also my great privilege to follow the noble and learned Lord, Lord Hope of Craighead. Fascinated as I was to hear his explanation of what lay behind that decision in Wells v Wells—of course I shall respond in much greater detail in due course in Committee—certainly the world has moved on a long way since that original decision.

I hope that the reforms in the Bill are in no sense controversial. They skilfully and fairly balance competing interests. That is never an easy task for government but it is an essential one, and I commend the Minister on his courage and resolution.

Reference has already been made to the many representations we are receiving, and we shall inevitably hear a great deal of noise from all those vested interests on both sides. But we are not here in this House to serve vested interests. It is the public interest we must serve, and it feels as if Ministers have got the balance broadly right. This has not happened by accident, especially on the law relating to the discount rate.

The reform proposals in Part 2 address an increasingly urgent need. As noble Lords have already understood from previous speeches, the lower the discount rate, the higher the cost. England and Wales are now the sole territories in the developed world with a negative discount rate for all future loss claims. For many younger and elderly drivers alike, the consequences have already proved to be extremely costly. That has thrown out any balance of fairness. We must also, as several speakers have mentioned, be aware of the heavy burden the negative discount rate has been imposing on the National Health Service.

Competition law prevents insurers offering any collective undertaking that premiums will fall if and when the discount rate is restored to a sensible level. However, there has still been an unprecedented commitment from individual chief executives across the market that savings would indeed be passed on. I cannot think of another occasion on which industry leaders have come together to make such a public pledge. They are of course responding to a strong lead from the Government, as the Minister made clear.

The Government published Command Paper 9500, *The Personal Injury Discount Rate: How It Should Be Set in Future*, on 7 September of last year. The Secretary of State then wisely asked the Justice Select Committee in another place to undertake pre-legislative scrutiny of the draft clause included in the report, which would change the basis on which the discount rate is calculated. That committee, on which no party has a majority, came to a consensus, in favour of reform, with certain caveats. In particular, the committee supported the establishment of an independent expert panel—not a representative panel—to advise the Lord Chancellor on the discount rate, and any discussion on the discount rate necessarily involves making reasonable assumptions about the likely appetite for risk on the part of anyone looking to invest a sum—particularly a substantial sum—of money.

As the committee and the Government have both acknowledged, setting the discount rate can never be a precise science, but I strongly support the notion that it should have a real-world basis, which is currently rather lacking. The Government are rightly committed to retaining the principle of full compensation, which, as we have just heard from the noble and learned Lord, Lord Hope of Craighead, is so important, particularly in very serious cases.

We must not forget that this means compensation must be neither too little nor too much. In Paragraph 77 of their response to the Select Committee, I was heartened to see the Government state that they,

"will work to ensure that the panel is ready to start work at the earliest opportunity".

That is a clear undertaking. Given the very considerable measure of consensus around this legislation, I ask my noble and learned friend the Minister to confirm that arrangements for the establishment of this expert panel can and will begin well before the legislation eventually receives Royal Assent.

I would like to mention Part 1 of the Bill. The discount rate provisions are of vital importance, but the plans for whiplash reform too should be commended as being sensible and uncontroversial. For far too long, we have as a country sustained a system in which there is an unseemly squabble over the value of soft tissue injury claims. That has been far more to the benefit of those paid to do the squabbling than it has been for their clients, the victims. What matters most to their clients is prompt and fair redress, not a

[LORD HUNT OF WIRRAL]

mathematically precise assessment of their loss. The idea of creating a fixed tariff for such claims, while novel in common law terms, is the right way forward. It takes the mystery out of how such claims are valued and avoids the use of precious court time in arguing over valuations. It can and must create a smoother process for the claimant, who will rightly be placed at the centre of such a process.

I have been a practising lawyer for exactly 50 years next month—I started life as a claimant lawyer, acting in cases for thalidomide victims. I have to say that claimant lawyers and others with a stake in maintaining the status quo are heavily pressurising me to argue that this is unfair and ill thought through. I believe that the Government have taken account of any legitimate concerns. They have wisely dropped the notion that some claims should receive nothing at all. The sums proposed for the tariff, while low, are more in line with what society can realistically afford to pay for these claims. Let us not forget, it is the wider public who have to fund these claims through higher insurance premiums and the inflated cost of goods delivery.

There are consumers and citizens at both ends of this equation. It is the task of Government to balance the interests of everyone involved. In another place, as we have heard, debate continues today on the Financial Guidance and Claims Bill, particularly on how we will contain the excesses of the claims management industry. How many times have we said that in this place? But at last it seems that something is being done. There is a simple answer to the question: it is to contain the amount of money from which they and their hangers-on can take a cut. By their very nature, civil claims set group against group, citizen against citizen.

A decade or more ago, I had the privilege of talking to a very senior senator in Washington, who told me that a complicated and unpredictable system of redress ultimately undermines civility in society. I believe that it does, and I hope that these reforms will go some considerable way towards simplifying redress and restoring the balance of fairness in society. However, I also hope that, in what I think is increasingly an uncivil age, they will serve to restore civility and a healthy respectful relationship between the people in England and Wales.

4.35 pm

Lord McNally (LD): My Lords, it is always a pleasure to follow the noble Lord, Lord Hunt. As I have reminded the House before, we once sat on the same committee, which was modestly called young Atlantic political leaders—where are they now?

It is very difficult to know where to insert oneself in a debate such as this with so many expert contributors, so let me begin at the beginning. During my childhood, I had two quite serious but non-permanent injuries that could probably be pinned on the school and the building I was in when they happened. Looking back, I know that it would never have occurred to my parents to sue somebody because of these misfortunes. Yet, in preparing for this debate, I decided to Google "injuries at school" to see what would happen. Up came a whole smorgasbord of offers: "Has your child been injured in the nursery?" and "Has your child been injured in the playground?" It seems to me that the tenor of the debate so far almost accepts as a given a change for the worse in our society. I do not know whether the spokesman for the Opposition is about to sue Transport for London for his injury—he is shaking his head, which is good; he is going in the right direction—but people see compensation as being worth the risk.

When I came to this House in the late 1990s, one of my first interventions was made in shock after I had been off and spent the afternoon watching daytime television. I saw advert after advert—not unlike the adverts inviting you to play the National Lottery—saying that if you had had the good fortune to have an injury, there might be some money in it for you. I have heard the statistics that my noble friend Lord Sharkey cited; nevertheless, what has happened has cheapened our concept of justice. Access to justice is right; certainly, when we hear the example given by the noble and learned Lord, Lord Hope, of the lady who was severely injured in a motor accident, we understand that of course there must be protection. But we have to have the courage to say that access to justice is not limitless and should not lead to clogging up the courts or to cases that increase costs throughout the system.

One thing that has come up when we have debated this before is personal experience. I suppose I should therefore give one other example. A couple of years ago, my wife had a little bump at a T-junction. When she got home, she told me that she had exchanged numbers with the other driver. I said, "Oh well, if you bumped into him, you bumped into him—I'll ring him up". The guy was a taxi driver. I spoke to him; we had a civilised conversation. I said, "Look, get the car checked over. Send me the bill and I will settle it". We did not hear anything for some weeks, and then we were told that the driver had sustained a whiplash injury. I live in St Albans and it was now being handled by a solicitor in an east Lancashire town and they had provided evidence from a doctor in south Manchester. I immediately said, "This is a scam".

I wrote to the chairman of our insurance company saying it was a scam and that my wife was willing to give evidence if they wished to challenge this obvious attempt to defraud the company. A few weeks later, we got a letter saying that the company had settled the claim because it was under £5,000 and it was not worth fighting. I wonder how many claims of £5,000 and under are settled in that way. Is it a victimless crime—or one that is passed on to the consumer?

I do not accept that this is so small a problem that it should not be dealt with, and I welcome the Government's attempt to do so. In 2010 when I came into this place, I went to the Ministry of Justice. Between 2010 and 2013 we tried to bring forward some reforms in this area. In the previous Labour Government, Jack Straw campaigned on this issue and has continued to do so. This is an issue that needs addressing. As my colleague and noble friend Lord Sharkey said, we will tease out some of the things that are being put forward to Committee, because that is what we are here for.

The noble and learned Lord, Lord Hope, set the scene for the second part of the Bill. It was one of the most difficult pieces of work that one faced as a Minister. I was greatly helped at the time by the noble

Lord, Lord Faulks, who succeeded me at the MoJ, and by the noble Lord, Lord Ribeiro. It is horrible to hear a case like the one we were given and then have to bring it down to some mathematical solution to give that person justice, but that has to be done. We have to ask in the Bill whether some of those powers should be given to the Lord Chancellor alone, or if there are other ways. We hear what the Delegated Powers Committee has said about certain of those responsibilities, and it has said that a whiplash injury should be defined. We will probably bring that forward in Committee. The tariff for injury should also be in the Bill.

There will be questions about whether the definition of a minor injury being up to two years is excessive. Is the small claims limit set too high at £5,000? As has been said, how will the Government ensure that the consumer and not the insurance companies benefit from these reforms? Nevertheless, this is timely legislation.

In the past, we have managed to get a degree of cross-party agreement that reform in this area is needed, and I hope that in the great tradition of the Lords, the expertise here will be used to help the Minister carry forward a Bill that is really worth while. What he certainly has, and which I had, is the presence of the noble and learned Lord, Lord Mackay, in his regular place behind him. Throughout any difficult and torrid debates in Committee on the Bill, he will come to the help of Ministers who flounder at the Dispatch Box. It is a very reassuring thing to see and, like the noble and learned Lord, Lord Hope, I look forward to hearing the contribution of the noble and learned Lord, Lord Mackay, to this debate.

4.35 pm

Lord Hodgson of Astley Abbotts (Con): My Lords, like the noble Lord, Lord McNally, perhaps I may begin at the beginning. Notwithstanding some rather disobliging remarks from the Delegated Powers and Regulatory Reform Committee referred to at some length by the noble Lords, Lord Beecham and Lord Sharkey, which no doubt we shall discuss in Committee, I welcome the Bill because it has at its heart the objective of achieving the greatest possible fairness. There will be fairness on the one hand to ensure that those who suffer life-changing injuries, often through no fault of their own, are properly compensated in so far as money can ever compensate for life-changing events of that sort. There will also be fairness to the other participants in the insured class who will inevitably have to face commensurately increased insurance costs. They are entitled to reassurance that overcompensation will not take place.

Sadly, as other noble Lords have referred to, there is a darker side to all this as part of a litigious society in the form of making claims on the basis of no or fabricated evidence. The proposals in Part 1 to bring whiplash claims under control therefore seem very worthy of support. In his opening remarks, my noble and learned friend referred to some of these fabricated cases, and perhaps I may pass on to him and to the House the following example. Last Friday, I was in the north of England to attend a board meeting of a company of which I am the chairman. I took a taxi and, as is my wont, I inquired of the temperature of the taxi driver, political and otherwise. We got on to the issue of whiplash injuries. He told me that it was prevalent in this and other towns in the north of England for young men to buy a clapped-out banger of a car or van for around £200 and engineer a crash with a taxi. I asked why they would choose a taxi. The driver said that there were two reasons. First, they know that a taxi will be well insured. If it was not, it would not be licensed by the local authority. Secondly, taxi drivers depend on the good will of the local authority for the renewal of their licences and so are less likely to put up a fight, argue the case and press for compensation. That is my contribution of anecdotal evidence gathered last week in the north of England, and it is why I think the Bill is an important first step towards reining in the compensation culture.

I say that it is a first step because there are other areas which need attention. No doubt noble Lords will have received briefings from the Association of British Travel Agents about burgeoning claims for compensation for illness occurring on holiday. Moreover, one of the most depressing aspects of the reviews I have carried out of the charity sector is the way in which individuals attending a charitable event, such as a proposal to raise funds for some much-needed community project, seem quite ruthless in bringing claims against a charity. Falling over a guy rope for a tent is a very common claim, as if tents do not have guy ropes and you have no responsibility for looking where you are walking. Charities are often run by volunteers who have only limited access to legal advice. Faced with what they consider an unreasonable claim, they can only use the small claims court for personal injury claims up to £1,000. I understand that this is to be raised to £2,000. However, the £1,000 for road traffic accidents is to be raised to £5,000. I hope that my noble and learned friend the Minister will explain at some point why we are moving from £1,000 to £2,000 and £1,000 to £5,000. That would be extremely helpful, particularly for smaller charities that have to deal with these unfortunate incidents.

Turning to Part 2 of the Bill, I have taken an interest for some time in what is familiarly called the Ogden rate, including initiating a debate on the matter last July, to which my noble and learned friend on the Front Bench replied. I support the overall shape of the proposal. I note the experienced comments of the noble and learned Lord, Lord Hope of Craighead, about risk. We may be able to have some existential discussions about the nature of this in Committee.

I want to raise two issues that I hope we can explore. First, reverting to the underlying strategic aim of achieving fairness, it seems that with long-tail insurance cases, the use of lump sum damages can result in only one near certainty: that the award will be unfair to one party or another. Surely we need to do more in such cases to make better use of periodical payment orders. One of the answers to the question raised by the noble and learned Lord, Lord Hope of Craighead, on making sure that people were fairly compensated would be to make greater use of PPOs.

I am concerned that injured parties—who may or may not be financially sophisticated—may be seduced by an apparent amazingly large lump sum against which the PPO may seem fairly modest and, in reaching

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that conclusion, may think that they should accept a lump sum. There is a risk that the injured party may be egged on by investment managers who see a long stream of advisory fees stretching into the future, and by insurance companies who see a chance to put a pink ribbon round the file and close the claim for ever.

My second concern is the proposal for the timing of reviews, a process that—as pointed out by the noble Lord, Lord Sharkey, in his opening remarks—needs to be designed to minimise the possibility of the system being gamed. I share the view that three years is too short a period. Indeed, any fixed-term review period is a very blunt instrument. I would argue that the trigger for a review should not be time-based but result from changes in the available rate of return on our investment. Establishing such a benchmark could be problematic, though changes in the base rate would be a pretty good indicator given that these investments will be low-risk, even under the new regime. Perhaps thought might be given to extending the duties of the expert panel proposed in the Bill to include a power for it to recommend to the Lord Chancellor that the rate ought to be reviewed. I look forward to discussing this matter and others in Committee.

Finally, there is an often expressed concern—indeed, it has been expressed this afternoon—that these proposals to control the costs of claims will result not in reduced premiums for the insured but merely in increased profits for insurance companies. Those of us who have spoken up for a fairer system expect the industry to demonstrate that savings as a result of these measures are being appropriately passed on. To be candid, it will not be good enough for the industry to say something along the lines of, "It's a very competitive industry so savings are bound to be passed on". The public are in a cynical mood, as reflected in an article in last Saturday's *Times* entitled "Insurers fail to drive down premiums". The article quotes Mr Matt Oliver from GoCompare as saying:

"Where insurance is concerned, loyalty doesn't pay. Companies typically use their best deals to attract new customers, so often the only option for existing customers is to go elsewhere".

If that situation persists, it would be a sad outcome to the Bill, the purpose of which I strongly support.

4.45 pm

The Earl of Kinnoull (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Hodgson of Astley Abbotts, who, as ever, was authoritative and full of charm. I declare my interests as set out in the register of the House and particularly those in respect of the insurance industry.

I also welcome this Bill, seeking, as it does, to tackle two distinct policy areas that are in need of reform. That reform, I believe, will benefit all in the country. I am looking forward to the passage of the Bill, which I hope will deliver these reforms in an optimal way, achieving the vital balance between the interests of all those concerned. To summarise two very interesting early speeches in the debate, from the noble Lords, Lord Beecham and Lord Sharkey, there is a great benefit to be gained from having certainty here. I do not believe that we in this House could feel that we had done our job unless we knew there was certainty on a number of the things mentioned in both those speeches. I certainly believe certainty will help.

The Explanatory Notes for the Bill point out that the UK generated 780,000 whiplash claims last year, which is one in 83 of our population. That is now down to one in 100. However, even the one in 100 statistic is worrying. In preparing for today, I came across a *Daily Telegraph* article entitled "UK 'whiplash capital of Europe'". The first paragraph says there are,

"one out of every 140 people claiming for a whiplash injury each year".

That article was published in May 2011, so one in 140 has gone, via one in 83, down to one in 100. I am obviously delighted that it has come down, but one has to feel, as a bit of a cynic about the claims management industry, that at least part of that is probably due to its spending so much of its energy on some of the new and wonderful things, such as the holiday sickness scam. However, the figures are too new, and I would like to probe them. I have no doubt we will come back to those in Committee. The point is that it is a vast number of people.

We should also take a look here at other countries. I have run personal lines underwriting businesses in continental Europe, so I have some experience on the ground of what in other countries the number of whiplash claims should be. It is a heck of a lot less. Sometimes—for instance, in France—that is due to impediments, which I think are unfair, that are put in the way of allowing people to claim for whiplash injuries, but in markets such as Germany the number is remarkably less. I certainly remember going to meetings and spending the day with Munich Re, a major reinsurance company, in Munich, and people pulling my leg about what they call "the British disease". It is one reason Munich Re was pulling back from reinsuring British motor insurance.

The noble and learned Lord the Minister, in his speech at the Association of Personal Injury Lawyers conference on 17 April said:

"The number of road traffic accident related personal injury claims remains around 70% higher than in 2005/06 and around 85% of these claims are for whiplash related injuries. This is despite extensive improvements in both vehicle safety and a decline in the number of reported accidents in recent years".

That decline, in the past 10 years, was 31%, according to the Department for Transport statistics. So 31% fewer accidents, in safer vehicles, are producing 70% more whiplash claims.

All this whiplash-claims activity produces loss cost to the insurance industry. We in the industry of course reprice our products annually, so that cost is therefore charged on as a problem to you and to me. The removal of non-bona fide whiplash claims is estimated in the impact assessment to be worth £1.1 billion a year. The ABI has probed how much of that goes into the pockets of those who have had the whiplash, or allegedly so, and how much goes into the pockets of claims management companies and specialist solicitors firms. The answer is that about 50% goes into the pockets of those assisting the whiplashed people.

Our task, then, is complicated. We are aiming for a £35 a year reduction in annual premiums. We will need to come back to this in Committee, as I do not

understand what the promise really is from the insurance industry in respect of the £35 that could be there for the saving. I am sorry to disagree with the noble Lord, Lord Hodgson of Astley Abbotts, but the industry is incredibly competitive, so I cannot believe that at least some of that will not naturally come back through competitive pressures. It is also true that people have been making these promises to their regulator, the FCA, which—I speak again with experience—is one of the toughest regulators in the world. It would certainly be pretty displeased with someone who had breached a promise to the general public and was not treating customers fairly. The fines for not treating customers fairly are very large. There is a certain amount of carrot and stick there.

On the personal injury discount rate, we have much to thank the House of Lords judges for in the case of Wells v Wells. They laid out the law with great clarity, a clarity that the noble and learned Lord, Lord Hope of Craighead, exhibited earlier in his seminal contribution. As ever, I learnt a lot; the noble and learned Lord never gets up without me learning. In March last year, the discount rate was lowered from 2.5% to minus 0.75%.

Oddly, this is the second time this year that we have spoken in this Chamber about discount rates, the other occasion being the debate on reconstruction and renewal, where we talked about discount rates in respect of the financial modelling, which gave very surprising numbers as to how expensive it would be to repair the Palace in some of the options being considered. That discount rate came from the Treasury Green Book and was 3%. I noted in that debate how sensitive things were and have looked for a precise example.

In the educational section of the Chartered Insurance Institute website, there is a worked example which is very instructive. It notes that when the discount rate was 2.5% the lump-sum settlement for a 20 year-old man who requires £100,000 of care per year for his lifetime was £3.2 million. When the discount rate changed to minus 0.75%, that £3.2 million rose to £8.9 million, almost three times the amount. That demonstrates just how sensitive it is.

That is why, in its latest annual report, NHS Resolution moved its reserves for past losses up by £4.7 billion and stated that it expected £1.2 billion to be added annually to the budgeted cost going forward for clinical negligence. All that is money coming out of the front line of the health service. This year's budget for clinical negligence excluding the PIDR change is £1.95 billion, so the extra due to the change represents an increase of more than 60% in the cost for clinical negligence to the NHS.

The insurance industry, naturally, has had to increase its reserves. Noble Lords will have read all about the one-off pain of that, but the industry has the opportunity to reprice, so for classes of insurance such as employer liability and public liability the industry is now repriced and whole again.

Had Wells v Wells been heard in 2018, instead of 1998, a lot of argument would have been presented concerning the lessons learnt in the aftermath of the financial crash and, in particular, the effect that quantitative easing has had on the gilts markets. According to the Bank of England website, the Bank has bought £435 billion-worth of gilts and £10 billion-worth of corporate bonds. To put that number in context numerically, that is about 25% of today's gilt outstandings. Quantitative easing was unheard of in 1998, and it has certainly had an effect on the very part of the investment market that Wells v Wells is tied to; indeed, that effect has been to depress the PIDR to its current level of minus 0.75%.

I accept that, mechanically, this number is what Wells demands but, like many noble Lords, I feel that it is completely wrong. I could say a lot about that at a high level, but it implies that investors will pay the Government to house their money over the decades ahead. I do not believe that that is credible or the lesson of history. The equivalent of the PIDR in France is 1.2%, in Ireland 1.5%, in Spain 3.5% and in Germany 4%. Britain is an outlier, as other noble Lords have pointed out. Rethinking the PIDR, therefore, is an idea whose time has come.

The Bill makes a good stab at things, but could the Minister give us a bit of colour on what,

"more risk than a very low level of risk",

means? Indeed, I worry, as others do, that the whole of paragraph 3(3)(d) of new Schedule A1 on page 9 of the Bill is none too legally certain. Also, what timeframe does the Minister have in mind for when the expert panel will have reviewed the PIDR and the level either affirmed or changed? I am thinking, in particular, of the £1.2 billion clock that is ticking for the NHS.

I make one short final point concerning Scotland and Northern Ireland. Section 6 of the Bill refers to the role of the FCA, yet it applies only to England and Wales. I am concerned that this could create problems for the UK market and present a potential for the ever-creative claims management companies to arbitrage regulation between the different parts of the UK. The interests of the UK in this regard would be best served by having a single market and regulator. Is the Minister in touch with the devolved Administrations to ask whether they would be willing to make use of this primary legislation to improve the situation generally? I close by welcoming this Bill.

4.57 pm

Lord Mackay of Clashfern (Con): My Lords, this is an extremely interesting Bill for me, for reasons that I will explain in a moment.

I will not say much about the first part of the Bill and the types of injury it deals with. That is because long ago, when I was in practice in Scotland, the system was still that juries awarded damages in personal injuries cases. I acted for the defendant in a case of whiplash injury. The lady came to the jury to explain how bad her injuries were. We had put in an advance offer—as was usual—for what we understood, from the medical evidence, was a reasonable estimate of the worth of the injuries. At the jury trial the lady was very good at explaining how bad the whole thing was, and she got an award considerably above our offer. My reputation as an estimator was, therefore, adversely affected by that experience.

I had the great advantage, however, that the late Lord Fraser of Tullybelton—as he became—was the presiding judge. In those days the judge was not supposed to give much indication: it was a matter for the jury

[LORD MACKAY OF CLASHFERN]

and he was not supposed to intervene to say it should be this or that. Lord Fraser—as those who knew him will remember—was an excellent judge who observed that requirement meticulously. He came to me afterwards and said that he thought I had been very badly treated by the jury, which shows how difficult it is to estimate genuinely on this type of injury. I have no doubt that there may be some question about precisely what the rate should be when the whole thing is lumped together as if it were a reasonably common experience, with reasonably common results.

However, I want to speak primarily about Part 2 of the Bill, because I am in the remarkable position of seeing that this part would amend a Bill that I introduced, and which became an Act, in 1996. My recollection of that—it is over 20 years ago, as your Lordships will quickly be able to observe—was that the judges were having a lot of difficulty in assessing damages, particularly for the whole of life, as some cases required. They were of course experiencing the benefit of actuaries and other people who ran investments, and so on. This involved a very large amount of work in the individual cases and the judiciary were anxious—I am subject to correction by members of the judiciary who may remember this situation—to avoid the necessity for this repeated excursion into financial administration. The other thing is that at that time, in 1996, the markets were probably a bit less volatile than they are now.

Eventually we passed that Bill, which required the Lord Chancellor to fix the discount rate. Fortunately, I had managed to retire before I had to do it so it fell to the noble and learned Lord, Lord Irvine of Lairg, to fix it, which I am sure he did to the best of his ability. He had to take the advice of the Government Actuary but he was not confined to that. He fixed the rate and that rate has lasted until 2017. The great thing about that matter is that if it changes after such a lapse of time, it is going to be quite a change and the effect on the estimates within various bodies, particularly public bodies such as the National Health Service, is terrific. I entirely agree that something more regular is required and that it is a difficult task, because the effects of the kind of injuries that may come before the court can vary tremendously, from those which will last for a lifetime to those which are much shorter.

I want to look at the assumptions that the Lord Chancellor is required to make under the Bill and I venture to suggest that they form a bit of a challenge. The Bill says in Part 2:

"The Lord Chancellor must make the rate determination on the basis that the rate of return should be the rate that, in the opinion of the Lord Chancellor, a recipient of relevant damages could reasonably be expected to achieve if the recipient invested the relevant damages for the purpose of securing that—

(a) the relevant damages would meet the losses and costs for which they are awarded".

That is fairly easy to say on a day-to-day basis. But Part 2 then says that,

"the relevant damages would meet those losses and costs at the time or times when they fall to be met by the relevant damages".

These will be years ahead in some cases, so it is quite an assumption that the Lord Chancellor has to make. The last provision is really crucial. It says that,

"the relevant damages would be exhausted at the end of the period for which they are awarded".

When I chaired the Select Committee that looked into the Assisted Dying Bill, one thing we learned was that doctors had great difficulty in assessing the length of life. One of the great difficulties is to assess when the damages should be finished, because in the life cases, which are now a very substantial part of the damages that have to be paid by the National Health Service, life expectancy is very difficult to estimate. Even as you get near the end of life, life expectancy seems to be very difficult to estimate. When a baby is born and the results affect that baby for the rest of its life, you can imagine the difficulty of trying to determine that.

The Lord Chancellor has to go on, having made these assumptions, to assume,

"that the relevant damages are payable in a lump sum".

He is not allowed to take account of the fact that you can now pay in instalments. The second assumption is,

"that the recipient of the relevant damages is properly advised on the investment of the relevant damages".

That seems a fairly easy assumption to make. It is not so easy to know what the right advice would be. The third assumption is,

"that the recipient of the relevant damages invests the relevant damages in a diversified portfolio of investments".

You would think that might be covered in proposed new subsection 3(b), but for clarity it has been separated out. Proposed new subsection 3(d) is the one I want particularly to draw attention to because I think it is possible that we may want to look at it in some detail in Committee. It says:

"The assumption that the relevant damages are invested using an approach that involves … more risk than a very low level of risk, but … less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims".

I assume these are different aims from the people who are investing the damages award for the injured party.

The assumptions that have to be made by the Lord Chancellor on this basis all seem very reasonable, but I think it would require the Lord Chancellor to have a certain element of the prophet about him or her to enable these assumptions to be taken with any degree of accuracy—we really need to look at this. I imagine that the promoters of this Bill have looked at this very carefully and if it is going to be accurate from the point of view of awarding damages, these conditions have to be fulfilled. The difficulty about it is how you satisfy yourself that that will be true. That is what I would like to hear a little about.

The expert panel included an actuary, but my understanding of actuarial science—it is a limited understanding—is that it is very much based on the statistical evidence on length of life. The trouble is that each case is separate; it is not the average, it is an individual case. How do actuaries go about doing this? I am interested to know. The Government Actuary has to do all that kind of thing and does it extremely well, but it is not by any means easy. Getting an expert panel to agree—it includes an actuary and investment people—will be very difficult.

The Bill deals with making fair the system of awards in civil liability. Two distinct aspects are covered in the Bill—the particular kind of injuries are dealt with in the first part and the discount rate in the second part, but the system is bigger than that. One of the important elements in the present system is an Act of 1948 in which Section 4(2)—I am sorry, Section 2(4); I better get them in the right order—indicates that the damages are to be calculated on the basis that the medical attention is given on a private basis. I can see that in 1948, when the health service was very young, that might be appropriate, but I think modern times have crept up on that and it is rather doubtful whether that is a good basis.

There is another point in relation to that. One of the biggest areas of claim for the National Health Service is in obstetrics. The trouble with an obstetric injury is that it is likely to have effect for the rest of the person's life and, as I say, you have to forecast what that is. My understanding is that the amount of private practice in obstetrics has almost disappeared for the reason that the premium for an operator in obstetrics is so large as not to be worth while; he is better to be in the National Health Service. I am not sure about that but it is what I understand to be the case. If so, it strengthens very much the need for a revision of a rule that requires you to assume what is not there as a basis for damages. Assessing damages is difficult enough without trying to assume what now is no longer practised.

5.10 pm

Lord Monks (Lab): My Lords, I start by declaring an interest as a member of the board of Thompsons Solicitors, the largest trade-union-oriented firm of solicitors and a big firm in the personal injury world. I serve on the board with my noble friend Lady Primarolo, who is sat behind me.

We are concerned with the victims but also with abuse of the system. No one on our side supports abuse, and we have heard some examples of that. No one doubts that there is quite a lot of it, but nor should anyone doubt where the primary blame for some of this lies. The key to the answer to that question is in the example given by the noble Lord, Lord McNally: the insurance companies have been extremely weak. If you can concoct a claim, you get £5,000 or maybe something near it. That did not just go around one northern town; it spread like wildfire. I believe that the insurance industry bears a lot of the responsibility for the situation we are in today. Add to that the claims management industry, which has been fostered by the opportunities that have been provided, and it seems to me that as lawmakers we should be looking very much at their activities as well as remedying any abuses that are around. My worry about the Bill, particularly with the increases in the cost limits and so on, is that the blame is being put on the victims and they are the people who will lose out. I will develop that thought in a moment.

The Bill is intended to reduce motor insurance claims first and foremost and, more generally, to reduce the number of claims for personal injury at work. The increase in the small claims limit is being introduced as a package with the Bill, and of course it can be done by statutory instrument. As has been mentioned, the current small claims limit for all personal injury claims is £1,000. It is proposed to double that amount, which is well above the levels recommended by Lord Jackson as recently as 2013. Others here who know more about this subject than I do will recall that Lord Jackson was proposing that when his package was introduced in 2013, the small claims limit should be increased only when inflation had taken it up to £1,500, and thereafter in blocks of £500. He did not contemplate a doubling for personal injury cases.

A justification for the hike is that the £1,000 figure requires revision because it has not been increased since the 1990s and an inflationary rise is therefore necessary. However, an increase of sorts was made in 1999, when the limit was restricted to general damages. That was the year Lord Jackson took as the base year for his recommendations. One of the unions that has submitted information to the House, the retail union USDAW, has calculated that if the CPI had been applied from 1999 to the present day, the limit should be increased to £1,440 and on current CPI rates would reach £2,000 only some time at the start of the 2030s.

The effect of this increase on non-road traffic personal injury cases—an area where the abuse is a lot less than in road traffic claims—will be profound. At present, very few are dealt with in the small claims court, but under the proposed new regime many more would fall into that court, where legal costs are not recoverable. As a result, a lot of claimants would be unrepresented or would have to find their own resources. For union members that is probably fine, as the union would cope with that; for a sound case, that is what we do; it is a core job that we have. But the many others not in a union will be made much more vulnerable. The result is deprivation of legal representation in recovering damages for injuries and losses. The number of workplace PI cases is reducing annually, and USDAW, from its own experience, calculates that the number of cases captured by the proposed lift in the small claims limit would increase fivefold. As I say, if people are in a union, that is not such a problem, but for others, it is a big problem.

As we have heard, extra costs will accrue to the Government as well. The impact assessment acknowledges that the changes will cost the NHS £6 million, and public funds generally £140 million each year. The impact assessment goes on to confirm a benefit of an extra £1.3 billion to the insurance industry. The Government are hoping that 85% of this windfall will be passed on to the consumer in reduced premiums. I note the guarantee that the chief executives have given, so let us hope that that bears out and they live up to their promises. But they will have to forgive me for being a bit sceptical. The Association of British Insurers has admitted that the insurance industry saved more than £8 billion over five years a result of earlier government changes, yet there is no sign that insurance premiums have declined at all. Indeed, they have continued to rise. Other factors tend to crowd in on these kind of promises, and they must be held to account in keeping this guarantee. I hope the Government will confirm that they will do that.

A further worry is that the decreasing presence of lawyers will leave a vacuum into which could sweep unregulated case management companies. They are

[LORD MONKS]
always on the lookout to increase their business, and some of them are prepared to use highly questionable methods to persuade vulnerable people that a "lottery win" is within their reach if they just listen and leave it to them.

A word on the road traffic cases. The Government's justification for raising the small claims limit to £5,000 is that there is an epidemic of fraudulent claims. Yet that evidence should not just be taken at face value or anecdotally borne out by stories that we all tend to tell. The Association of Personal Injury Lawyers has made it clear that it believes that the figures the Government are relying on are exaggerated. The figures for actual proven fraud are rather low. All this shows that there is perhaps a need to spend a little more time checking each other's figures because, on the current proposals, perhaps as many as 96% of all road traffic claims will be captured by the increase to £5,000.

It is therefore undeniable that hundreds of thousands of genuinely injured people could risk losing the basis for their claims being proceeded with effectively with legal representation. It should always be remembered when the House considers such things that legal claims are the primary driver for retaining and improving health and safety standards in the workplace, and that the massive reduction in the number of claims that is likely to be occasioned by these changes will have an adverse effect on health and safety standards. Deregulation in this area increases the risk of injury at work, and the Bill simultaneously would restrict the ability to seek redress. I hope we will have some substantive debate and see substantial changes to this Bill in Committee, and I look forward to getting into the detail to see whether we can make it better.

5.20 pm

Baroness Berridge (Con): My Lords, it is a pleasure to go down memory lane to the nine years I spent as a personal injury and licensing barrister at Kings Chambers in Manchester. During my time as a junior barrister, dealing with road traffic accidents seemed to be compulsory basic training, rather akin to the traffic list in a magistrates' court for the criminal Bar of this era. I should state that I was a member of the PIBA, and I am grateful for its briefing, as well as the advice of the now head of the personal injury department at my old chambers, who happens to be my former pupil mistress, Fiona Ashworth.

As is the nature of the independent Bar, I represented both claimants and defendants, the latter being legally represented through insurance companies as a result of the statutory obligation for drivers to have third party, fire and theft insurance. It is important to note at the outset that it is claimants who are legally unrepresented, unless they have fully comprehensive insurance or free-standing legal expenses insurance. Of course, a claimant may be a passenger, who is obviously under no duty to be insured. This statutory obligation of third party, fire and theft created a huge market of customers for insurance companies, and the quid pro quo of creating this market at that time was the Motor Insurers' Bureau, which the insurance companies paid for to deal with claims when the defendant driver was uninsured. Underlying all of this is the foundational principle that if you drive your car deliberately or negligently so that you damage someone else, in terms of their property or personal injury, you must compensate them. How sad it is that the term "compensation culture" has come to be seen only as derogatory. It is an important plank of any mature justice system. I must state at the outset that I agree with the tenor of the comments of the noble Lord, Lord Monks, and I ask my noble and learned friend the Minister to comment. In my experience, the overwhelming majority of claimants are genuine.

The mischief that the Bill seeks to address seems twofold regarding whiplash claims, and it is to Part 1 that I will limit my comments. Her Majesty's Government have two laudable desires: to reduce insurance premiums and to reduce exaggerated and fraudulent claims. While I believe, along with other noble Lords, that the obligation to obtain a medical report will serve the useful purpose of ensuring that claims are dealt with thoroughly and will help to reduce the possibility of fraudulent claims, I currently have reservations about the introduction of the Lord Chancellor as the creator of a new tariff, the separation out in the personal injury system of compensation of one discrete form of claim, and the proposed levels of the new tariff. I also mention the oddity of the codification of the duty to mitigate.

First, I will address the separation out of one type of claim. I spent more hours than I care to remember poring over what was then the Judicial Studies Board guidelines to assess the value of someone's personal injury claim. After a while, it was described to me that you get a feel for cases, but it is important to remember that the guidelines do not seek to compare apples and pears. There is no mystery to the assessment. These guidelines are based on reasons and analysis as to why certain injuries merit more compensation. Importantly, they enable claimants—perhaps chatting about their injuries in, say, the office or the pub—to have confidence that they can compare, for instance, why a visible scar is worth more than one that is not visible; or why, in general, a fracture will merit more compensation than a soft-tissue injury.

The guidelines hold together as a body of reasoned assessment, and it these guidelines that the Bill seeks to substantially change. It is important to remember, as the noble and learned Lord, Lord Judge—who is not in his place—stated in Simmons v Castle, that the Court of Appeal has the power and a duty to review the guidelines. I would be grateful for confirmation from the Minister of whether the insurance companies maintain that these tariffs are too high for this type of injury, have raised these arguments in the courts and have been unable to persuade them.

I note that my noble friend used the word "proportionate", which is a legal term that could be subject to test in our courts, to challenge these guidelines. Is it that the courts have said that the guidelines are a matter for Parliament to legislate on—to take one section of injuries out of the guidelines as they decided they were unable to do so? Is that also why we have the Bill? Also, am I correct in my reading of the Bill that a whiplash injury to a cyclist, motorcyclist or pedestrian falls outside the tariff? Does a whiplash injury fall outside the Bill if you fall over in the street or are a

passenger on a train that stops suddenly? Even a motor vehicle accident on a private road might be treated differently. These would then be assessed on the Judicial College guidelines, not the Lord Chancellor's fixed tariff. This matters enormously as the amounts of compensation that Her Majesty's Government are proposing in the tariff, in the consultation and the impact assessment, are so much lower than the Judicial College guidelines. How can this be just to a claimant?

I had the privilege, mainly due to court listing procedures on the northern circuit, to sit in waiting rooms for hours talking to genuine claimants. So often, the few thousand pounds of compensation for pain, suffering and loss of amenity was going to have a substantial effect on their finances, enabling them to buy a car, pay off a debt or pay for education, as well as make windfall purchases such as holidays. Why does a car passenger not deserve the same whiplash compensation as a cyclist for the same injury? I could perhaps understand this part of the Bill more if the savings to the insurance companies of reducing motor car whiplash claims had to be passed on through insurance premiums. A mere pledge is just not good enough. Why do Her Majesty's Government think that genuine claimants should not get this compensation and that the insurance company should have the money instead? As the Personal Injury Bar Association briefing states:

"Further, if a claimant is going to be fraudulent or exaggerate a claim, there will be a large incentive to describe symptoms lasting for longer than the tariff provides so as to bring their claim out of the tariff and more than double the amount of compensation they receive. The greater the disconnect between the tariff amounts and the judicial college guidelines and court awards, the greater the incentive to exaggerate the duration of symptoms. Such an approach would undermine the stated goal of the Bill".

Of course, if the tariff is to be the same as the Judicial College guidelines, the statute is superfluous.

Surely such irrational differences between the tariff and the Judicial College guidelines will somehow be justiciable. Maybe someone will now say that the European charter, on which I so happily voted with the Government yesterday, might be the solution. I am not in principle against a tariff system: we currently have one called the Judicial College guidelines and we also have one for the criminal injuries compensation scheme, but the tariff has to apply to all cases so that people can readily understand the fairness of their compensation. Also, why does the government tariff say that a 10-month injury and a 12-month injury merit exactly the same amount of compensation? There is not even a bracket of figures in the examples of the tariff I have seen. How can this be just?

There are other, more complicated, cases that we also need to consider. While the overwhelming majority of soft-tissue injuries caused to the neck, shoulder and back by the forces of deceleration on impact recover within six to 12 months, a small minority of claims—perhaps around 5%— leave permanent damage. Long-term effects can range from ongoing twinges, to accelerating the onset of arthritis, to the more complicated but well-recognised fibromyalgia and chronic pain syndromes. The latter will command substantial levels of compensation. Although these will, of course, fall outside the new tariff outlined in the Bill, it is important to realise that pressure may be put on unrepresented claimants to settle their claim too early, relying on only a basic GP's medical report. Such a report does not even require a GP to have seen previous medical records. People will often need advice to wait and see. I sent back so many claims, saying, "Don't settle now. Wait.". However, we all know of the type of pressurising phone calls that can be made. Are Her Majesty's Government going to make the quid pro quo of these savings to insurance companies that those companies must provide legal advice to an unrepresented claimant? How else will there be equality of arms?

In relation to the Lord Chancellor as the creator of the tariff, I would be grateful if the Minister could clarify whether the Lord Chancellor will have to consult the Lord Chief Justice on Clause 2(2), or even have to consider the Judicial College guidelines when deciding on this tariff. It is hard to imagine that the tariff, if at the levels outlined in government consultation, will not impact on other forms of compensation. Is it the Government's intention to bring down compensation on a whole range of injuries by the use of this statute? Will not insurance companies be able to raise non-tariff injuries and use this legislation to say the Judicial College guidelines are too high overall, trying for a revision of the whole system?

I turn briefly to the duty to mitigate, outlined in Clause 2(1)(b)(ii). It refers to,

"the claimant's failure to take reasonable steps to mitigate its effect",

thereby bringing their case in the two-year period. It seems this might encourage defendants routinely to argue that earlier treatment would have led to lesser injuries so they would be in the tariff, and that is a difficult argument for litigants in person to meet and argue against. I would be grateful to know why the Government are putting the common law duty to mitigate on a statutory footing only in this area and inserting a section that will lead to an increase in the complication of litigation, which I was pleased to see in its briefing that the PIBA did not want to encourage.

In conclusion, the Minister said that three-quarters of the insurance companies have signed up to a pledge. I am surprised that it is not more. Why are we relying on only three-quarters? Will there be a strategy to ensure that the entire industry signs up to pass on these savings? In relation to the abuse correctly outlined by the noble and learned Lord, Lord Hope—I practise in this area—yes, there is an abuse, but the intended, not unintended, consequence of the Bill is to have a significant effect on genuine claimants. Is that a fair balance to strike? There will be an effect on genuine claimants: they will not benefit from the Bill. I fear we are hearing too loudly from the lawyers and the insurers, and I have yet to see any representation purely on behalf of genuine claimants from an organisation with no other vested interests. I hope the Minister will be open to listening and meeting to deal with the concerns that I have outlined.

5.32 pm

Lord Thomas of Cwmgiedd (CB): My Lords, I will address only Part 1 of the Bill, following on from the very eloquent remarks of the noble Baroness.

[LORD THOMAS OF CWMGIEDD]

It seems to me that there are four problems that will have to be addressed, and I will briefly mention them and suggest some solutions. The first is the need for advice and who is to pay for it. This is a problem that runs right across the whole of the legal sector at the moment, and gets more difficult by the day. We need to deal with small claims— small areas where advice is needed—in a proportionate manner, but one that does not incentivise people to bring litigation for the sake of litigation.

Secondly, it cannot be right to categorise a claim as for the fast track or a small claim, simply to enable fees to be recovered. Those are different points: the point of a track is the difficulty of the case.

Thirdly, I welcome the principle of a tariff; this is a novel departure. We ought to look at this and I very much take the point made by the noble Baroness about why we are doing it in this one sphere, which could be met with the remark, "Well, you should pilot it". There is much to be said for setting a simple tariff, for two reasons: one, it gives certainty and two, it enables claims to be settled more easily. I shall return in a moment to the way in which that should be set.

Fourthly, there is the problem of fraud. In my own experience, the insurance industry—not merely in large claims but in small ones—crusades or works very hard to suppress fraud. In the instance mentioned by the noble Lord, Lord Hodgson, what are commonly known as "cash for crash" cases, the insurance industry has instigated significant prosecutions and has made use of the contempt of court rules to seek the imprisonment of those who have brought false claims. It would be helpful to know what the issues and difficulties are, and the proportion of cases where the insurance industry feels there is a fraudulent claim but cannot prove it. It is important when setting the tariff to have some clear idea of why and how you are setting it. Are you setting it to stop fraud, or on the basis that people should be more stoic and should not be paid so much for a bit of pain? What is the basis?

I will return to each of those four points. First, on the provision of advice, it seems that we need to look at this issue more broadly and not separate out those who suffer this type of personal injury. It is wrong that the energies of claims managers and the legal profession should go into this kind of claim and not the much more important types of small claim. If resources are to be used, they should be used for the vindication of serious rights. It is, I think, the experience of everyone that many people have rights they cannot vindicate because they cannot get legal advice. I hope that the Government give serious consideration to funding the Courts & Tribunals Service or some other body to provide proper online advice in this area, in which a great deal can now be done. Last year, City university and others sponsored a hackathon where people tried to create this kind of legal advice online. I hope that efforts will be made to pursue that.

Secondly, on the allocation of tracks, whether a small claim or fast-track claim, it is essential that the courts have the right IT. If they are to have litigants in person, the IT must be designed to deal with those.

Thirdly, on setting the tariff, I listened with great interest to the noble and learned Lord, Lord Mackay of Clashfern, explain the task the Lord Chancellor would have in setting the discount rate. The task of setting the tariff rate, although dealing with much smaller sums, poses some difficulties. He is given no committee—although a committee is provided for in the other part of the Bill—and no guidance as to what he is to take into account. It would be helpful to look in Committee at assistance that could be given to the Lord Chancellor. Certainly, as has been suggested, maybe the judges could give advice, or the Lord Chief Justice could appoint people who can give advice. It is wholly wrong in principle that this should be set by a government Minister without proper legal advice and medical advice, because no doubt over the next few years, medical science will improve so that we have a much clearer idea of how you prove or show that such injuries have been sustained.

Finally, we must address a fundamental problem: what is this compensation level to be set at? Is it to be set to deter fraud, or is it a matter of compensation? If it is the latter, and assuming that an ordinary individual needs advice, who is to pay for the advice? Is that part of the compensation or not? That point must be addressed. You cannot say we are offering fair compensation unless you are clear about the various objectives. I warmly support this Part of the Bill—as I do the other Parts, on which I could not better the comments already made. It has the right principles, but a great deal needs to be done to improve it.

5.40 pm

Lord Faulks (Con): My Lords, I begin by declaring some interests. I am a practising barrister, and Part 2 of the Bill, relating to the personal injury discount rate, is relevant to the size of the awards in cases in which I am instructed by both defendants and claimants. In particular, I declare an interest as acting for the National Health Service and for various medical defence unions in claims of the utmost severity. I should also declare an interest as having being a Minister in the Ministry of Justice between 2013 and 2016, immediately following the noble Lord, Lord McNally, from whom we have heard. During that time, whiplash reform was frequently discussed. However, during my time in the Ministry of Justice, neither Lord Chancellor changed the discount rate.

The Bill, or something like it, has been a long time coming. Noble Lords may remember that in the Queen's Speech a Bill was foreshadowed which would,

"ensure there is a fair, transparent and proportionate system of compensation in place for damages paid to genuinely injured personal injury claimants".

The scope of this Bill, which is,

"to make provision about whiplash claims and the personal injury discount rate",

is much narrower, although I anticipate that the aim of the legislation very much reflects what was said in the Queen's speech. I hope that, at the very least, we will be able to debate the future of Section 2(4) of the Law Reform (Personal Injuries) Act 1948, as referred to by my noble and learned friend Lord Mackay and the noble Lord, Lord Sharkey.

I imagine that most noble Lords will agree that many whiplash claims have contained a strong element of a racket. There may well be a dispute as to how much of a racket, but very few of us will have escaped invitations to commit a fraud, usually on the telephone, inviting us to say that we have been involved in an accident. There is also the sort of fraud suggested to the noble Lord, Lord McNally. There is such an accumulation of anecdote that it becomes beyond anecdotal evidence. I regularly used to receive telephone calls when I was a Minister, inviting me to participate in these frauds. When I identified myself and invited further information to be provided to me, the phone suddenly went silent.

The difficulty, or perhaps the advantage, to some people with whiplash is that it is neither provable nor disprovable by any scans or investigations, and so provides an opportunity for those who wish to participate in a fraud, or simply wish to exaggerate the impact of a particular on their neck or back. I agree with the noble Lord, Lord Monks, that insurers have played their part in what has been this racket. The inclusion of pre-medical offers precluding settlement is definitely a step in the right direction and it is important that it should remain in the Bill.

Part 1 reflects a strategy to restrict the level of damages and to discourage these ambitious, or fraudulent claims. It has been criticised, and I quote the briefing from the Law Society as "arbitrary, disproportionate and wrong". It said that the Bill ignores genuine claimants, and even that the evidence of fraud is very slender. It is true that the existence of a tariff will mean smaller claims for pain, suffering and loss of amenity, although when a scheme of this sort was originally announced, not by the Ministry of Justice, but by the Treasury, it was suggested that no damages at all would be paid for pain, suffering and loss of amenity. However, in this scheme, what are known by lawyers as special damages will be recoverable—that is, loss of earnings or medical expenses attributable to the injury. There is a power, subject to the regulations, for an uplift on the tariff for damages in exceptional circumstances. It is said that this will give rise to litigation—that the changes and the proposed increase in the small claims limit will result in a proliferation of litigants in person. I am sure these and other criticisms, which we have already heard canvassed in the course of these debates, will be debated in Committee. My view is that this part of the Bill is aimed in the right direction and is a necessary correction to the whiplash claims racket.

By contrast, I do not think that there should be much real debate about the need to change the discount rate, which was dramatically reduced as a result of a decision of the then Lord Chancellor, Ms Truss, from 2.5% to -0.75%. Even cautious wealth advisers have described this rate as "incredibly generous", and this is borne out by relevant international comparisons. As we have heard, the Government's proposal is to change the assumption. The result should still be a generous discount rate from the point of view of claimants and should result in fair compensation to them. The Government could in fact have gone further in relation to the assumptions, but have been rather conservative—with a small "c".

I do, however, have a number of issues with this part of the Bill. The first is that it could be some time before it takes effect. The cost to the taxpayer of a change in the discount rate is very high indeed. The Department of Health is a particular loser. The suggestion is that the recent changes may result in a loss of as much as £1.2 billion a year. Furthermore, the cost of clinical negligence claims generally, as revealed in the recent National Audit Office report, has got completely out of hand. Every day that -0.75% remains the discount rate will be a further blow to government, both national and local, as well as to those affected by increased premiums.

There is a 180-day turnaround period between the Lord Chancellor deciding to commence a review and the expert panel reporting back. But the obligation to commence a review begins only after commencement of the Act, and we do not know when that will be. As I understand the Bill, he or she has 90 days after commencement before the 180-day turnaround period even begins, and perhaps my noble and learned friend will confirm my understanding of this. The commencement date—see Clause 11 in Part 3—is on such a day as the Secretary of State may appoint, and so the period does not begin automatically once the Bill is passed. The Lord Chancellor must be ready for these changes. Why can the initial 90-day period in which the Lord Chancellor has to commence a review not be curtailed to, say, 30 days? Surely preparation should be under way for at least some preliminary work on the composition of the panel. I hope my noble and learned friend will be able to reassure the House that the Government intend to get on with this as soon as possible.

My other main concern is the frequency of the review. My experience as a practitioner is that, pending a probable change in the discount rate, parties on both sides, particularly in substantial cases, will inevitably and legitimately seek to game the system. Indeed, I can tell the House that that is going on at this very moment, depending on when trials might take place in relation to anticipating forward changes in the discount rate. If the review is every three years, there will be a constant exercise in guessing whether the discount rate will go up or down. By complete coincidence, the period of five years that was suggested by the noble Lord, Lord Sharkey, and my noble friend Lord Hodgson, is one to which I adhere. I respectfully suggest that it should be five years. What is important is that there should be regular reviews, as opposed to no reviews at all or very infrequent reviews, which, as we have heard, has been the position since the Damages Act came into force.

I am also concerned about the recoverability of investment advice as a separate head of damages. My construction of Clause 3(3) of Schedule A1 inserted by Clause 8 leads me to think that this should not be a separate head of damages as is now the case following the decision of Eagle v Chambers—here I have to declare an interest, as I was involved in that case. Given that the discount rate reflects a degree of advice—or at least proper advice given to a claimant—then surely he or she cannot recover the cost of additional expert advice as once was customary in large cases.

[LORD FAULKS]

Finally, I want to say something about periodical payments. I entirely endorse what a number of noble Lords, including my noble friend Lord Hodgson, have said about periodical payments. I read the Government's response to the House of Commons Select Committee in which they said that they would investigate, either directly or with the help of a third party, whether there are any ways in which the present law and practice regarding PPOs could be improved to ensure that any avoidable obstacles to their use are removed. It seems to me that periodical payments are often much more satisfactory than lump sums and are a clear indication that a claimant is not interested in gambling on the uncertainties of the market or indeed his or her life expectancy, but simply wants to make sure that damages are available, as and when needed, for the rest of their lives.

In this context, I will comment briefly on the speech of the noble and learned Lord, Lord Hope, who was one of the judges in the case of Wells v Wells. He spoke of the power that always existed for having varying rates, according to different heads. I agree with my noble friend Lord Hodgson that some of his anxieties would be and are satisfied by the regular awards of periodical payments, particularly cases of cerebral palsy for example, where life expectancy, even in the time of my practice, varied considerably. It is now very much longer than it was, because of improvements in medical science.

I have thought carefully about whether it ultimately should be for the Lord Chancellor to decide these matters or if there should be a panel, taking it out of the political sphere entirely. Indeed, the political pressures on a Lord Chancellor not to do anything are plainly there in the existing legislative framework. Ultimately, it is appropriate that a Lord Chancellor should decide, albeit with the obligation regularly to review on advice, because ultimately it is a political matter. This was one of the difficulties that the Supreme Court faced because, as the noble and learned Lord, Lord Hope, said, it did not have all the evidence that one might have to come to its conclusion. The Supreme Court does not have what the Supreme Court in America has, so-called Brandeis briefs, with all the information enabling you to make an almost economic or socioeconomic decision. Politicians make what legal academics call polycentric decisions about the appropriate discount rate or any other factor. That is not something that courts in this country are able to do.

In my view, subject to hearing further argument, the structure of the Bill in this respect is right. We want a fair system of compensation for both sides in litigation, and one that commands public support. The Bill, though capable of improvement, should do this.

5.52 pm

Lord Hayward (Con): My Lords, it is always a daunting task to follow my noble friend, who is such an expert in this field. I intend to raise three non-legal points on the Bill, in the view that it pursues the right course, but there are certain questions that are worth raising.

First, I fall into the category of the noble Lord, Lord McNally, as the insurance industry settles too often, too quickly and in too many cases. I disagree with the observations of the noble and learned Lord, Lord Thomas, but that does not necessarily mean that I disagree with either the noble Lord, Lord Monks, or the noble Baroness, Lady Berridge, in their comments, because those that are settled too early do not necessarily go to lawyers to be dealt with.

I will cite two personal circumstances, as others have done. First, when I was chief executive of a business, we were confronted by a malicious claim in relation to racial discrimination. I referred it to my chairman, who said that he wanted us to fight it because it impugned the honour of a number of members of staff, including me, and we were in a financial position to do so. We fought the case and it was settled the day before it went to court by the individual making the claim withdrawing. We paid not one penny, but there was a cost.

There is a clear message for the insurance industry: it is about time it fought a few more cases. I say that because the first time I ever asked a Question in this House was in relation to the case of Mr John Elvin. Rather like the noble Lord, Lord McNally, he was involved in a false claim. He identified it to the insurers on the Monday, because it had happened on a Saturday. He said, "I am convinced this is a false claim". The insurers, esure, chose to do nothing. It settled it.

The community at large suffers, not only the individual, because we all have to pay for that. The insurers should challenge a few more cases. As I say, in this case the individual had absolute chapter and verse in relation to what had happened and warned the insurance company before it was even contacted by the other party that this was going to be a false claim. It could and should have pursued it. Having cited it in this House, did the insurers come back and say, "You have cited an incorrect case and you haven't got the facts right"? No, they were absolutely silent. The insurance industry has a lot to improve on, because this should not be a "protect the insurance industry" Bill, it should be a "protect the consumers" Bill, which overall I believe it is.

The noble Lord, Lord Sharkey, and others have identified concerns about what can be taken at face value from the insurance industry. Those are quite reasonable questions to ask. I for one have experience of discussing this issue with representatives from insurance companies, not only as regards individual cases but in terms of their general approach. Around a year and a half ago I listened to the evidence given by the ABI to a Select Committee in the House of Commons. The association blamed everyone else, even to the extent of when explaining the difference in practice in other European countries saying, "Oh, there is a different driving style there". Well, people drive on the other side of the road, but I am not sure that there are that many other differences in driving style that would result in us being identified as the crash claims capital of Europe. The insurance industry has something to answer for in this area.

One other area that has not been touched on during the debate in terms of its implications, although it has been identified, is the ramifications for the health

service. If we are to ask people to get signed documentation in one form or another, by implication that will result in an increased burden on the health service. I am not sure how well it will cope with the extra demand and I am also concerned about the prospect of people pressurising GPs and hospital specialists by saying, "Please sign me off for six months. No, I would like nine months. No, I would like 12 months". People will push it up in one form or another. It is right to go for some form of medical certification, but we should recognise the implications of the burden it will place on the NHS.

Thirdly, I look forward to the future possibility of other similar legislation. If we do not resolve the problems in relation to the insurance industry, claims companies and others pursuing this matter, as the noble Lord, Lord McNally, implied, we will be back in this Chamber considering a "civil liability (schools injury)" Bill, a "civil liability (visiting public buildings injury)" Bill and a "civil liability (travel industry)(sickness on holiday in Benidorm)" Bill. We have to recognise that if this issue is not tackled properly at its source—I believe that the different participants are all responsible—we will need many more pieces of legislation to resolve the problems that we are currently trying to resolve in one field.

5.58 pm

Lord Cromwell (CB): My Lords, it is a tradition in this House to say what a privilege it is to follow the previous speaker. As the 15th speaker in this debate, I have to say that I have enjoyed and learned from all 14 speeches so far. It has been a real privilege to listen to this debate because it reflects the House of Lords at its best: terrifyingly well qualified; taking a roughly hewn Bill and making it even better, and I am sure that the Minister is extremely grateful for all the questions and advice that he is receiving. Well, all good things must come to an end.

I intend to speak on the personal injury discount rate, and in particular the panel that is being established to advise on it, about which I have some questions for the Minister. I wish first to make a general point. It is essential that in a Bill that combines whiplash claims, an area that is infamous for mischief, and the discount rate for personal injuries as a whole, we are not tempted into viewing all claims, or even most claims, as excessive or fraudulent, a point made powerfully by the noble Baroness, Lady Berridge. There are, of course, opportunistic claims and, in some cases, a collusive sub-industry seeks to profit from them, but there are also many injury claims that reflect tragic and agonising circumstances for individuals and their families. It may be that it is too easy for false claims to be effective, but that is wholly separate from determining the value of compensation claims that are found to be genuine and on which the discount rate has a profound effect.

In swinging the pendulum away from apparently excessive claims, we must not allow it to travel so far that it treats genuine claims unfairly or distorts their real value. As the Justice Select Committee reported,

> "it may be simply increasing levels of under-compensation for claimants who were already under-compensated".

The noble and learned Lord, Lord Hope, also touched on the difficulty for a claimant who, in a depressed market, has to eat into capital and is thereby unable to recover their position later. We need to be mindful of such unintended consequences. As the Minister reminded us, there is a person behind every claim.

Turning to more specific matters in the Bill, relating to the changed approach to the discount, who are the winners and losers? The winners are those who save substantial sums through reduced payouts: the Government, the NHS and insurers. Some might say that this not a bad thing, particularly if the results in reduced premia are passed on—something that a number of speakers have touched on and expressed a certain amount of cynicism about. However, the losers are people whose lives may have been damaged or curtailed, who may be in lifelong pain and who have to make the payout last them to the end of their days. The winners win at the exact expense of the losers.

I invite the House to consider the question of the inequality of arms between the winners and the losers. The winners are large, well-organised, well-connected and articulate bodies with financial interests in the outcome; they are able to draw on a depth of expertise in the rather arcane world of predicting investment returns far into the future. Contrast that with the losers of the new arrangement. These are typically individuals who have suffered an injury. We cannot assume that they are well-resourced, that they are acting collectively, that they are familiar with theories on investment returns or that they are erudite in subjects such as yield curves or risk profiles. I note that the Justice Select Committee report contained these words:

> "We advise caution in considering evidence of claimants' investment behaviour to set the discount rate. Investment by claimants in higher risk portfolios could indicate they are under-compensated and forced into higher-risk investments to generate sufficient return for their future living expenses".

In the same report, the committee highlighted the inadequate evidence of real behaviour of people seeking to invest safely for their future—a future of uncertain duration, as pointed out by the noble and learned Lord, Lord Mackay of Clashfern, uncertain health and uncertain investment returns. The government response to that report accepted that the evidence is indeed limited.

In short, these people need protecting. I do not think that there is any disagreement about that. They are wholly dependent on the Lord Chancellor and the panel set up to determine the discount rate. I am concerned that both the panel and the Lord Chancellor have an incentive, perhaps even a temptation, to keep the discount rate just a shade higher than it should be—what the noble and learned Lord, Lord Hope, referred to as a "tension" in the arrangement. I note that in the Ministry of Justice impact assessment, 45% of the 92 respondents favoured retaining a very low-risk approach, so I do not think that we are looking at unanimous support for the new approach to a higher discount rate.

In its equalities statement, the Ministry of Justice concludes:

> "The proposals will therefore be likely to reduce the amount of compensation that claimants receive unless they can demonstrate that a different rate should apply".

[LORD CROMWELL]

Does the Minister really think that a claimant will be able to persuade a court or the Lord Chancellor that a rate should be changed? Currently, I believe, courts can vary the rate but never do so. I look forward to him correcting me or confirming that.

My second question is: can the Minister tell the House how the powers of the Lord Chancellor are to be contained such that he or she is prevented from perhaps guiding or even overriding the panel, especially as the panel is chaired by the Government's own actuary, and that person will have two votes out of a total of six?

Turning to the panel itself, it has five members, quorate when only four: the Government Actuary, another actuary, an economist, an investment manager and a person familiar with,

"consumer matters as relating to investments".

Those are four very clearly technical roles, although getting an economist and an investment manager to give an unambivalent view or one consistent across their professions is always something of a challenge. Each of these four panel members will be aware of the background to their appointment—that rates have been too low and need to be increased. Any dissent from raising rates may be considered too soft-hearted or too pessimistic about future economic growth, which itself is often a matter of political perspective. In short, there may be subtle pressure to pitch the rate a bit higher. Only a small adjustment in the rate will save the winners many millions but could spell a lifetime of struggle and hardship for the losers.

That leaves one role, which, by contrast, sounds to me pretty vague. I note that they are the last person listed as a panel member, and it feels slightly as if they have been bolted on as an afterthought, but perhaps I should not read too much into that. It would appear that this person is almost expected to sign off on behalf of consumers—in other words, on behalf of those receiving these payments. That is going to have to be a person who is not only extremely robust in negotiation but also multi-skilled in the technical areas represented by those who outnumber them, in vote terms, five to one. Otherwise, they are likely to find themselves outgunned or simply overwhelmed by the views of the other committee members, to say nothing of having only a single vote. My third question to the Minister is: can he tell the House whether, and on what basis, he feels that the last panel member is sufficient to counteract an inherent tendency for the panel to adopt a perhaps marginally overoptimistic view of the economic future? I say again that even the smallest tweak upwards in the discount rate will have a very significant negative consequence for the claim.

My final question to the Minister is: can he look again at the composition of the panel and the roles of the panel members so that he can assure the House that there is a fair balance of representation, both numerically and in terms of firepower? So often it is possible, in seeking to right one wrong, unintentionally to create another. This Bill in large measure seeks to prevent false claims of overpayment, but we must not in the process end up with a system that could deprive of adequate compensation those who need and deserve it.

6.08 pm

Lord Ribeiro (Con): My Lords, I find myself not only at the end of the list of speakers but surrounded by lawyers and other more knowledgeable people than I on this subject. The Bill affects patients—those who have been injured and those who seek compensation. As a clinician, I have witnessed some of these injuries, which range from merely a stiff neck to a quadriplegic patient, as was mentioned by the noble and learned Lord, Lord Hope of Craighead.

I have also despaired of the length of time it takes before cases are settled and compensation made. Sadly, in some instances the patients involved receive substantially less than their lawyers and claims companies. Unlike car or house insurance, in which the insurer knows the accident falls within the terms of their policy, clinical negligence poses a unique problem. The doctor often does not know that there has been an incident that might result in a claim for negligence. Clinical negligence cases have a long tail. The doctor is often notified three to five years after the incident.

The Medical Defence Union, to which I am grateful for providing some of the data I will be using today, noted 1,000 claims since 1995 with more than ten years between the incident and the notification. The limitation period on claims is three years from the date of the incident or three years from when the patient was aware that the alleged negligence had occurred. The long tail means that indemnifiers need sufficient funds to pay claims years into the future.

As we have heard from many speakers, the drastic change in the discount rate from 2.5% to 0.75% from 20 March last year has had the practical effect of inflating substantially awards to patients and litigants. I shall give one example from a surgical context. Before the discount rate, the MDU's highest payment on behalf of a consultant member was £9.2 million to a patient with a spinal injury, who would be expected to live for many years. After March 2017, a similar claim would cost £17.45 million. With children, it is even worse, because they have a much longer future ahead of them. In one case involving a GP, a child aged 14 with a 50-year life expectancy would have expected to receive £8.4 million at the 2.5% discount rate. That same patient would now receive £17.5 million at the 0.75% rate.

The financial crisis related to this policy is huge. When inflation is added to a claim—let us say at 10%; I know that the rate is lower at the moment—claims double every seven years. The National Audit Office produced a good report on this matter in September 2017, *Managing the Costs of Clinical Negligence in Trusts*, where it recognised the problem and noted that the drivers of the cost of clinical negligence claims are related to the legal and economic environment and are not linked to patient safety—I shall return to patient safety later and how the health service safety investigations body legislated for last year can help reduce litigation through a learning culture.

The spiralling cost of claims is beyond the control of doctors and other healthcare professionals. Paragraph 16 of the NAO's report states:

"There is no evidence yet that the rise in clinical negligence claims is related to poorer patient safety, but declining performance against waiting time standards is one factor which increases the risk of future claims from delayed diagnosis or treatment".

The NHS Resolution annual report for the financial year ending 31 March 2017 focused on the impact of the discount rate and the financial crisis that it had caused for the NHS. It stated:

"The liabilities arising from incidents up to 31 March 2017 for all types of claims have increased significantly, with the provision reported in our accounts increasing from £56.4 billion in 2015/16 to £65.1 billion in 2017/18. In addition to the changes in discount rate factors, these increases are due to continued inflation for damages awards and legal costs, and the growing number of cases where we provide for the cost of care for life".

In a letter to the Lord Chancellor in January 2018, the NHS Confederation raised the issue of rising costs and the impact of the discount rate. It noted that the Chancellor of the Exchequer's Budget speech of March 2017 had indicated that the Government had put aside £5.9 billion for three years to 2020 to protect the NHS from the effects of the change in the personal injury discount rate. My question for my noble and learned friend the Minister is: what happens after 2020? If the problem is not resolved by then, costs will surely rise. Perhaps the Minister can say where we are with the consultation on the discount rate being carried out by the Ministry of Justice and when we can expect to learn the results. What progress are the Ministry of Justice and the Department of Health and Social Care making on the recommendation of the National Audit Office that a co-ordinated strategy is required to manage the growth in clinical negligence costs by September 2018?

One major block to reducing clinical negligence costs to the NHS is, as was mentioned earlier by the noble and learned Lord, Lord Mackay, the noble Lord, Lord Faulks, and other noble Lords, is Section 2(4) of the Law Reform (Personal Injuries) Act 1948. I look forward to hearing more about this, and I hope that the Minister will be in a position to provide an amendment in Committee so that we can explore it a bit further.

There is no doubt that Section 2(4) was enacted in good faith at the birth of the National Health Service—70 years ago in 1948. It completely ignored care that could be provided in the NHS. One wonders whether this might have been—it is just my thought—because few lawyers in those days would have considered seeking treatment in the new health service, preferring to stay with what they knew best. Currently, however, bodies such as the Medical Defence Union, the Medical Protection Society and NHS Resolution are prevented by Section 2(4) from compensating patients on the basis of care provided by the NHS—even if that care is of a high standard and has been provided before the award. Thus, billions of taxpayers' money earmarked for the NHS finds its way instead into the independent care sector.

Currently, a claimant awarded damages on the presumption that he or she will pay for care and treatment privately is not precluded from using NHS care. Some claimants, having been awarded compensation, have admitted that they have gone on to use the NHS. That seems like a double whammy if ever there was one.

Surely it is time to stop robbing Peter to pay Paul. It is time that Section 2(4) of the 1948 Act was repealed. Unless we do that, I have great concerns about the long-term sustainability of the NHS and social care, a subject that we shall debate on Thursday. I have grave concerns that we will not be able to fund the NHS if it continues to incur the liabilities so graphically described by many speakers today. The NAO report shows that in 2016-17 10,600 new clinical negligence claims were registered with NHS Resolution under the Clinical Negligence Scheme for Trusts—CNST. Furthermore, NHS Resolution spent £1.6 billion on claims in 2016-17 and there is a £60 billion provision to pay for the future cost of claims arising in 2016-17.

This is unsustainable. As in the film "We Need to Talk About Kevin", we need to talk about repealing Section 2(4). Although the scope of this Bill is tight, I am sure that there are enough noble and noble and learned Lords here to make it possible to include this.

Finally, the proposed health service safety investigation body will provide an opportunity to address the rising cost of litigation and a safe space for healthcare professionals to meet and discuss healthcare issues—and near misses—that could lead to litigation. The NAO proposes a safety and learning team to engage with trusts on patient safety issues, but I believe that in the HSSB we will have a force for good that could do much to reduce the cost of litigation and at the same time improve patient safety.

More medical input has been suggested, and I agree with my noble friend the Minister of State that no settlement should be possible without a medical report. I agree, too, with the views of the noble and learned Lord, Lord Thomas, and the noble Lord, Lord Faulks, that a committee—advisory or otherwise—supporting the Lord Chancellor should include a medical expert, for the reasons the noble and learned Lord, Lord Thomas, gave. Medical knowledge and diagnostic assessments and skills are improving continuously and we may reach a point when we can set a timeframe for how long an injury may last.

6.20 pm

Lord Marks of Henley-on-Thames (LD): My Lords, we have had an extremely strong debate with important contributions from all noble Lords who have spoken, which has delivered much to consider in Committee.

I will begin with whiplash claims. There has plainly been an explosion of such claims over recent years, many of them exaggerated, unnecessary or fraudulent, even if the last few years have not continued that upward trend. My noble friend Lord McNally and the noble Lord, Lord Hayward, made the point that not only false whiplash claims but other claims have mushroomed. There can be no doubt that the ban on solicitors paying referral fees has helped to restrict the trend but there is considerable evidence of the ban being circumvented, particularly with the help of claims management companies.

Cold calling generates a great many claims—the noble Lord, Lord Faulks, is not the only Member of this House with repeated experience of this—but the very fact that this practice is so widespread suggests that not everyone responds with a rejection. I understand that it is difficult to control cold calling by claims management companies operating from abroad but there is no excuse for our not doing everything we can to stop this direct incitement to fraud. We agree with the Government that we must try to stamp out unmeritorious, exaggerated and fraudulent claims.

[LORD MARKS OF HENLEY-ON-THAMES]

If I may be permitted to add to the accumulation of anecdotal evidence, my wife had a similar experience to that of Lady McNally when she hit the back of a car that was in front of her, ever so gently—so she tells me, anyway. Out stepped five strong young men, on their way to a paintballing and laser-gaming session. They were polite, charming and concerned as to whether my wife was all right, and they all assured her that they were fine. So off they went to their paintballing and laser gaming; a week later, my wife received a claim for some £13,000 in respect of their five alleged whiplash injuries. She told our insurers that she did not believe any of them were genuinely injured and that they had all told her they were unhurt. We have not found out whether the insurers paid out but, since we have heard nothing further, I suspect that they did. This illustrates a major problem, which is that it is often easier for insurers to give in and pay small claims than to investigate and fight them—a point made by the noble Lord, Lord Monks, and others. It is a point that will not be assisted by reducing the amount payable in such claims.

However, while we must do everything we can to stamp out false claims, in so doing we must take care not to prevent those with genuine claims recovering fair compensation. I reiterate the point made by a number of noble Lords: it is unfortunate that this legislation is being dealt with separately from the Government's proposals to increase the small claims limit, with which this legislation is closely connected and which will have a number of significantly unjust outcomes.

First, increasing the small claims limit for personal injury claims to £5,000 would prevent cost recovery for claims below that sum. It would thus deny very large numbers of genuine claimants legal advice and representation because the only way they can afford lawyers in these cases is by relying on conditional fee agreements and the recovery of costs from insurers—a point well made by the noble Lord, Lord Monks, and the noble Baroness, Lady Berridge. This will affect not just road traffic accidents. My noble friend Lord Sharkey mentioned the plight of other vulnerable road users, including cyclists and pedestrians, who will find it difficult to bring claims without legal help. Many other claims will be affected as well.

The increase in the small claims limit will increase the number of litigants in person and reduce access to justice in general, hitting, as always, the most vulnerable citizens the hardest. Furthermore, the increase will take the vast majority of whiplash claims outside the pre-action protocol for low-value personal injury claims in road traffic accidents and the portal associated with it, which, for all its faults, has provided a route to settling many of these claims quickly and economically. If the small claims limit is to be increased, then I suggest the scope of the portal and the protocol should be broadened, or at least we should have a new parallel protocol to assist claimants in person in these cases. I draw some support from the speech of the noble and learned Lord, Lord Thomas, in that regard, but I regard £5,000 as simply too high for the small claims limit and would endorse the £3,000 figure proposed by the Bar Council and the Personal Injuries Bar Association.

Turning to the detail of the Bill, I share with my noble friend Lord Sharkey and the noble and learned Lord, Lord Hope, the view of the Delegated Powers and Regulatory Reform Committee, expressed in trenchant terms, that it is inappropriate that whiplash is undefined on the face of the Bill and that the initial tariff for damages is left to be determined by regulations. We hope that the Government will follow the usual line and conventional course of accepting the committee's recommendations before the start of Committee on 10 May and put down amendments defining whiplash injury and spelling out the initial tariff in the Bill. As to the figures suggested for the tariff in the impact assessment on the whiplash proposals, included in the information pack helpfully provided by the Government, table 6 on page 26 says it all. The Government have in mind to reduce the damages for pain, suffering and loss of amenity for injuries of less than three months' duration from £1,800 to £235, and for injuries of three to six months' duration from £2,250 to £470 and so on. These are drastic reductions indeed. It is pretty clear that the intention is to make such claims not worth bringing. We are all for getting rid of fraudulent and unmeritorious claims; we are not for denying honest claimants reasonable compensation for genuine injuries.

We can see the reasoning behind the proposal that claims should not be settled without medical reports, and I should add to my registered interest as a practising barrister—I am not sure this is a declarable interest—in that I have recently represented an insurer in a case involving such settlements. We can see why making medical reports compulsory is likely to deter false and inflated claims. I do, however, stress the need for reporting doctors to question claimants' accounts of whiplash injuries closely in order to weed out inflated or false claims. One of the difficulties with whiplash injuries is that generally, all the doctor has to go on is the account of the patient. Another, is that the estimation of duration is usually carried out in advance and is notoriously both difficult and variable.

However, to avoid unfairness to genuine claims, the cost of medical reports—which I understand from MedCo to be some £180 plus VAT—must be recoverable. I have asked the noble and learned Lord to find out about that, but have since noted that in paragraph 5.121 on page 33 of the impact statement, an expectation is noted that:

"Insurers will have savings for 120,000 medical reports they would no longer be responsible for of around £22 million per annum, and associated medical report VAT of about £4 million per annum".

Doing the maths, 120,000 multiplied by £180 is £21.6 million. So it is pretty clear that whoever compiled the impact assessment expected claimants with injuries likely to have a duration of less than three months to pay £216 including VAT for a medical report in the hope of recovering £235, leaving the princely sum of £19 to represent compensation for the injury. The tariff proposed in the impact assessment is far too low, and in this I am afraid I disagree with the noble Lord, Lord Hunt of Wirral.

Furthermore, I can see no reason why the tariff should be set by the Lord Chancellor. If there is to be a tariff—though I agree with the noble Baroness, Lady Berridge, that flexible guidelines may be better, and I

agree with the observations of the noble and learned Lord, Lord Thomas—is not the sensible proposal that any tariff should be established by the Judicial College? Why should damages for whiplash injuries not be comparable to damages for other injuries? The Government have made no convincing case on that.

My last point on whiplash is that all the savings from these reforms should be passed on to policyholders. I am not convinced by the Government's touching faith in the insurance industry, nor even by the regulatory stick mentioned by the noble Earl, Lord Kinnoull. I would like to see a healthier scepticism on the part of the Government and, if need be, a clear statement that if savings are not passed on to policyholders then the industry may be subjected to a tax penalty on a windfall saving.

I turn, more briefly, to Part 2, on the discount rate. We support the move from a very low-risk to a low-risk investment assumption, principally for the reason given by the Minister that in practice the investment of damages is not generally undertaken on a very low-risk basis. In particular, we fully accept the need, on which the noble Lord, Lord Ribeiro, expounded, to reduce the cost to the NHS of catastrophic injury clinical negligence claims. I urge the Government to accept the suggestion made by my noble friend Lord Sharkey and the noble Lord, Lord Faulks, that we try to move faster in implementing the first change of rate, as the present negative rate is so plainly wrong, as the noble Earl has persuasively argued. Defining the level of risk is difficult, though, and I join the noble and learned Lord, Lord Mackay of Clashfern, in seeking more guidance from the Government on their approach; there is too little at present.

We are also unclear as to why it has to be the Lord Chancellor who determines the discount rate. The Government have said this is a political decision, but are they really right about that? Why should the expert panel not report to a judge or judges or to the Judicial College, taking on an expanded role? The speech of the noble and learned Lord, Lord Mackay, illustrated the difficulties facing a Lord Chancellor in this task.

I am also unpersuaded that a fixed period of three years for the time between reviews is appropriate, but I do not accept the point made by the noble Lord, Lord Faulks, and others that a fixed five-year period should be a substitute. Interest rates change fast in some periods and very slowly in others. Would it not be better for the expert panel to meet annually or every two years to consider whether the discount rate needed changing in the light of circumstances? If the panel's view were that no change were needed, the rate would be left unchanged. If the panel thought the rate did or might need to change, it could conduct a full review and produce a report, which, as I say, I suggest could be to the Judicial College.

On the composition of the panel, I accept that an independent panel of experts is intended rather than one representative of either claimants or insurers. However, I suggest that to meet the point made by the noble Lord, Lord Cromwell, the legislation should include a requirement that the panel consider the interests of claimants and insurers even-handedly. I also accept that it should include a medical expert.

Lastly, I turn to periodical payments in cases where there are long-term elements to awards, often for the long-term care of the catastrophically injured, of whose claims the noble and learned Lord, Lord Hope, spoke so movingly. Unfortunately, the take-up of periodical payments orders has been low. This may be partly because the discount rate has been very low so that lump sums have been unduly high. I suggest, or suspect, that many claimants and their families are also attracted by lump sums even where periodical payments would be more suitable. The problem with lump sum awards is that expectation of life is actuarially determined and, as the noble Lord, Lord Hodgson of Astley Abbots, pointed out, it can therefore never be exactly right. Some claimants die earlier than expected, leaving a windfall inheritance for their heirs. More seriously, others live longer than expected so that their damages run out well before they die and they are left without the lifelong support the court intended them to have.

Will the Government make proposals to encourage greater use of periodical payments orders? I note the support for them expressed by the noble Lords, Lord Hodgson, Lord Beecham, and others. They provide some answers to the point made by the noble Lord, Lord Cromwell, on the need to protect claimants from the effect of a raised discount rate. I am entirely unimpressed by the argument that defendants' insurers, the Medical Defence Union or others prefer to pay out lump sum. These parties after all represent the tortfeasors and if they are required in this sophisticated economy of ours to re-ensure so as to pay out what are in effect annuities in place of lump sums, I see no reason why they should not do so.

I also join the noble Lords, Lord Sharkey, Lord Ribeiro, Lord Faulks and the noble and learned Lord, Lord Mackay, in inviting the Government to revisit the basis on which medical treatment is costed under the 1948 Act. If a way could be found to do so, it would be a beneficial use of this House's time.

I close by expressing my gratitude to the Minister and the noble Baroness, Lady Vere, for arranging a very helpful meeting of all Peers to discuss these reforms and to consider amendments. I look forward to working with the Government and others to improve this Bill.

6.37 pm

Baroness Chakrabarti (Lab): My Lords, one noble Lord's declared interest is perhaps another's experience and expertise, or perhaps even better put, interests and experience can sit simultaneously with a noble Lord. Perhaps uniquely, in what has been an incredibly thought-provoking debate, I seem to be without interest or expertise. However, I have listened with enormous care to the wonderful tutorial that noble Lords have given me. I have read, as have so many other noble Lords, many submissions to which we have had access in this House. Just as I respect the interests and experience of those debating inside this Chamber, I do not think it is completely fair to suggest that everything from outside is, as one noble Lord suggested, noise.

The noble Lord, Lord Faulks, said that there are some real polycentric issues at stake and important, occasionally competing, concerns. I do not accept that all insurers are unscrupulous, nor do I accept that all

[BARONESS CHAKRABARTI]
claims are fraudulent or indeed, that all professional legal practitioners who are trying to do their best for their clients in this area are ambulance chasers. Further, I too have had the benefit of meeting the Minister, so nor do I believe that Her Majesty's Government are somehow completely captured by the insurance industry in what they are trying to do in this Bill. However, to improve it requires listening to some of the concerns that have been expressed both inside and outside the Chamber.

The Bill addresses its purported targets by—how can I put it?—circuitous routes. It is concerned with, at worst, fraud and, at best, inflation of, for example, whiplash claims. I agree with, I believe, the majority of noble Lords, that compulsory medical reports before settlement must be a good idea. It would be good to see clear provision in the Bill for the cost of such reports to be met by insurers where settlements are made. That seems completely fair, and might be something we could look to. But, essentially, the Bill does not directly deal with fraud.

Another stated target is unscrupulous claims managers and McKenzie friends. Again, there is nothing in the Bill about that public policy problem and social evil. These problems have been pointed out by a number of noble Lords, including the noble Lords, Lord McNally and Lord Hodgson, the noble Earl, Lord Kinnoull, my noble friend Lord Monks and the noble Lord, Lord Faulks. We know that there is some level of problem here; I do not think anyone doubts that.

Another target is the unfairness of overly high insurance premiums. Again, the Bill does not directly regulate insurance premiums. We are told that industry leaders have made a public pledge to pass on the benefits of limiting claims to insured persons, but there is nothing in the Bill at the moment to give teeth to that promise. It would be helpful to so many people to hear from the Minister about the teeth in that promise.

Finally, a target of the Bill is said to be devastating pressures on the NHS, and perhaps on social care, too. Again, this is a very indirect approach towards the devastating pressures on the NHS and on social care in this country at this time. I echo the sentiments of my noble friend Lord Beecham—perhaps other discussions need to be had about the 1948 Act and so on—that that devastating pressure has ultimately to be met with a more honest conversation about taxation with a country that loves its NHS.

Those are the targets. But, instead of the direct approach, the Bill approaches these problems somewhat indirectly. First, in relation to whiplash injuries in Part 1, it does this by limiting damages in a particular class of claims. I have to say that, on a day when there have been very special celebrations in Parliament Square, I was a little sad to notice that I was to be just one of two noble Baronesses speaking in this Second Reading debate. But that disappointment began to fall away when I heard the extraordinary, eloquent and principled speech from the noble Baroness, Lady Berridge. She spoke of the need to hear the voice not of lawyers, insurers or any other professionals and experts but of victims. I can only tell her that we heard that channelled through her voice today, and I am sure that people outside will be very grateful for that. She pointed out with particular clarity the problem of principle in singling out one class of victims—not even a whole class of victims but a class within a class of victims—and saying that they must have their damages limited by the Bill and by regulations under it, as opposed to other victims, who may also be inflating or misstating their claims.

That is a matter of principle and will be a concern for people on the outside who are looking to understand what is behind this legislation. It is important to address that principle if we are to retain the public's trust in the legislative process and in public policy making. I moved closer and closer to the noble Baroness's devastating logic when she spoke about the role of the Judicial College and her concerns about why these particular damages should be set by the Lord Chancellor, not by the judges, as with all other tortious damages in our law. The Minister will, no doubt, address her concerns.

The second circuitous route, and a matter of enormous concern expressed on all sides of the House, is the incredibly broad delegation granted to the Lord Chancellor in defining whiplash and then setting the level of damages. The Delegated Powers Committee's findings on this cannot be easily ignored. We listened to the concerns and I hope we can take them on board in amendments as the Bill progresses. The noble and learned Lords, Lord Hope and Lord Thomas, the noble Lord, Lord Sharkey, and many other noble Lords pointed out that to give the Lord Chancellor the defining power over the problem and then the further power to set the damages is a step to far. It is a precedent that we do not want to set in any Bill. It is a wider constitutional point that applies to this Bill and we do not want to be doing it in future. It is a problem in relation both to the rule of law—and clarity and certainty in law—and to parliamentary sovereignty as opposed to ministerial fiat. I hope that the Minister will take that on board and that there can be further clarity and definition on the face of the Bill.

The third concern that has been expressed is about inequality of arms and, in particular, the effect of combining measures in this Bill with the increase in the small claims jurisdiction. As the noble Baroness, Lady Berridge, pointed out, in practice even amounts of money which are small to the ears of those of us in this Chamber are incredibly important to a lot of people who will hear about, and perhaps read about, this debate. Small amounts of money can be life changing for people. To leave a greater number of people who have been the victims of even relatively minor injuries unrepresented, with no means of recovering costs and, therefore, no means of getting proper representation, is an affront to access to justice. In the civil sphere in particular, that has already been diluted, if not positively undermined, in recent years.

The Bill attempts to nudge victims, even those with quite serious injuries, into becoming slightly higher-risk investors. Some on the outside have suggested that they are to become stockbrokers and have the confidence and expertise to become more adept at investing and managing single lump-sum payments. Noble Lords will have read the argument against that. Equally, the noble Lords, Lord Hodgson and Lord Faulks, and others have pointed to the inescapable logic of the

preference for periodical payment orders. Yet there is nothing explicit in the Bill to incentivise those orders, as opposed to encouraging slightly higher-risk investments or discouraging playing it safe. In the case of an ordinary lay person who is not used to managing investments, particularly if they have had a serious personal injury, one can understand the instinct for playing it safe. Again, that was pointed out by several noble Lords. The point about lack of representation was mentioned particularly by my noble friend Lord Monks and the noble Lord, Lord Marks. I agreed with so much of what he said.

It is always worth listening very carefully to the noble and learned Lord, Lord Mackay of Clashfern, on matters of this kind. As I heard references to the discount, the complex nature of this decision, what is being asked of the Lord Chancellor in Part 2 and the prophet-like powers that the noble and learned Lord described, echoed by the noble Lord, Lord Marks, and others, I really thought that we might give further thought as to how we could achieve greater clarity, transparency and accountability in the Bill for this incredibly complex decision over which so much might turn for victims and claimants on the one hand, but also, as the noble Lord, Lord Ribeiro, and others pointed out, for the NHS. I hope that on that matter, as well as on so many others in this Bill, there will be real room for the kind of thoughtful debate and constructive collaboration to improve what I believe to be a genuine attempt to balance a number of important societal interests.

6.51 pm

Lord Keen of Elie: My Lords, I thank the whole House for all the contributions on the Bill today. I might not answer every query posed during this stage of consideration, but—and I hope this reflects the steps that we have taken already—I would be perfectly open to, and would welcome, meeting any of your Lordships who wish to engage with me and officials prior to Committee to discuss particular issues. That is an invitation I hope at least some noble Lords will consider taking up if they have any queries.

Clearly, there are different views about the state of the Bill at this stage, but I could not accept the observation made by the noble Lord, Lord Cromwell, that it is rough-hewn. Respectfully, it appears to me that a great deal of work has been done to prepare for the issues that we shall have to address. I will look at those issues in two parts, as does the Bill, and begin with whiplash.

The noble Lord, Lord Beecham, took issue with some of the statistics and suggested that perhaps matters had turned, but let us be candid. I shall not use some of the terminology used by noble Lords about a racket or anything else. What we have is a very obvious and clear trend in the development of claims for road-traffic-based whiplash injury. It has been going on for more than 10 years. The consequences are very clear and obvious; it may well be that we should have considered acting sooner to address this issue, but act we must and that is what we intend to do.

The *New England Journal of Medicine* recently carried out an analysis of the incidence of whiplash injury and the availability of compensation. It discovered a very obvious correlation between the availability of compensation and the incidence of whiplash claims reported in road traffic cases. The noble Earl, Lord Kinnoull, observed that when he attended meetings with the reinsurers Munich Re in Germany it had alluded to the situation in the United Kingdom, which is quite exceptional. Unless Scandinavians have much thicker necks than us in this part of the world, there is little to conclude except that a claims culture has developed, because the incidence of these claims in that part of the world is very different from our own.

We therefore have to address how these claims will be contained in the wider public interest and, ultimately, in the consumer interest. However, I do not suggest that any one part of the community is wholly or solely to blame for the situation we now find ourselves in. For example, I do not demur from the suggestion that insurers have been complicit in the development of this claims culture over the past 10 years or more in their willingness to avoid undue expense and simply to settle claims without the necessity for any form of real evidence. Many noble Lords have experience of that themselves.

However, there is some rationale to the way in which we are attempting to approach this matter, and it includes the reference to proposed changes in the small claims limit as well. The idea of a tariff is not entirely novel; such an approach has already been taken in Italy and in Spain, where they faced a similar claims culture. We are, first, bringing together a tariff and, secondly, making it a requirement that no claim can be settled without a medical report, or MedCo report. I discern that there is almost universal approval for that step. Thirdly, we have agreed that the claims portal for small claims will be reviewed, which the noble Lord, Lord Marks, suggested would be required, to make it accessible to claimants themselves when they come to make claims. It will of course be simpler for them to make that claim in circumstances where they know that there is, beyond the issue of liability, a tariff that determines the damages for pain and suffering. I emphasise those damages because this does nothing in respect of the claims for wage loss and other outgoings incurred by claimants in the circumstances.

I will also take up a point mentioned by the noble Lord, Lord Marks, with regard to the cost as compared with the tariff of damages at the very lower end. I understand that where liability is accepted, the cost of the MedCo report will be a relevant recoverable cost, no matter whether this is in the small claims court or otherwise. Another question that has been raised is how the original cost of the MedCo report is funded, and we are looking at that and discussing it with interested parties at present. However, there will be no material issue over the recovery of the MedCo report cost itself, which the noble Lord identified as in the region of £180 plus VAT.

That, then, is the background. There are other potential targets. The noble Lord, Lord Beecham, referred to the conduct of claims management companies, and I will say a little about that. As noble Lords will be aware, we are already taking steps through the Financial Guidance and Claims Bill, which is making its way through the other place, to address some of the difficulties that arise with regard to claims management companies.

[LORD KEEN OF ELIE]

First, their regulation will go to the FCA. As the noble Earl, Lord Kinnoull, observed, that is a regulator with teeth, and we consider it properly positioned to deal with claims management companies. There will also be the means to limit the percentage that claims management companies can take from a claimant when they deal with a claim, to try to control their activities in that regard.

We have of course been concerned with the issue of cold calling, which I suspect has bedevilled virtually all of us at one point or another. The Information Commissioner is concerned with that as well. One of the difficulties, and this was touched upon in the course of debate, is how to regulate the unregulated. One of the real difficulties is that in the context of cold calling, we have seen the claims management companies, or those who carry out this cold calling, move out of the United Kingdom and carry out this conduct from abroad. It is a very simple thing for them to do, and it is a very difficult thing for us to stop. That is why you have to look at alternative routes to addressing the wider issue that we have to deal with. We are certainly concerned that we need to control the activities of the claims management companies, although they alone are not responsible for the way in which this whole industry of whiplash claims has developed.

I notice that the noble Lord, Lord Monks, who I appreciate is not entirely sympathetic to the Government's position on this, did make a passing remark in the context of other claims, such as workplace claims. He said the abuse was a lot less than in road traffic accident cases, but implicitly he accepts the existence of abuse in the context of RTA cases, and I believe that is almost universally acknowledged. We seek to address that in Part 1 of the Bill. We consider that we are taking a proportionate approach. Yes, it distinguishes whiplash-type injuries that occur in a road traffic context from other forms of accident or injury, but that is because we have to address a particular mischief. That is what we are doing with Part 1 of the Bill. It appears to us that this is the sensible and considered way forward in order to control this situation.

I note that the Delegated Powers Committee has made a number of recommendations with regard to Part 1 of the Bill. We do not entirely agree with its recommendations, but I have noted the concern expressed by noble Lords about the question of defining whiplash injury. The intention was to have a degree of flexibility, so that if the claims industry developed in a particular direction in response to legislation, we were equipped to deal quite rapidly with that. It may be that noble Lords would like to see rather more in the way of definition so far as whiplash is concerned, and I take on board the observations that have been made.

There is also the question of the tariff, and of course an illustrative tariff was provided in the papers that were produced along with the original Bill and to which reference has been made. We consider that being able to regulate the tariff by the affirmative procedure is a more flexible way of being able to respond to changes. But, again, I hear what noble Lords say and we will have to consider that going forward.

I would like to respond to a number of points made by the noble Lord, Lord Sharkey. First of all, I hope I have made clear that medical report costs are recoverable. There was a suggestion that they were not. He referred to the position of other parties such as cyclists being caught, but they are not brought within the tariff on the basis of Part 1 of the Bill. To answer that particular point, they are specifically excluded at Clause 1.

I would like to move on to Part 2, the question of the discount rate, and address a number of points. First of all, it appears to be generally understood that we do need to put in place a means by which the discount rate can be determined and reviewed on a regular basis in order that we do not encounter the sort of situation we had in 2017, when we saw it go from 2.5% to minus 0.75%. I wholly agree with the observations of the noble Earl, Lord Kinnoull, that the present discount does not realistically reflect the way in which a party—any party—is going to invest funds going forward. Therefore, we have to bring this back into a realistic scenario.

The objective—here I address a number of points made by the noble Lord, Lord Cromwell—is not to have representatives of various interested parties partaking in an exercise of trying to agree a rate. The whole point of the structure in Part 2 is that there should be an expert panel, not a representative panel. The noble Lord asked about there being a fair balance of representation on the panel, but that is not the intention or the objective. The idea is that we should have an expert panel to advise the Lord Chancellor.

The intention is that that should be an open exercise so that, for example, the way in which the expert panel reports to the Lord Chancellor will be open. Indeed, in our response to the Justice Select Committee, the Lord Chancellor observed that he would be publishing the recommendations of the panel's report in circumstances where he received it and was to act upon it. In due course, he will also be required to explain the way in which he fixes the discount rate. Indeed, he will be amenable to judicial review in carrying out that function, so that there will be ultimately an oversight of the way in which he discharges that duty. We consider it appropriate that that should be done openly and effectively in that way.

Clearly, it will be important that the discount rate should be reviewed at regular intervals. We have alighted upon the period of three years for review after considering various representations, but I have heard the references to five years as a review period and the interesting alternative mentioned by the noble Lord, Lord Marks, of essentially having an expert panel meeting at regular intervals to consider whether or not there are circumstances that might require a proper review of the discount rate. We would be open to discussing these alternatives to see how we can effectively ensure that the discount rate continues to reflect the reality of investment.

On the point of investment, I believe there is general consensus that we should move from the very-low risk level to the idea of a low level of risk for investment. That is not to suggest that claimants are going to become stockbrokers—I really do not feel that that is a proper reflection of the situation at all. The intention

in Part 2 of the Bill is to bookmark the place in which the expert committee will address the question of how the discount rate should be fixed. It is to give the panel a degree of flexibility in that context between, at one end, very low risk and, at the other end, low risk by an investor who is not concerned about having to provide for their future care.

On the question of future care, which arises most particularly in the context of clinical negligence cases and the subsequent cases of severe injury that very often arise from that, there is always the difficulty of determining not only what the appropriate discount should be but, as noble Lords have observed, what life expectancy may be. That is always an estimate. You could almost say that you invariably get it wrong; you can never be sure that you have got it right. That is why we consider that PPOs are a very important option available to claimants. Looking at the data that has been gathered in arranging guidance for the Bill, we have noted that their use is essentially limited to cases where claims exceed £1 million, and more generally £5 million. They are not always taken up, and one of the problems with the present discount rate is that it would tend to discourage claimants and their advisers from taking up PPOs. But clearly, if you want certainty with regard to future care, one way to secure it is to agree to a PPO, and we would wish to encourage them.

We have to underline, however, that PPOs are not universally available. For example, I understand that the Medical Defence Union, which is a mutual, is not in a position to guarantee future payment of a PPO and therefore not in position to provide them. However, that may alter as we look at the question of indemnity arrangements—for example, in respect of general practitioners—which we are doing at the present time. We certainly wish to encourage the use of PPOs and are looking at providing guidance to claimants and their advisers, in order to ensure that they are taken up in appropriate circumstances.

One further issue that has been raised by a number of your Lordships is Section 2(4) of the 1948 Act. We recognise the question that is being raised about this and the appropriateness of maintaining that. Presently, Section 2(4) of the 1948 Act would not fall within the scope of the Bill. I appreciate that, if we were to amend the long title of the Bill, we might be able to bring the matter within scope, but there is a concern that the repeal of Section 2(4) potentially raises issues that will have to be the subject of consultation with interested parties. We are concerned that we need to act promptly, particularly with regard to the discount rate, and it would be unfortunate if that process was materially slowed because of an attempt to bring Section 2(4) and its repeal into the present Bill. I hear what noble Lords have said and am not unsympathetic to the suggestion that the time has come to revisit that provision and understand why we need to maintain it. My concern is that attempting to bring it into the Bill at this stage could have unfortunate consequences for the way in which we are trying to deal with the discount rate.

On that last point, I appreciate the concern about the delay in respect of the discount rate. We are proposing to carry out the first review as swiftly as possible. I understand that we are aiming for April 2019, not 2020 as has been suggested. There is a 90-day period and then a 180-day period. There is a need to have an expert panel in place, but considerable steps may be taken in anticipation of the Bill passing to ensure that we have the machinery in place for the swift appointment of an expert panel, so that the review can be carried out as soon as possible. I will take further advice from officials on the question of how far we can go with that sort of preparation prior to Royal Assent of the Bill, in order to move swiftly on that matter.

I appreciate that I have not addressed all of the queries that have been raised this afternoon. In the time available, I regret that I will not be able to do that but, as I said at the outset, I am open to meetings with noble Lords who wish to raise questions on the Bill prior to Committee, and I would welcome the opportunity to engage with them. I beg to move.

Bill read a second time and committed to a Committee of the Whole House.

Capita

Statement

7.13 pm

Lord Young of Cookham (Con): My Lords, with the leave of the House, I shall repeat in the form of a Statement the Answer given earlier today by the Parliamentary Secretary to the Cabinet Office to an Urgent Question in the other place.

"Mr Speaker, I welcome the opportunity to come to the House to update it on Capita's announcement yesterday. This covered its 2017 full-year results, the launch of a £701 million rights issue and an update on its transformation programme. As I have said repeatedly, private companies can answer for themselves but the Government's priority is the continued delivery of public services. As we demonstrated with respect to Carillion, we have continued to deliver public services without interruption.

The House will recall I came here in February when Capita initially announced the rights issue; Capita confirmed yesterday that it is proceeding in line with that previous announcement. The House may be interested to know that Capita announced in its statement yesterday that its underlying profit before tax was £383 million for 2017, in line with market expectation. It made a contribution of £21 million to reducing its pensions deficit and as a result of this announcement the share price rose by more than 10% on the day.

Capita's board and auditors have confirmed that the company will continue to have adequate financial resources to deliver on its obligations, supported by its rights issue and other steps designed to strengthen its business. The rights issue is underwritten and the required shareholder vote will take place in early May. The management has confirmed that the key shareholders fully support its plan. In addition, the company has suspended dividends until it begins to generate positive cash flow. It expects to generate at least £200 million in free cash flow in 2020. The impact of this has been to reduce dividends and shareholder returns in favour of other stakeholders. This is evidence of shareholders, not the taxpayer, taking the burden.

[LORD YOUNG OF COOKHAM]

I understand that noble Lords remain concerned about outsourcing companies following Carillion's liquidation. However, Capita has a different business model and a different financial situation from Carillion. It is not a construction business and has minimal involvement in PFIs. The measures that Capita has announced are designed to strengthen its balance sheet, reduce its pensions deficit and invest in core elements of its business. Arguably, these measures may have prevented Carillion getting into the difficulties that it did. It remains the case, as I said when I came to the House in February, that neither Capita nor any other strategic supplier is in the same position as Carillion, but I would like to reassure the House that officials in my department continue to engage regularly with all strategic suppliers. It is in the taxpayer's interest to have a well-financed and stable group of key suppliers, so we welcome the moves that the company is making".

7.16 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for repeating that Answer. I think that this is the third occasion on which he has come to the House to discuss these issues, twice in relation to Carillion and now in relation to Capita. It is striking that from the Government's point of view, Capita is one of the limited number of companies which are privileged to have large government contracts, yet it is interesting to note that the boss of Capita admitted today that the company has no long-term strategy at all. That, to say the least, is a little worrying.

I would also say to the noble Lord that Capita's record is, at best, patchy. When I mention the messed-up management of the dental register which left hundreds of dentists standing idle, its failure to maintain the Primary Care Support England service which supervises GP and patient records, and failing on the Army recruitment contract, one questions why this Government in particular are so wedded to giving yet more contracts to this company and similar ones. I hear what he has said about Capita being a different model and having a different structure from Carillion, and he said that shareholders will be taking the burden, but I still think I am right to ask him what contingency plans Ministers have put in place to deal with possible defaults on these contracts. Also, can he confirm that improvement plans have been agreed with Capita since its string of profit warnings and yesterday's financial statement?

The noble Lord said that it is of strategic importance for the Government to have, I think by implication, contracts with a limited number of providers. However, the other side of the coin is that if we have a domino effect—first Carillion, then Capita—a huge swathe of government contracts will be put at risk. Is it right that so much government work should be put in the hands of a very limited number of companies? I would also like to ask whether he agrees that this excludes SMEs from many prime contracts. They have to subcontract with these principal contractors, but we know what happened with Carillion. Carillion was a very late payer and as a result, many SMEs went bust due to its collapse. What is the Government's approach to SMEs and can we ensure that they get a fair crack of the whip?

Lord Young of Cookham: I am grateful to the noble Lord, Lord Hunt, for his questions. I will try to answer all of them. On the question of a strategic approach, he will know that a new chairman, Ian Powell, was appointed last year and a new chief executive, Jon Lewis, in December. Jon Lewis has made it clear that he is in the process of putting together what he calls a "transformation programme". Yesterday's announcement was part of that process. The market's response shows that it now has confidence in the new leadership team at Capita.

The noble Lord then asked why the Government are wedded to Capita. I have looked at the major central government contracts that have been awarded to Capita: 20% were awarded by the last Labour Government, just over 50% by the coalition Government and the balance by the current Government. So, it is not the case that we are more wedded than previous Administrations to the concept of using private providers and outsourcing contracts to get the best value for money. Appropriate contingency plans are in place for each contract. They depend on the nature of the contract—that is, whether others could immediately take over if there was a problem. Major contracts have terms that give contracting authorities the freedom to act in the event of supplier failure, including financial distress. I assure the noble Lord that appropriate contingency plans are in place for these contracts.

Turning to the noble Lord's question about small providers and SMEs, the Government are anxious to break up these large contracts wherever possible to enable more SMEs to bid for them. During the Easter Recess, the Minister announced a whole raft of measures designed to boost opportunities for small businesses to gain government work. He is right to point out how important SMEs are. They provide 16 million jobs in this country and we are committed to ensuring that they are treated fairly by large suppliers. The Government have a target of HMG spend on SMEs. It was 25% but is now 33%, so I think we are at one on that issue.

On paying subcontractors promptly, Capita is currently paying 80% of invoice value to SMEs within 30 days and has plans to raise that to a higher percentage. I hope that deals with the thrust of the noble Lord's questions.

Lord Wallace of Saltaire (LD): My Lords, are the Government considering an overall review of the privatisation and outsourcing process? This is not just about Carillion and Capita. I have been reading about the problems that Serco has been going through and the recovery programme that it is now undertaking. I have been reading a little about the problems that G4S has had over the past few years in delivering some of the services it promised. There seems to be an underlying problem of large and diverse outsourcing companies, which are extremely good at drawing up contracts, managing to crowd out SMEs.

When I was a Minister, I remember being told that SMEs lose out because they are not as good at preparing contracts and spending the money in presenting them—so they end up as the subcontractors—and that we are therefore facing an oligopoly of diverse, major companies that successive Governments have allowed to grow, as the Minister said. What can be done to encourage more SMEs to become prime contractors? If I may say so,

allowing more local authorities to take responsibility would help a great deal because more local suppliers would then be able to do so. The centralisation of these diverse outsourcing companies means that decisions are taken in London and small outsourcing companies in Leeds, Manchester and elsewhere end up as subcontractors. That is very bad for local enterprise. Are the Government now considering an overview of the sector and considering that competition policy needs to be rather more active here?

I have one final comment. I am very conscious that there is a problem of oligopoly in a number of sectors, with accountancy being a major example. Do we not need now to break up some of these oligopolies?

Lord Young of Cookham: There is nothing ideological about this. Governments of all persuasions have found that outsourcing certain activities enables them to focus on the key functions of government. A recent survey by the CBI showed that overall there was a saving of roughly 11% by going through the process of outsourcing activities, engaging competitive markets and awarding the contract to the contractor best able to meet the objectives.

I entirely agree with what the noble Lord said about SMEs. I think there is a contract with HMRC which, when it came to an end, we broke down into component parts. As I said in response to the noble Lord, an additional measure that we have taken is that, when a main contractor is slow in paying the subcontractors, that main contractor will be deleted from the opportunity to bid for future contracts. That is a good example of the steps that we are taking.

Subcontractors will have greater access to buying authorities to report payment performances, and suppliers will have to advertise subcontracting opportunities on the Contracts Finder website. Without repeating what I said a moment ago, we have a target of driving up from 25% to 33% the percentage of government spend with SMEs on these major contracts.

Lord Carlile of Berriew (CB): My Lords, can the Minister confirm that, as Capita refreshes itself and restructures, the Government will be totally intolerant of any attempt to reduce the standard of services for which Capita has contracted? If Capita attempts so to do, will the Government prioritise finding new contractors to undertake those services, including SMEs?

Lord Young of Cookham: The Government will hold Capita, and indeed other suppliers, to the terms of their contract and take appropriate steps if those terms are ever broken.

Lord Faulkner of Worcester (Lab): My Lords, would it be helpful if the House were reminded of what the *Companion* says about procedure on Urgent Questions? They are treated as Private Notice Questions, which in turn are treated as similar to normal Oral Questions. In particular, the answers and supplementary questions on a Private Notice Question must be brief to allow as many people as possible to come in.

Lord Young of Cookham: If that was a rebuke to me, I am glad. I plead guilty, and I am sure that will have been noted. I will be as quick as I can with the responses to the following Urgent Question.

Local Elections: Voter ID
Statement

7.28 pm

Lord Young of Cookham (Con): My Lords, with the leave of the House I should like to repeat an Answer to an Urgent Question given in the other place yesterday by the Parliamentary Secretary at the Cabinet Office. I apologise in advance if it is somewhat longer than it would normally have been. The Answer is as follows:

"The British public deserve to have confidence in our democracy. There is clearly the potential for electoral fraud in our system, and that undermines confidence and promotes perceptions of vulnerability. When fraud is committed in elections, it is not a victimless crime. People's votes are stolen, or someone is elected who should not have been elected.

Earlier this year the Government announced that they would be conducting pilots for voter identification at the local elections in May this year in line with our manifesto commitment to legislate to ensure that a form of ID must be presented before voting.

Voter ID is part of the Government's commitment to improve the security and the resilience of the electoral system that underpins our democracy and will promote greater confidence in our democratic processes. In making these changes, we will bring our electoral system in line with others, such as that in Northern Ireland or Canada, which operate successful programs and recognise that there is an increasing expectation that someone's vote should be protected and carefully guarded.

We already ask that people prove who they are in order to claim benefits, to rent a car or even to collect a parcel from the post office, so this is a proportionate and reasonable approach. Democracy is precious, and it is right to take that more robust approach to protect the integrity of the electoral process.

Since 2014, the independent Electoral Commission has pushed for the introduction of ID to strengthen the system, and it has welcomed the voter ID pilots as a positive first step towards implementing its own recommendation that an accessible, proportionate voter identification scheme be introduced in Great Britain. In a recent report for Democratic Audit UK, academic Stuart Wilks-Heeg stated that after the scheme was introduced in Northern Ireland there was no evidence to suggest a fall in turnout but that there was plenty of evidence that fraud declined sharply.

Indeed, it was the previous Labour Government who introduced photo ID at polling stations across Northern Ireland in 2003. As I have said, it has not affected turnout there and it has helped to prevent election fraud. The Labour Minister at the time said:

'The measures will tackle electoral abuse effectively without disadvantaging honest voters',

ensuring that,

'no one is disfranchised'.—[*Official Report*, Commons, 10/7/01; col. 739.]

The opportunity to pilot voter ID in May 2018 was offered to all local authorities in Great Britain, and five—Woking, Gosport, Bromley, Watford and Swindon—have committed to do so. Proxy voters in Peterborough will also be required to show ID before they can vote on 3 May 2018. The Minister for the Constitution has

[LORD YOUNG OF COOKHAM]
taken the opportunity to speak to each local authority about the design of their pilots and the methods that they have applied to ensure that their electors are aware of voter identification and that each elector's needs are understood. Local authorities will notify every eligible voter by including information of the ID requirement on their poll card.

No one will need to buy ID documents to be able to vote, and the ID requirements will not be limited to a passport or driving licence. In the pilots, voters can use a wide variety of ID, from marriage certificates and passports to bus passes and bank cards, depending on where they live. If voters do not have the required ID, local authorities are providing alternative or replacement methods to ensure that no one is disenfranchised. Everybody eligible to vote will have the chance to do so.

The pilots will help to identify the best way of implementing voter ID, and we look forward to each authority's findings. The Minister for the Constitution has responded to the recent letter from the chair of the Equality and Human Rights Commission, and a copy has been made available in the Library of both Houses. All the local authorities involved have completed equality impact assessments, and the Electoral Commission will independently evaluate the pilots, with results published this summer.

We want to ensure that our elections are as accessible as possible and that there are no barriers to democratic participation. We have recognised that, for example, people with a disability face different issues when registering and voting. We have run a call for evidence to hear directly about their experiences to enhance the Government's understanding so that we can help those people to register and cast their vote. We have also recently made it easier for survivors of domestic abuse to register to vote anonymously for fear of revealing their address to an ex-partner, as there were fears that that was preventing survivors registering to vote.

The aim of the pilots is to protect voting rights, and it comes in the context of protecting and improving our democracy. Pilots are important in order to find out what works best. Electoral fraud is unacceptable on any level, and its impact on voters can be significant. It takes away an elector's right to vote as they want, whether through intimidation, bribery or impersonating someone in order to cast their vote. The Cabinet Office, in partnership with the Electoral Commission and Crimestoppers, launched the Your Vote is Yours Alone campaign only last month to encourage people to report electoral fraud if they see it.

The impact of electoral fraud is real and it is criminal. It steals something precious from a person and undermines the entire system for everyone. I do not want to see our democracy dumbed down; it is rather a shame that the Labour Party appears to".

7.33 pm

Lord Kennedy of Southwark (Lab Co-op): Ensuring our elections are safe and secure is an important duty, and one which I fully support. Will the noble Lord, Lord Young of Cookham, say a bit more about the evaluation process? I hope that he can confirm that a speedy decision will be taken by the Government after the pilots have been evaluated, as we need simple but effective measures to ensure the integrity of the electoral process and to ensure that we do not get in the way of enabling people to cast their vote, which is the other side of the same coin and an important part of their playing their role as citizens of the UK.

Lord Young of Cookham: I am grateful to the noble Lord. There will be an independent statutory evaluation of the pilots conducted by the Electoral Commission. That will be published by the end of July, and it will inform the ensuing debate.

Lord Tyler (LD): My Lords, we recognise the validity of the concerns of the EHRC, but we should know by the summer whether the Government were correct in their assessment or whether those concerns were legitimate. Meanwhile, what exactly are the new safeguards to prevent electoral fraud in postal and proxy voting that are being tested in the three pilot areas referred to by the Minister in the Commons yesterday? The Minister also assured my Liberal Democrat colleague there that the number of registered electors who are not permitted to vote in person, for lack of appropriate ID, will be recorded and reported. What will happen if that number exceeds the margin of victory in a particular ward?

Lord Young of Cookham: The noble Lord is quite right: three local authorities are piloting new procedures for voter ID on postal votes—Tower Hamlets, Peterborough and Slough. I said a little about that in my opening remarks. Some local authorities are not only making people more aware of the incidence of electoral fraud and encouraging them to report it where necessary to Crimestoppers, but are following up after the election—contacting certain electors who have used the postal vote—to make sure that nothing improper has taken place.

With regard to turning up at a polling station and not being able to vote, in one local authority—I think it is Swindon—if you do not have the necessary documentation on polling day you can take along someone called an "attester", who has the necessary documentation and is registered in the same ward, and if the attester vouchsafes your identity you can then vote.

Lord Campbell-Savours (Lab): Is the Minister aware that during the proceedings on the Electoral Administration Bill on 21 March 2006, in col. GC 94, some of us proposed an alternative to electoral registration in a scheme similar to the pilots currently proposed by the Government? There was, however, a crucial difference: individual local authorities could apply for permission to run voter ID control schemes only if they believed that they had a particular problem with electoral fraud. With the Government now proposing pilots with a view to a national rollout, in addition to existing electoral registration schemes, which are already costing us millions—a fortune and, in my view, a waste of money—will not more money be wasted on a problem that affects only a very small number of local authorities?

Lord Young of Cookham: I was not in your Lordships' House in March 2006—I was elsewhere—so I do not recall that intervention. However, the noble Lord made a similar intervention when we debated a statutory

instrument on the combined authorities order 2017. We are not minded to adopt the proposals that he has referred to. Any incidence of electoral fraud is unacceptable. The independent Electoral Commission have been pressing for voter ID since 2014; the Eric Pickles report that looked at the wider incidence of voter fraud recommended it as part of the way forward; and I think that this is the right way. I notice that when we debated the measure in Grand Committee there was broad support for the Government's approach, with a notable dissenting intervention by the noble Lord.

Lord Hayward (Con): Would my noble friend consider, when he reviews the effectiveness of ID in voting systems, consulting the Labour Party? In selection meetings the Labour Party requires two forms of ID: one photo ID and one proof of address. It goes on to say, "It is rare that members have no form of ID". That is a direct quote from the Tottenham Labour Party, but it applies—does it not?—to many other Labour constituency parties: they have experience and expertise that the Government could well draw on.

Lord Young of Cookham: I am very grateful to my noble friend. The chances of my presenting myself at a selection meeting for the Labour Party, when it chooses a new candidate, are small. However, my noble friend makes a valid point: people are now accustomed to being asked for various forms of ID during the normal course of their daily lives, so there should not be a problem as we introduce these pilots for voter ID in a few local authorities.

Baroness Corston (Lab): My Lords, when I was in the other place representing Bristol East, I was one of the few Members who conducted a constituency-wide consultation on identity cards when they were proposed by the then Labour Government. There was a mix of replies and we then held a consultation with the Minister, Beverley Hughes—now my noble friend Lady Hughes. The people who were most in favour of identity cards were women from our ethnic minority communities, who said to us in terms that they had no access to their passports and no bank accounts; some of them were not even allowed to have a library card. This also applied to replies from another women's organisation, representing women who were subject to coercive control. They all said, "I do not have any means of identity, and no man in my family will allow me any". Perhaps the Minister will tell me how women like that will be able to vote because they will not turn up if they think that they will be turned away.

Lord Young of Cookham: The noble Baroness makes a valid point. Local authorities are implementing equality impact assessments and working with partners to ensure that voter ID does not risk preventing any eligible voter from voting. The noble Baroness has raised an important issue, and when the Electoral Commission evaluates the impact of the pilots, I will make sure that it takes on board the specific issue she raises.

Lord Rennard (LD): My Lords, the Minister will be aware that when you go along to a polling station to cast your vote but find that somebody has stolen it and impersonated you, you would be issued with a tendered ballot paper. Those are then kept separately in discrete envelopes and used if necessary—because the result of the count is so close—when somebody has to adjudicate whether or not that is a valid ballot paper. This process indicates what level of impersonation takes place at polling stations, so can the Minister tell us how many tendered ballot papers have been issued in any of the recent national elections? Does he also accept that perhaps the best deterrent against impersonation at polling stations is the presence of a uniformed police officer, as used generally to be the case?

Lord Young of Cookham: I am not sure that the presence of a uniformed police officer would guarantee the absence of impersonation in every case. The steps that we are taking in line with the recommendation of the Electoral Commission are the right way to go. The noble Lord asked a specific question; the answer to it is not in the folder in front of me, but I will endeavour to get it and write to him.

Lord Bassam of Brighton (Lab): My Lords, can the Minister perhaps give us some advice on the terms of reference and the way in which the Electoral Commission will produce its report? One of the particular concerns being expressed on our Benches is that voter ID schemes will be used to depress turnout. Will an evaluation of the impact on turnout come through from this study and, in particular, will the Electoral Commission look at that issue and compare, say, Peterborough with adjacent areas that do not have the obligation to produce voter ID when people go to vote?

Lord Young of Cookham: Not only will the Electoral Commission be able to do that—I am sure that it will—but anybody could look at the turnout. As I said in my opening Statement, there is no evidence in Northern Ireland or in many other countries that have moved over to voter ID that this has depressed turnout.

Yemen

Statement

7.43 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, with the leave of the House I will repeat in the form of a Statement an Answer to an Urgent Question on Yemen given by my honourable friend Harriett Baldwin in another place earlier this afternoon. The Statement is as follows:

"The UK is deeply concerned by the humanitarian crisis in Yemen, the largest in the world. Over 22 million people—more than three-quarters of the population—are in need of humanitarian assistance. The UN estimates that 17.8 million people in Yemen do not have reliable access to food and that 8.4 million face extreme food shortages. Last year, the country suffered the worst cholera outbreak ever recorded in any country in a single year.

At the Yemen pledging conference in Geneva earlier this month, the Minister of State for the Middle East announced £170 million of support to Yemen this year. This funding will meet the food needs of 2.5 million Yemenis. Last year, the UK was the second-largest donor to the UN's humanitarian appeal for Yemen. Our funding provided over 5.8 million people with at

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least a month's supply of food, nutrition support for 1.7 million people, and clean water and sanitation for approximately 1.2 million people, but money alone will not be enough. We must see sustained progress on the response to this year's cholera outbreak. We must see payment of public salaries to millions of civil servants and their dependants, and we must see unhindered humanitarian access into Yemen. The UK has led the way here too, lobbying and advising all parties to make the life-saving steps to prevent further deterioration of this crisis.

We are aware of reports over the weekend of significant civilian casualties resulting from coalition airstrikes. We take these reports extremely seriously. The Saudi-led coalition has confirmed that it will carry out an investigation. It is essential that this happens without delay, the results are published, and that lessons are learned and acted upon. Our hearts go out to the families of those killed. We call upon all parties to comply with international humanitarian law.

A political settlement is the only way to bring long-term stability to Yemen and to address the worsening humanitarian crisis. The Yemeni parties must engage constructively and in good faith to overcome obstacles and find a political solution to end the conflict".

7.45 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating that response to the Urgent Question asked in the other place. Clearly, Saudi Arabia has the right to protect its territory and its people from the missile attacks witnessed in recent weeks, but this does not excuse the targeting of innocent civilians. Despite UK training to the Saudis on international humanitarian law compliance, we have seen the rate of civilian casualties increase.

UN special envoy to Yemen, Martin Griffiths, said at the Security Council that if intensive operations were launched in Al Hudaydah, one of the main entry points for aid, it would, as he put it,

"in a single stroke, take peace off the table".

If an attack on Al Hudaydah were to go ahead, causing an already horrific humanitarian situation to get worse, what measures, apart from condemnation, would the Government take to bring pressure on the Saudis? Surely, these are the circumstances when the suspension of arms sales must be considered.

Lord Bates: The noble Lord is absolutely right to say that there is never any excuse for this. There is a joint incident assessment team in the Saudi-led coalition which investigates these incidents and produces reports, 55 of which have already been published. But we have been very clear at the UN in our most recent wording and language. The UK is the penholder at the UN Security Council on the Yemeni issue and we are urging restraint on the part of Saudi Arabia, particularly in the context that the noble Lord is referring to. For that to happen, it is also very important that the Houthi rebels, in this context, do not perpetuate or worsen the situation by continuing their missile strikes into Saudi Arabia. So, it is a very complex and fast-moving situation. We do not want it to deteriorate further and we are actively engaged at a humanitarian level, and very much at a diplomatic level.

Lord Wallace of Saltaire (LD): My Lords, I am conscious that an already poor humanitarian situation has been exacerbated by the conflict, and by the blockade. Can the Minister tell us a little bit about the blockade of the ports which US and Saudi ships have been involved in, and how far that now has been lifted?

Can he also tell us about the consultations we are having with the Emiratis who, after all, alongside the Saudis, are major players in every single way in Yemen? I received a note from the UAE embassy in London about the humanitarian assistance to Yemen the other day. Clearly, they have major local responsibility, so can he assure us that we are working as closely with them and criticising when we think it is necessary?

Lord Bates: I shall respond by giving a bit more information. Yemen imports 90% of its food and almost all its fuel. The level of imports remains insufficient. The UK has been responding to this by sending DfID experts and funding experts, particularly to Djibouti, to help to speed up the process of verification of shipping. As a result, over the past year the level of shipping that has been cleared to enter Yemeni ports has increased from 8% to around 70%—around tenfold—and we welcome that. We are funding to the extent of £1.3 million the UN verification inspection mechanism. These are all very important steps to ensure that urgent humanitarian support gets in.

Windrush Generation

Statement

7.50 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House I will repeat a Statement made in the other place by my right honourable friend the Home Secretary.

"From the late 1940s to the early 1970s, many people came to this country from around the Commonwealth to make their lives here and help to rebuild Britain after the war. All Members will have seen the recent heart-breaking stories of individuals who have been in this country for decades struggling to navigate an immigration system in a way that they should never, ever have had to. These people worked here for decades. In many cases, they helped to establish the NHS. They paid their taxes and enriched our culture. They feel British in all but legal status, and this should never have been allowed to happen. Both the Prime Minister and I have apologised to those affected, and I am personally committed to resolving this situation with urgency and purpose.

Of course, an apology is just the first step we need to take to put right the wrong that these people have suffered but, before I get on to the steps that we will be taking, I want to explain how this situation has arisen. The Immigration Act 1971 provided that those here before it came into force should be treated as having been given indefinite leave to enter or remain in the UK as well as retaining a right of abode for certain Commonwealth citizens. Although HMS "Windrush" docked in the port of Tilbury in 1948, it is therefore everyone who arrived in the UK before 1973 who was given settlement rights and not required to get any specific documentation to prove those rights. Since 1973 many of the Windrush generation would have

obtained documentation confirming their status or would have applied for citizenship and then a British passport.

From the 1980s, successive Governments have introduced measures to combat illegal immigration. The first NHS treatment charges for overseas visitors and illegal migrants were introduced in 1982. Checks by employers on someone's right to work were first introduced in 1997, measures on access to benefits in 1999 and civil penalties for employing illegal migrants in 2008. The most recent measures in the immigration Acts of 2014 and 2016 introduced checks by landlords before property is rented and checks by banks on account holders.

The public expect us to enforce the Immigration Rules approved by Parliament as a matter of fairness for those who abide by the rules, and I am personally committed to tackling illegal migration because I have seen in this job its terrible impact on some of the most vulnerable in our society. However, these steps intended to combat illegal migration have had an unintended and sometimes devastating impact on people from the Windrush generation, who are here legally but have struggled to get the documentation to prove their status. This is a failure by successive Governments to ensure that these individuals have the documentation that they need, and that is why we must urgently put it right. It is abundantly clear that everyone considers people who came in the Windrush generation to be British, but under the current rules this is not the case. Some people will have indefinite leave to remain, which means they cannot leave the UK for more than two years and are not eligible for a British passport. That is the main reason why we have seen the distressing stories of people leaving the UK more than a decade ago and not being able to re-enter.

I want to enable the Windrush generation to acquire the status that it deserves—British citizenship—quickly, at no cost and with proactive assistance through the process. First, I will waive the citizenship fee for anyone in the Windrush generation who wishes to apply for citizenship. This applies to those who have no current documentation and to those who have it. Secondly, I will waive the requirement to carry out a knowledge of language and life in the UK test.

Thirdly, the children of the Windrush generation who are in the UK will, in most cases, be British citizens. However, where that is not the case and they need to apply for naturalisation, I shall waive the fee. Fourthly, I will ensure that those who made their lives here but have now retired to their country of origin are able to come back to the UK. Again, I will waive the cost of any fees associated with this process and will work with our embassies and high commissions to make sure people can easily access this offer. In effect, that means that anyone from the Windrush generation who now wants to become a British citizen will be able to do so, and that builds on the steps that I have already taken.

On 16 April, I established a taskforce in my department to make immediate arrangements to help those who needed it. This included setting up a helpline to get in touch with the Home Office. Let me be quite clear: this helpline and the information shared will not be used to remove people from the country. Its purpose is to help and support. We have successfully resolved nine cases so far and made 84 appointments to issue documents. My officials are helping those concerned to prove their residence and they are taking a proactive and generous approach so that they can easily establish their rights. We do not need to see definitive documentary proof of date of entry or of continuous residence. That is why the debate about registration slips and landing cards is misleading. Instead, the caseworker will make a judgment based on all the circumstances of the case and on the balance of probabilities.

Previously, the burden of proof on some of the Windrush generation to evidence their legal rights was too much on the individual. Now we are working with this group in a much more proactive and personal way to help them. We were too slow to realise that this was a group of people who needed to be treated differently, and the system was too bureaucratic when these people were in touch.

The Home Office is a great department of state It works tirelessly to keep us safe and to protect us. It takes millions of decisions each year that profoundly affect peoples' lives, and for the most part it gets these right. But recent events have shown that we need to give a human face to how we work and exercise greater discretion where and when it is justified. That is why going forward, I will be establishing a new customer contact centre, so that anyone who is struggling to navigate the many different immigration routes can speak to a person and get the appropriate advice. This will be staffed by experienced caseworkers who will offer expert advice and identify a systemic problem much more quickly in the future. I will also be putting in place 50 senior caseworkers across the country to ensure that, where more junior members of staff are unsure about a decision, they can speak to someone with experience to ensure that discretion is properly exercised.

There has also been much concern about whether the Home Office has wrongly deported anyone from the Windrush generation. The Immigration Act 1971 provides protection for members of this group if they have lived here for more than five years and if they arrived in the country before 1973. I am now checking all Home Office records going back to 2002 to verify that no one has been deported in breach of this policy. This is a complex piece of work that involves manually checking thousands of records. So far, 4,200 records have been reviewed out of nearly 8,000 which date back to 2002, and no cases have been identified that breach the protection granted under the 1971 Act. This is an ongoing piece of work and I want to be absolutely certain of the facts before I draw any conclusions. I will ensure that the House is informed of any updates, and I intend to have this data independently audited once my department has completed its work, to ensure transparency.

It was never the intention that the Windrush generation should be disadvantaged by measures put in place to tackle illegal migration. I am putting additional safeguards in place to ensure that this will no longer happen, regardless of whether they have documentation or not. As well as ensuring that the Home Office does not

[BARONESS WILLIAMS OF TRAFFORD]

target action against someone who is part of the Windrush generation, I will also put in place greater protection for landlords, employers and others conducting checks to ensure that we are not denying work, housing, benefits and services to this group. These measures will be kept carefully under review, and I do not rule out further changes if they are needed.

I turn to the issue of compensation. As I said earlier, an apology is just the first step we need to take to put right these wrongs. The next and most important task is to get those affected the documents they need. But we also need to address the issue of compensation. Each individual case is painful to hear, but it is so much more painful, and often harrowing, for the people involved. These are not numbers but people—with families, responsibilities and homes, and I appreciate that. The state has let these people down, with travel documents denied, exclusions from returning to the UK, benefits cut and even threats of removal—this to a group of people who came here to help to build this country; people who should be thanked. This has happened for some time. I will put this right and, where people have suffered loss, they will be compensated. The Home Office will be setting up a new scheme to deliver this, which will be run by an independent person. I will set out further details around its scope and how people will be able to access it in the corning weeks.

I am also aware that some of the individual cases that have come to light recently relate not to the Windrush generation but to people who came to the UK after 1 January 1973. These people should have documentation to confirm their right to be here, but I recognise that some have spent many years here and will face similar issues in documenting their rights after so many years in this country. Given that people who have been here for more than 20 years will usually go on a 10-year route to settlement, I am ensuring that people who arrived after 1973, but before 1988, can also access the Windrush task force so that they can access the support and assistance needed to establish their claim to be here legally. I will consider further, in the light of the cases that come forward, whether any policy changes are needed to deal fairly with these cases.

I have set out urgent measures to help the Windrush generation document their rights, how this Government intend to offer them greater rights than they currently enjoy, how we will compensate people for the hardship they have endured, and the steps that I will be taking to ensure that this never happens again. None of this can undo the pain already endured, but I hope that it demonstrates this Government's commitment to put these wrongs right going forward".

My Lords, that concludes the Statement.

8.02 pm

Lord Kennedy of Southwark (Lab Co-op): I thank the noble Baroness, Lady Williams of Trafford, for repeating the Statement made yesterday in the other place by her right honourable friend the Home Secretary. As the noble Baroness said, from the late 1940s to the early 1970s, many people came to this country from around the Commonwealth to make lives here and help rebuild Britain after the war. Before that, many of them fought in the British Armed Forces to defeat both Nazi Germany and Japan—people such as my friend Sam King, who served in the RAF during the Second World War. Sam came back to Britain in 1948 on the "Empire Windrush", served his local community as a postman, was the first black mayor of the London Borough of Southwark and was awarded the MBE for his services to the community. Sam loved this country very much. He sadly passed away at the age of 90 in 2016. It is people such as Sam King who have been treated in such a shameful way.

Despite the apology from the Government and their admission that a terrible wrong has been done to the Windrush generation, no Minister is taking any responsibility whatever for these gross abuses of the Windrush generation's rights—their rights denied, their rights taken away and people who are in the UK legally being treated appallingly by the country they call home. So my first question to the Minister is: when is a Minister of the Crown going to accept responsibility for this scandal and resign? The noble Lord, Lord Bates, offered his resignation because he turned up late for Questions earlier this year—quite rightly, it was not accepted by the Prime Minister. This is a monumental scandal and what is offered here does not go far enough. A Minister or Ministers have to accept responsibility.

The Government's hostile environment for illegal immigrants was badly designed and put together, with no thought given to how to ensure that people who are here legally would be protected and not caught up in that environment. People here legally should not be at risk of losing their jobs, driving licences or homes or be threatened with deportation. Does the Minister accept that some of the people who are here legally will actually be scared to come forward to the Home Office, having heard the terrible reports of abuses and denial of rights? What is she going to do to gain the confidence of these individuals, who need help and support but will be worried about coming forward?

At the bottom of my copy of page 2 of the Statement, the last sentence reads:

"Instead, the caseworker will make a judgment based on all the circumstances of the case and on the balance of probabilities."

Can the Minister be crystal clear about exactly what she means here? That statement does not appear to be an unequivocal guarantee that people who came here as part of the Windrush generation will not have their rights taken away or be denied justice. They are still at risk of deportation from the country that has been their home for decades. Who is bearing the civil standard of proof? Is it the person or is it the Home Office? At the top of my copy of page 3 of the Statement, it says that, for some of the Windrush generation, the burden of proof,

"to evidence their legal rights was too much on the individual".

Other than saying that,

"we are working with this group in a much more proactive and personal way"—[*Official Report*, Commons, 23/4/18; col. 620.]—

which I hope we would expect to be the norm, what has actually changed here? How are other people being treated when they enter the system? This is not shining a very good light on how Ministers run the Home Office.

In paragraph 6 on page 3, it says that a new customer contact centre will be "staffed by experienced caseworkers". In paragraph 7 on the same page we are told that 50 senior caseworkers will be put in place to help junior members of staff who are unsure about a decision. Surely we should ensure that these matters are dealt with by experienced staff in the first place. Will the Minister comment on that and tell the House how the experienced staff at the contact centre relate to the junior members of staff mentioned in paragraph 7, who are making the decisions, and how the 50 senior caseworkers fit above that? That part of the Statement seems very confused.

I agree that it was never the intention that the Windrush generation should be disadvantaged by measures put in place to tackle illegal immigration; but they were, because of poor implementation and development of policy at the Home Office by Ministers. Because of that, people who deserved better have been treated badly by the state. They have been treated appallingly, and someone in the Government should take responsibility for that.

Compensation is referred to on the last page of the Statement. Other than saying that people will be compensated and a scheme will be set up, run by an independent person, there is absolutely nothing about compensation. Will the Minister give the House some more detail on what this will look like? We do not want to read in the media about people who, having been denied their rights, are being made to jump through hoops to get the compensation they deserve for the abuse they have suffered.

This is a shameful episode and it is about time someone in the Government took responsibility for it.

Lord Kerslake (CB): My Lords—

Baroness Hamwee (LD): My Lords, I too thank the Minister for repeating the Statement. My noble friend Lord Paddick very much wanted to be here but is precluded by circumstances beyond his control. Not only he and I, and these Benches, but many others feel frankly ashamed to have discovered what has been going on. The Minister, whom I believe to be a compassionate, caring person, must be very uncomfortable too. She will understand that this is not a matter of what people "deserve"—the term used in the Statement—but of their rights.

We are told that the Home Secretary is committed to resolving the situation with "urgency and purpose". They are, indeed, needed, and more widely than on this issue. The position of the Windrush people—citizens who seem retrospectively to have become migrants—is a symptom, not a cause, of the problem. The cause, as we see it, is the culture within the Home Office, an attitude that one cannot avoid saying must come from the top: hostility or compliance—which seems to be the substitute term now—and certainly carelessness, by which I mean "care-less", as in lacking in care.

That seems to be why every immigration lawyer to whom I have spoken says that the first thing they do is ask the Home Office what information it has on their client, because so often they find that it is wrong. That is why the Home Office has such a poor record before the tribunal. The Minister will not be surprised by this: it is why I sought to remove the Home Office exemption from the Data Protection Bill, which can be applied in the interests of effective immigration control—a matter others are now pursuing. The Home Office might say that it can choose not to apply that exemption or that it will be applied only when it is relevant, but it is the Home Office that has to assess these aspects.

My first question to the Minister is therefore a question and a plea. Before the UK finds itself in an even more embarrassing position—which I assure her I do not want—will the Government reconsider whether the exemption is just, wise or even common sense?

My second question is about staffing, to which the noble Lord, Lord Kennedy, has referred. Are the officials concerned being redeployed within the Home Office, or is the establishment being increased? If so, may we have details of this? It has appeared for some time that Home Office officials are really overloaded. As regards the customer contact centre, or indeed any part of the work, is this being outsourced to the private sector? Again, may we have details?

Thirdly, what information will the Home Office publish so that we can see the whole picture systematically, rather than as a series of individual stories, and not just about deportations?

This affects many, many people. Another cohort, of course, is the 3 million EU citizens in the UK. They raise it in their current 128 questions on settled status. It must affect UK citizens abroad as well. Manifestations of the Home Office policy are very wide, but I will mention just two. One is the right to rent, on which the chief inspector has recently reported less than fully positively. One of his recommendations mentioned quality assurance checks. Another manifestation is immigration detention, to which people unable to prove their status have been consigned.

Immigrants might be legal, they might be illegal or perhaps they cannot prove their status, so the Home Office makes an assumption, if not a presumption, that they have no rights. This issue is more extensive than—I do not want to say "just"—the Windrush generation.

Lord Kerslake: My Lords—

Baroness Williams of Trafford: The noble Lord is so keen to get up that I was going to give him the opportunity, but he will get the opportunity. I thank both noble Lords for their comments, and echo the words of the noble Lord, Lord Kennedy, on the endeavours of the Windrush generation, who rebuilt this country after the war. Some of them actually fought in the war, and I pay tribute to the noble Lord's friend Sam King: what a truly rich and fulfilling life he clearly led in his time in this country.

The noble Lord makes the point about no Minister taking responsibility. I have to say that when my right honourable friend the Home Secretary stood up yesterday, apologised and made very clear that she was going to put right this wrong, she took responsibility. It takes a big person to stand up and say, "Sorry, we'll make this right". So she firmly took responsibility yesterday, as well as in the weeks preceding.

On compensation, my right honourable friend the Home Secretary said yesterday that she will set out further details on its scope, but she made it clear that it

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would be run independently of government. Details will be set out in due course. The noble Lord also made the point about a hostile environment, which was made yesterday as well in the Question I answered. This country should be a hostile environment to illegal immigrants but it should not be a hostile environment to people who are here as of right, which is the whole point of what the Home Secretary is putting right here. These people are welcome in this country and we are not hostile to them. If anybody feels scared about coming forward—I hope none of the scaremongering is being generated within these walls—they should come forward. The Home Secretary made very clear yesterday that there will be a sympathetic and human approach to the help these people will get.

The noble Lord also commented on the balance of probabilities. I hope he appreciates that the Home Secretary yesterday made it clear that people can produce a wide range of evidence, including school and parish records. The evidence people will need to produce will be treated in a sensitive and light-touch manner. As regards the contact centre, experienced staff will deal with these cases. The point about the junior staff is that in every set-up there will be junior and senior staff, and where there is any difficulty in determining a case it will be passed to a senior member of staff. All the staff in the contact centre, as well as in the task force, will be trained, and nobody need feel any fear about approaching members of the task force or the contact centre, nor need fear the hearing they will get.

The noble Baroness, Lady Hamwee, said that this was not about what these people deserved but about their rights, which were established when they came here as part of the Windrush generation and of course more recently. My right honourable friend the Home Secretary made it clear that perhaps the Home Office is sometimes too focused on cases as opposed to humans; she made it very clear that this is a human consideration.

As regards the immigration exemption, I hope we will not conflate immigration rights with the cases of the Windrush generation, who, as the noble Baroness says, are here as of right, and we just need to regularise that status. Therefore I will not go into the immigration exemption in the Data Protection Bill. However, I will go on to discuss the EU citizens, because that clearly points out how it is absolutely right to be proactive about having a system to establish settled status and to plan it well, which the Home Office has done. Those rights will be established early on rather than waiting 47 years beyond the point when people's rights were naturally given but not documented in all cases. The noble Baroness asked about Home Office staff in the contact centre. There will be Home Office staff, and they are trained to a sufficient degree to deal with the cases that come forward.

I reiterate the words of my right honourable friend yesterday. These cases are being dealt with very sympathetically, and I hope that anyone who should come forward or knows of anyone who should come forward will be encouraged to do so.

8.19 pm

Lord Kerslake: My Lords, third time lucky—my apologies. I should first like to declare an interest. I am chair of Peabody, and if noble Lords have read the newspapers recently, they will have read of one case, reported in the *Guardian*, involving a well-regarded caretaker, Hubert Howard, who was forced to be dismissed from his job with Peabody in 2014 under these rules. He came to this country at the age of three. His only crime, if you can call it that, was to seek to return home because one of his parents was ill. This is a practical example of how organisations have contributed to the misfortune of these individuals.

The Minister has rightly said that the state has let these people down. In my career I cannot think of many examples where we have seen such a shameful and terrible miscarriage of justice. It makes me personally feel ashamed that this has happened in my country. I think we must acknowledge that, without the work of Amelia Gentleman in the *Guardian*, and indeed the work of David Lammy, I fear we would not be having this debate today. Those cases would have carried on as injustices.

After what has been a painfully long period—even two or three weeks ago, the Government were still saying that this was a process where people have to go through the normal applications—the Government have recognised the wrong that has been done and have taken steps to address this. I think this is very welcome and we should acknowledge the scale of change in the Government's position, but I fear there is a risk of further injustices happening. If we are to deal rightly with the Windrush generation, and with similar situations from other communities—this is the thing we must not lose sight of—there are some important questions to answer.

First, there is much talk of a change in culture and practice, but very little talk about a change in policy. Unless that happens, the practice will always be trumped by the policy. We know that the restrictions on illegal immigrants grew over time, but the dial was turned up very considerably from the 2014 and 2016 Acts. The environment was changed very considerably, too. My first question is: do we really stick with a very hostile environment in circumstances where we cannot be confident, as the noble Baroness, Lady Hamwee, has said, that we have got the answer right on individuals? They suffer the injustice of us getting the proof wrong, or their proof not being clarified, and then we apply draconian policies. Can I ask the Minister whether, in the light of what we have learned here, should we not be seriously be re-visiting the existing policies?

My second question is: how will Parliament know it has made progress on the Windrush generation? Where will we get that information from? Are the Government willing to consider an independent third party verifying the progress in tackling those cases? Given the scale of the injustice, that is something the Government should sign up to.

Thirdly, are the Government going to take a proactive approach to tackling those families identified in the *Guardian* and other newspapers, rather than just waiting for them to come to the call centre? I would personally like the opportunity to speak to Mr Howard and see if we can offer him his job back.

Baroness Williams of Trafford: I join the noble Lord in saying that this is a bad period—for successive Governments, actually—but that is not a reason to try to shirk our responsibilities as a Government. In terms of Mr Howard, the task force is aware of his case and we have contacted him previously, and we will be doing so again as part of this exercise. We are taking a proactive stance on cases we know exist.

The noble Lord also asked whether we should be revisiting some of our policy, for example in connection with the hostile environment. This is not a new thing. Successive Labour and Conservative Home Secretaries over the past 30 years have sought to make the UK a hostile environment for people who should not be here. Let us not forget the consequences of people who should not be here. They actually cause some of the worst detriment to people, for example through modern slavery and serious and organised crime. We do not want those people in this country. We do want this country to be a friendly environment for people who are here legally, so we will not back down—as successive Governments have not done—on tackling the pernicious practice of illegal migration to this country.

On independent oversight of what we are doing, the Home Secretary has announced that an independent person will be put in charge of the compensation scheme. I am sure that there will be plenty of time and room for debate in this House, as has already taken place, to scrutinise the effects of some of the measures that the Home Secretary outlined yesterday.

Lord Cormack (Con): My Lords, I am sorry that I am the only one on this side of the House, but I echo the expressions of shame that have already been made on both sides of the Chamber. This is a very sad day, but my noble friend the Minister was right to say that the blame is in fact cumulative and that all of us who have voted on any immigration measures have inadvertently perhaps played a part. I would like to suggest this to my noble friend: I do not like the expression "those people"; we are dealing with fellow British subjects and citizens who have the same rights as anyone in this Chamber, and that must be underlined. I would like my noble friend to discuss with the Home Secretary that a High Court judge be asked to look at all the various Acts and measures to which she referred in the Statement to see where misinterpretation could have arisen and what we can do about it. It may well be sensible for a new Bill to be presented to your Lordships' House and another place, clarifying and rectifying the measures which have led—however inadvertently—to our treating our people so despicably.

Baroness Williams of Trafford: I thank my noble friend for being the one person behind me, and I of course echo his points: this is a shameful episode in our history. The rights of these people are the rights of British citizens. However, I do not think it was the misinterpretation of legislation but rather its unintended consequence that did not—I do not want to say "confer"—confirm the rights of these people. They are not illegal migrants and that is why my right honourable friend the Home Secretary is going to right this wrong as soon as we can. He talks about other people perhaps being victims of a similar thing. That is why the measures we have in place for EU citizens are so important, so that this type of unintended consequence does not happen in the future.

Baroness Benjamin (LD): My Lords, this is the third time in the last week that I have spoken on this appalling issue, and it breaks my heart to do so. The image of broken-hearted elderly men and women of the Windrush generation weeping on television over the truly unbelievable treatment they have received will remain with us for a long time. They are etched on the nation's mind and consciousness. It could so easily have been my life being torn apart, but it is good to see the Government showing remorse and determination to put right things that should never have happened.

Will the Government, rather than just relying on victims coming forward, as the Minister has said several times, be proactive in reaching out to local communities and black-led churches to engage with those who have lost trust and confidence and are too traumatised to come forward? They truly are. For some, financial compensation will never be enough, but can the Minister tell the House if the compensation package will include backdated benefits and pensions for those who lost entitlement to those benefits, including those who were wrongly deported and now live abroad?

I want something good to come out of all this, something positive. The country wants it. The Windrush generation needs it; they deserve it. As a mark of true sincerity and respect for those people, for all the Windrush generation and the country, will the Government consider having a Windrush day to celebrate what the Windrush generation has done for this country? They feel so much part of the fabric of our rich country, so let us show them that they are appreciated on 22 June every single year. Windrush day is what we need, so the Government can really show that they care.

Baroness Williams of Trafford: The noble Baroness's idea of a Windrush day is wonderful and I will certainly take that back. She is right that, rather than relying on victims coming forward, we should be proactively going out and ensuring that those who should be coming forward and require our assistance will do so. She is right on that proactive approach.

On compensation, I had a brief word with my colleague from DWP yesterday. The whole structure of the compensation scheme will be revealed in due course, but that is certainly an area where compensation might be appropriate, particularly if someone could not access their benefit because they were deemed not to be a citizen of this country.

Lord Morris of Handsworth (Lab): My Lords, in circumstances such as those we have listened to, read about and discussed with colleagues and friends, there is always a great temptation to treat them all the same when we come to talk about restitution, reparation or whatever is appropriate. I ask that the civil servants who were involved in carrying through the policy be properly briefed, so that they understand the individuality of each case and apply to those people what is appropriate and just.

Baroness Williams of Trafford: I could not agree more with the noble Lord. These are people. They are not numbers; they are not cases. They are people;

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they are human beings. Quite often they are human beings who have suffered terrible loss in the difficulties they have faced. I will certainly take that back to the department. I echo his sentiments that we are dealing with human beings here.

Lord Scriven (LD): My Lords, this is a situation where faceless bureaucracy and policy has forgotten that we are dealing with individuals. My issue is not to apportion blame, but to try to solve the problem as quickly as it can be deemed for the individuals involved. That will require joined-up government not just in policy but in its implementation. We are talking about driving licences, benefits, jobs and housing. Rather than just have a Home Office helpline, would it not be useful to have co-ordinated centres providing face-to-face meetings with local government across the country? In that way, the moment a decision is made, it will tip off other government agencies about that person's right to remain and to have all the benefits due to them as a citizen. The unintended consequence may be that a decision is made by the Home Office but months have to go by before it filters through to the rest of government.

Baroness Williams of Trafford: The noble Lord is absolutely right that of course, this does not just involve the Home Office. As he mentioned, a number of departments are concerned, including the DWP, the DVLA and all sorts of other government departments. I have every confidence that the centre and the 50 case-workers across the country will provide a joined-up approach and that people will not have to go to several different places in order to solve their case. It should be resolved in one place by co-ordinating with other government departments. I thank the noble Lord for making the point because it is a very important one.

Lord Faulkner of Worcester (Lab): My Lords, I want to underline what the noble Lord, Lord Kerslake, said about the role of David Lammy MP and the *Guardian* newspaper, in particular the work of Amelia Gentleman in bringing this whole matter to light over the past few weeks. I feel bound to say that someone in the Home Office should have taken the trouble to read the debate on Windrush that we had in Grand Committee on 18 January, when I first raised the question of Paulette Wilson and Anthony Bryan, both of whom had been threatened with deportation. In the case of Mr Bryan, he was given an air ticket to go back to a country he had not lived in since he was a child, while Paulette Wilson was taken to Yarl's Wood detention centre and obviously treated like a criminal. Had some notice been taken then—following the campaign led by the *Guardian* and David Lammy—we would have come to where we are today very much sooner.

Having said that, I am delighted that we are where we are. I should like the Minister to confirm that the culture inside the Home Office and the immigration department will change as a result of the Home Secretary's statement yesterday. There are terrible reports of immigration officers playing a game in which they catch people in what is known as a "Gotcha culture". When they think they have found an illegal immigrant, they mark it up as a victory. That sort of talk and action can no longer be tolerated. Can she give an assurance that that will stop? Also, can we now begin to have a proper debate on and give full recognition to the importance we attach to the immigrants among us? We are all immigrants in one way or another, so we should move away from the blame culture and xenophobic attitude which is colouring so much of our public debate.

Baroness Williams of Trafford: I agree with the noble Lord that the culture is everything in an organisation and I hope that the Home Secretary's words yesterday will have acted as a jolt to the culture not only in the Home Office but in other government departments because, in the end, everything is about human beings as individuals and citizens of this country. He mentioned our debate in Grand Committee and I will mention again what I have said: is not hindsight such a wonderful thing? If only this had come to light far sooner. It is 47 years after some of these people arrived, and indeed a lot longer for others. I understand that Paulette Wilson now has her documents and that Mr Bryan has had his status confirmed. That is an example of how, I hope, the Home Office is being proactive in its approach.

On David Lammy, I did mean to say when the noble Lord, Lord Kerslake, made his point that my right honourable friend the Home Secretary also paid tribute to his work yesterday. I echo those comments.

Baroness Lawrence of Clarendon (Lab): My Lords, I have been listening to the debate for a while. I had no intention of speaking but I have been sitting here and thinking about when the Windrush residents first came here and how they suffered with accommodation, jobs and all the signs in the windows saying, "no Irish, no blacks, no dogs". Now here we are again, almost 70 years later, talking about the same people who travelled here and are facing deportation and everything else. These people are suffering a double whammy. They should never have been put in this position, because they came here as British citizens. They were invited here, yet here we are now, talking about hundreds of people being deported and what we should do. This should never have happened. This country was never told in the first place that these people were invited here to build the country up; they did not just come here. The residents of this country never understood why the Windrush people came here in the first place.

Baroness Williams of Trafford: The noble Baroness is absolutely right: it is a double whammy. I have often referred to the comments in the windows of bed-and-breakfasts here in the 1960s, saying "no Irish, no blacks, no dogs". What a terrible insult they are to the noble Baroness, myself and anyone who is black, Irish et cetera. We are a country of immigrants. These people are here by right and she is absolutely right that they are here because we invited them.

Financial Guidance and Claims Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments. It was ordered that the Commons amendments be printed.

House adjourned at 8.40 pm.

Grand Committee

Tuesday 24 April 2018

Smart Meters Bill

Committee

3.30 pm

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I must make the usual announcement. If there is a Division in the Chamber, we must adjourn and resume after 10 minutes.

Clause 1: Smart meters: extension of time for exercise of powers

Amendment 1

Moved by ***Lord Grantchester***

1: Clause 1, page 1, line 5, leave out "2023" and insert "2026"

Lord Grantchester (Lab): My Lords, I will speak also to Amendments 2 and 4 in this group. Amendment 1 gives the Secretary of State a further three years beyond the date the Government are asking for in the Bill. The Government seek to extend the existing powers provided to the Secretary of State to develop, amend and oversee regulations relating to the licensing of smart meters from 2018 to 2023. Unusual as it may seem, we would like the Government to have more time. We want them to get the smart meter implementation programme right.

We are all in favour of smart meters and the benefits that they will bring to energy efficiency and customer satisfaction. I could cheekily say that we do not want to have to grapple with whatever state of distress the smart metering programme has reached when we take over at the next general election. We want the plan to work for consumers, and at the moment we see a smart meter rollout that is unclear, incoherent and unco-ordinated in its approach. The Second Reading debate revealed the delays, complexities and escalating costs at this juncture. We want the Government to take more time. We think that they will need more time. Ostensibly, they are seeking the five-year extension—three years beyond the 2020 deadline—in order to conclude a review of the data access and privacy framework by the end of 2018, and to fulfil any actions needed from the review.

In addition, I understand that the National Audit Office review of the cost-benefit analysis, due in July, will also be delayed because of a lack of resources. The review was also going to consider the technological choices made to ensure that the programme was not going to be installing obsolete equipment. I would appreciate it if the Minister would include the latest position on the NAO report in his remarks. This indicates that there is going to be a pause in any case. We believe that this time should be used constructively. Experience has already shown that the timetable has slipped. We say to the Government, "Take more time. We think you might need it. And in return, let's get it right. Let's be more ambitious. Let's capture the latest technology to bring real benefits to consumers".

Also contained in the amendment is the consideration that the statutory obligation to complete the rollout by 2020 needs to be reassessed. First, there is a mixed message or misunderstanding about what is to be completed by 2020. I am grateful to the Minister for his letter of 22 March, after Second Reading. In his second paragraph, he writes:

> "The obligation on energy suppliers … is to take all these steps to install smart meters … by the end of 2020".

However, in the first paragraph of page 2 of the letter he writes:

> "The Government is committed to ensuring all homes and small businesses are offered smart meters by the end of 2020".

There is a lack of clarity between installation and being offered a smart meter by 2020.

The Government needs to reassess the whole programme, revisit the milestones and reset the parameters in a collaborative way with the various interested parties charged with making smart metering happen. Just as the Government need sufficient time to undertake and execute actions from the post-rollout review of the programme, as the Minister's letter states, so the industry needs the confidence to implement worthwhile solutions for its consumers.

I move to Amendment 2, which was moved in the other place, and we repeat it here merely to retest under what circumstances the Secretary of State may wish to remove certain licensable activities to which his department has drawn attention in its memorandum, submitted to your Lordships' Delegated Powers and Regulatory Reform Committee. Although it is stated that there is no intention to use this power, one licensable activity that could be removed is a revision of the smart meter communications service, the DCC. In line with the ambitions under Amendment 4, perhaps the Minister might clarify why his department may wish to use the power included here.

On Amendment 4, although the Minister and the Government may wish to portray that smart metering is now back on track and proceeding constructively towards its objectives, very few independent assessments concur with that view. There continues to be confusion regarding which types of SMETS 1 meters can be upgraded without replacement to be interoperable and from what date. There is confusion around differing standards and the use of differing technologies around the UK; confusion over whether pursuing the 2020 deadline has the potential to increase costs and risks and jeopardise the programme's increasingly suspect credibility to consumers; and concern that a lack of fully tested SMETS 2 meter devices will further undermine meeting supposed timescales.

In considering the number of reports across the various parameters important to stakeholders, the necessary consumer activity required and the technological challenges in inherent in these meters, we concluded that it would be far more constructive if all those intimately challenged by the rollout were to come together to share perspectives and work constructively together to find common solutions and co-ordinate the rollout. We consider that Ofgem as the industry's regulator would be best placed to lead and develop this national plan. We consider that consumers should be put at the heart of the programme, costs

[LORD GRANTCHESTER]
monitored to secure benefits for them and the programme able to take advantage of all developing consumer technologies.

Proposed new subsection (3) clarifies those that Ofgem must consult, and subsection (4) specifies all the ambitions to which the national plan must have due regard. The plan must set out credible milestones with appropriate timescales for achievement, including the installation or termination date. The plan needs careful monitoring and adjustment, with frequent reports from Ofgem. For example, I draw attention under proposed new subsection (4)(g) that all other national rollouts of smart meters have been conducted through DNOs—distribution network operators—not suppliers. Here the rollout has been conducted by energy suppliers. I do not wish to challenge the whole implementation model, but it could be that different answers are required as implementation proceeds, and Ofgem needs to be able to take account of this and promote effective delivery mechanisms.

A reset needs to be made so that the consumer can begin to have confidence again that smart meters will be deliverable and beneficial. Smart metering needs to be the first crucial initial infrastructure in place to deliver the benefits of smart technologies to the home. It needs to be effective—it needs to be got right. I ask the Minister to respond positively to this amendment. It may not be correct in every detail: for example, it does not include a review of the cost-benefit analysis, as it had been understood that the NAO was already going to be doing this. The Minister needs to advise the Committee on the status of that review. It can be included on Report, should the NAO not conduct the review after all. However, I ask the Minister to agree that a national plan along these lines is required and to bring something back himself on Report. Perhaps this can be discussed next week, but a favourable response would be very constructive. I beg to move.

Baroness Featherstone (LD): I support Amendment 4. Compared with other noble Lords present, I came late to the smart meters table. They have participated in a number of debates leading up to where we are now and during that process they have obviously met a number of bodies associated with the smart meters programme. I have to say that I have been somewhat shocked at how what should be an energy revolution, welcomed on all sides of this House and beyond, has turned into a shambolic mess. As was mentioned, the cost—much higher than was ever envisaged—will no doubt end up with the consumer. This could and should never have happened.

I was a member of the London Assembly when it was formed in 2000 and I was chair of the transport committee. When we introduced in London the biggest civil engineering project since the end of the Second World War—the congestion charge—a great deal of planning and work went into making sure that on the day it went live, it was so well thought through that nothing went wrong, despite the *Daily Mail* circling the perimeter of the charge to, it hoped, see it go wrong. I do not really understand why the commissioning of such a major infrastructure project has not been treated in that fashion. This is an absolutely huge change and an infrastructure priority, heralding a better future for all when energy is very important to this country. It seems to have involved a kind of piecemeal bun fight over which companies will deliver which meters to which people under what circumstances and for how long, with no co-ordination, no collaboration and nothing bringing it together.

Everyone has made it quite clear that the deadline will be missed. I am afraid that I have not met anyone, other than the Minister, who thinks that this deadline will be reached. That being the case, rather than move the programme to 2023 or whatever, it would be far better to grab hold of it now: otherwise, consumer confidence, which is vital to this project, will be completely undermined. I hope that the Government will grasp hold of this and take up the recommendation of the noble Lord, Lord Grantchester, coming back with a similar suggestion for halting the project and promoting a national plan. Not only does what needs to be done to whom, by whom and at what cost need to be thought through but there is a great need for a new communications programme to market the project. There is possibly also a need to incentivise consumers and to find a way not to put them off but to bring them back into the fold after they have become somewhat disillusioned.

The opportunity to make the project work is there, but at the moment we are in danger of the absolute opposite happening, with diminishing returns and diminishing confidence, shooting ourselves in the foot over what should be a fantastic programme for the future. The project has been piecemeal, inadequate and not thought through. If the Minister will excuse me, I believe that he should bring it together, do the necessary and bring back an amendment on Report.

Lord Teverson (LD): My Lords, I congratulate the noble Lord, Lord Grantchester, on this major amendment in terms of a plan. I have been searching to find a way in which this project can be put right. The difficulty is in making it deliverable and coherent without going back to where we were 12 years ago. This programme started in 2006 and it has taken since then—the time taken for the First World War, the Second World War, the Korean War, plus a bit more—to get to 300 SMETS 2 meters. That is what we have achieved over that period of time. That suggests to me that it has not been good. Obviously, a number of Governments have been involved during that time. We all understand how important this is. This programme is not just about people not having to read the meter any more, as one of my colleagues said over lunch, but about how we manage energy in the whole economy and our nation for decades ahead. We should be leading a cultural, technical and economic change.

3.45 pm

The solution proposed here—putting it in Ofgem's hands—is probably one of the best ways to do this. Again, I congratulate noble Lord, Lord Grantchester, on his initiative. But the big paradox here, as the noble Lord, Lord Grantchester, said, is that in a situation where we are late and getting later, it is impossible to meet the targets we have at the moment—they will not be met; like my noble friend, I have met no one who agrees that it is possible to roll out this programme—

so we have to get realistic. But at the same time I understand the Government's wish to make sure there is no slack in the process. This should be relatively simple and straightforward—a meter for two sources of energy communicating electronically with a data centre, which sends the data back to the energy suppliers—but it is not. We need to rethink it without going backwards.

I have heard of a number of instances, particularly with SMETS 1 meters, where people have changed supplier; the existing meter has been taken out and replaced with one from another supplier and the meter is identical and made by the same manufacturer, but on a different leasing arrangement. So I would like to understand how we get over that short-term and, indeed, long-term problem. There is a real cost implication for consumers and the leasing costs of the equipment have been a major factor in the cost of the rollout so far for the suppliers. How do we get round that issue? Is there a legislative way, or an instruction or whatever, to solve that problem with SMETS 1 meters now as we move on with the programme?

Lord Skelmersdale (Con): My Lords, is there not actually a rather bigger problem than the one the noble Lord has just explained? At the moment smart meters are offered to consumers. They do not actually have to have them. This whole scenario falls absolutely flat unless there is an imposition on the energy companies, whether gas or electricity, to install smart meters in their customers' premises.

Lord Stevenson of Balmacara (Lab): My Lords, I support my noble friend Lord Grantchester in his Amendment 4 and reiterate his important suggestion. He accepts that his amendment is not necessarily the definitive way forward and is inviting the Government to engage with him and others to try to find a form of words, process and activity that would enable a national plan to come forward that we could all get behind. I hope that when the Minister responds he might signal that this is something he will consider.

Like the noble Baroness, Lady Featherstone, I have come to this relatively late. Those who have not been living the ups and downs of this over the past few years are completely and utterly shocked that it could have got to this stage without some very serious consequences. At a superficial level—I know it is more complicated than this—the initial programme has had to be restarted and reset but is now about to stop, and people are being laid off and made redundant because there is no guarantee that the SMETS 1 meters will be continued after October 2018. A completely new, untested and uncertain scheme involving SMETS 2 will be brought in on top of that and will therefore go back over ground already covered in a way that is as yet unforeseen.

At the same time, the whole costs of this are hidden and difficult to ascertain. The process under which levers can be exercised on people is not clear and the role of Ofgem, the regulator, is very passive in relation to the capacity it has now. It all smacks of being a complete and utter train crash of enormous proportions, and the only solution appears to be to keep ploughing on. British pluck is all very well but it has not always been the most successful way forward, particularly in matters involving technology.

I urge the Minister, when he comes to respond, to think very carefully about the way in which the Opposition are proposing this and about the support we have received from others. If we do not come out of this with a clear and approachable process—whether it is this national plan or not—the real danger is that consumers will literally be switched off in the sense that they will not wish to be involved in this. As a result, the huge upside of this, the benefits of bringing in a new technology, opening up innovation and bringing in new thinking about how we manage our energy supply—which was the point made by the noble Lord, Lord Teverson—will be lost if consumers are not prepared to walk along. This is not about individual customers having a better time; it is about how we as a country can cope with the energy demands that we will face, and minimising them while strengthening our approach as we go through. This is a terrific chance to get this right in a proper and positive way.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the noble Lord, Lord Teverson, used the examples of the length of a number of wars. I will not follow him down that track because I think one could come up with some longer wars as examples. He mentioned that this had started under a Labour Government, continued under a coalition Government and was now being dealt with by a Conservative Government. I have been a member of two of those—obviously I was not a member of the Labour Government. It has been going some time but we want to get it right.

When things have been going some time I am always faintly surprised when Oppositions put forward amendments to suggest that we should take even longer. I suppose that is why the noble Lord, Lord Grantchester, prefaced his remarks with, "Unusual as it may seem". I take note of that. I will not rise to his bait to make any comments about the likely outcome of the next election. Quite rightly, he wants whoever is in government at the time, whomsoever that may be, to be helpful, possibly referring to the remarks on the word "helpful" made by the noble and learned Lord, Lord Goldsmith, in yesterday evening's debates. We will try to avoid "helpful" in the future.

To continue on the helpful theme, I would obviously like to be helpful. The noble Lord asked whether we could have further meetings. I will make myself available when the noble Lord, the noble Lord's colleagues and the noble Baroness, Lady Featherstone, and others want to have meetings between now and Report if we feel that we can discuss things further and take things forward.

In the meantime, I will respond in a little detail to the specific amendments—Amendments 1, 2 and 4 in the first group. As I said, the first amendment proposes to extend certain powers that the Secretary of State has to develop, amend and oversee regulations relating to smart meters until November 2026, although in this Bill we have sought only the powers that we think are justified, which extend to 2023. Extending the powers to 2023 would allow the Government to continue to oversee the programme, while suppliers meet the obligation on them to take all reasonable steps to install smart meters in homes and businesses by the end of 2020.

[Lord Henley]

The noble Lord referred to my letter where I talked about them offering rather than installing—we are trying to make sure that they have at least offered something to everyone. Obviously no Government can guarantee that one can be installed in every home because it is quite possible that a number of individuals will refuse to have a meter for whatever reason. It also allows the Government to undertake a post-rollout review once the programme has been operating in a steady state and then implement any of the recommendations that emerge. We hope this will help to ensure that the smart metering programme is fit for purpose—whether SMETS 1 or SMETS 2—for decades to come.

Lord Stevenson of Balmacara: I am sorry to interrupt, but on the narrow point, what specification are the Government adhering to? Is it the obligation on energy suppliers to take all reasonable steps to install smart meters or not?

Lord Henley: We hope that they will offer—and if they do, obviously they must then install. There is no point offering to install one unless they do so. So we hope that all of them will have offered and installed by that date.

Lord Stevenson of Balmacara: It is important that we get this right, because there is a world of difference between making an offer to install and having an installation completed. My noble friend Lord Grantchester, in making his proposal, would give an additional three years because the understanding we had from the first paragraph of the Minister's letter was that it was about the completion of that process. If the noble Lord is saying that the licence obligation placed as a condition of licence on energy suppliers is only to offer, does he not accept that that completely changes the process?

Lord Henley: No. I wanted to make clear that there is no obligation to have got to a 100% rate of installation because we know we can never get to that target. What we are looking for is that they must make the offer and then make the installation—that is the undertaking—by the appropriate date. We do not think that extending the time is necessary. Does the noble Lord follow me?

Lord Stevenson of Balmacara: I will try one more time and then I will stop. The obligation placed statutorily on companies operating as energy suppliers is, as I understand it, to have made an offer to take all reasonable steps to install smart meters in homes covered by the mandate by the end of 2020. That will be considered to have been completed if they have written to and received information back from all those who would be eligible to receive these things, and, where there has been an acceptance, have completed the installation. Obviously, as the Minister said, you cannot install a meter if somebody says that they do not want one, so those people are taken out of it—but must everyone else, if they say that they want a meter, have had one installed by 2020? That seems extraordinary.

Lord Henley: It is not simply a matter of writing a letter to the individuals concerned. One letter would not be enough. The energy suppliers must show that they have made reasonable efforts with all their customers while allowing a degree of flexibility in certain circumstances. The rollout obligation puts that onus on them. Ofgem has made it publicly clear in an open letter that it will need to adapt its approaches to consumer engagement, using other approaches where necessary. It is not merely a letter, but it must make a genuine attempt—merely making a solitary offer is not sufficient—to get hold of those people to make an installation.

Lord Grantchester: I shall interject very quickly to follow up on my noble friend's comments. There has been a lot of confusion about what sort of meter will be installed. The Government have backed away from SMETS 1, but I am also hearing industry commentators suggesting that if SMETS 1 meters can be interoperable, the process should continue beyond October as they will then be interoperable as though they were SMETS 2 meters. So if, as we are hearing from other commentators, people are standing down staff from being able to put meters into premises where they have said yes because of the unavailability of SMETS 2 meters, that in itself will mean there will be a considerable delay to implementation. In the circumstances, it is rather unclear to the consumer what exactly their expectations will be and what will be delivered by what date—hence my argument. The Minister needs to appreciate that there is probably still a lot of confusion out there regarding what meters will be done by what date, when they might be installed and when any benefits will be appreciated.

4 pm

Lord Henley: As the noble Lord is aware, SMETS 2 meters are now being installed. I cannot remember the figures given at Second Reading, but so far there have been very few. However, we expect to see a fast increase over the coming months.

We have also made clear—the noble Lord alluded to this—is that SMETS 1 will no longer count by October, the date to which he referred, and thereafter SMETS 2 will be installed. If a SMETS 1 is installed after that date and is upgraded to a SMETS 2, obviously that will count as a SMETS 2. I will take advice and write to the noble Lord if I am wrong on that. However, as the noble Lord knows, from October SMETS 2 will count in meeting that commitment.

With that, with the changes and with the gradual rise in the number of SMETS 2 installed, no suppliers will have problems in finding work for their staff, and so will not have to lay people off and bring them back on during this process.

Baroness Featherstone: My understanding is that there are so few SMETS 2 meters out there—mainly in supplier homes—that their testing with the DCC cannot be relied upon at this stage. Surely it cannot be done with fewer than 50,000. I am not a technician—I do not know what the number is—but 300 or fewer is not enough to ramp up the rollout of SMETS 2 in the way the Minister is suggesting.

Lord Henley: Again, I will take advice on that. We will come back to it on a later amendment. The noble Lord, Lord Teverson, has spoken about not moving

further until we have a large number rolled out. However, my understanding is that this process is beginning to happen and that numbers are going up. The noble Baroness is looking at me in disbelief, as she so often does. We often disagree.

Baroness Maddock (LD): In defence of my noble friend, we have had briefings which tell us what she has just said to the Minister. I do not know where he gets his briefings, but the industry has briefed us and it is clear that SMETS 2 is not at the stage that he thinks it is.

Lord Henley: My Lords, I am not sure whether, strictly speaking, the noble Baroness is correct. My understanding is that the number of SMETS 2 installations will go up over the coming months, in which case it will be possible to test them, and therefore that by October we will be at a stage where we can go ahead. We have time on our hands on this matter and, as I said, I would like to have further meetings with the noble Baroness and others between now and Report. We could then go through some of these particular points.

At the moment perhaps I may get on with these amendments and come back to my point. As I said in response to the noble Lord, Lord Grantchester, there will be this change in October. SMETS 1 meters will no longer count, but suppliers will still be able to make use of their workforce in the installation process.

On the extension that the noble Lord is generously seeking on behalf of the Government, we do not think it can be justified. It would not send out the right signals and could even have—dare I say it?—an unhelpful impact. It could suggest that the Government would play an active role in leading the programme well beyond the point at which the self-sustaining industry model overseen by Ofgem is due to take over. It also risks undermining industry momentum in progressing the rollout just as suppliers are accelerating deployment with the new generation of meters being brought in. Delay to investment decisions and deployment would also bring delay to the benefits that accrue to consumers from receiving smart meters. In turn, that could impact on the pace of moving to a smart meter system with dynamic time-of-use tariffs made possible by smart meter installation. That is why we are firmly committed to the programme's timetable as reflected in Clause 1.

The noble Lord referred to the NAO report. We welcomed it and the follow-up study on smart meters, and will work closely with the NAO to help review the progress of the programme, but I do not believe that the report necessarily means that we need a pause in the rollout. As the noble Lord knows, it is routine for the NAO periodically to examine every major government programme, as it did on smart metering in 2011 and 2014. We will take note of the report and discuss it with the NAO, but I do not think that the programme needs a pause.

Amendment 2 relates to the power to remove licensable activities. This amendment seeks to limit the extension of the Secretary of State's power, so that beyond 1 November 2018 he would not be able to exercise the power to remove any licensable activities in respect of smart meter communications. The Government have so far used the power only to establish the provision of a smart meter communication service as a licensable activity. That ensures that we have a communications and data system that supports secure, reliable and interoperable services for smart meters. The DCC is playing a fundamental role in driving smart metering benefits, and we do not currently consider that we will exercise this power to remove the provision of a smart meter communication service as a licensable activity.

However, we cannot rule out that evidence could emerge to suggest that the removal of at least some elements of this licensable activity to the market could be justified. Retaining the power to remove licensable activities in respect of smart meter communications is therefore necessary as a backstop and is consistent with the Secretary of State's principal objective of protecting the interests of energy consumers. The Secretary of State may also determine that it is appropriate and in energy consumers' best interests to introduce further licensable activities in support of smart metering by 2023.

As detailed in our delegated powers memorandum, the smart metering programme continues to develop policy in a number of discrete areas, including overseeing the development of technical solutions delivering smart benefits to the small number of premises which are currently not expected to be served by the smart meter communications network as to do so would be disproportionately expensive. This is typically due to location and surroundings. For example, this can affect premises in highly built-up areas with many tall buildings as well as remote or mountainous areas.

One of the tools we may wish to use to deliver the policy is requiring activity to be licensed. For example, it might be considered appropriate to create a licensable activity that relates to arranging the establishment of communications to these properties. Should we introduce a new licensable activity here that is subsequently found no longer to be justified or needed, we would need to have retained until 1 November 2023 the ability swiftly to remove that licensable activity.

As the noble Lord will be aware, we have used the affirmative resolution procedure. We have also referred it to the Delegated Powers and Regulatory Reform Committee. It did not raise any issues with it. Further—I shall read this out because it is not often that one gets praise of this sort—the memorandum from the committee, in the part that I have highlighted, states:

> "There is nothing in this Bill we would wish to draw to the attention of the House. We do, however, wish to commend the helpful and well-drafted memorandum about the delegated powers in the Bill, provided by the Department for Business, Energy and Industrial Strategy".

We do not often get praise, so I think that it is worth repeating it on this occasion to make sure that it is properly on the record. Obviously, it was already on the record, as it was in the committee's 17th report—but I am grateful for the opportunity to repeat it.

Amendment 4 is the big amendment tabled by the noble Lord, Lord Grantchester, and principally supported by the noble Baroness, Lady Featherstone, and the noble Lord, Lord Teverson. I am grateful to the noble Lord, Lord Grantchester, for what he said about it. He talked about there being confusion on a number of points, which I hope I can help deal with. He also

[LORD HENLEY]
spoke about moving from rollout by suppliers to rollout by DNOs, as happens in another country. I suggest to him that making such a change might bring more confusion and chaos than absolutely necessary. Let us first deal with the amendment and no doubt we can talk about that later.

The amendment would task Ofgem with consulting stakeholders and publishing a national plan for smart meters by 31 December 2018. It would then require the Secretary of State to specify the final version of such a plan in regulations. The large-scale rollout of smart meters across Great Britain by 2020 is a substantial technical, logistical and organisational challenge. As we have made clear, meeting that challenge depends on collective and co-ordinated delivery. I think that that programme should be led by the Government, who set the policy and regulatory framework for the realisation of the benefits. The rollout is delivered by energy suppliers, networks and others. Ofgem's role is to make sure that consumers remain protected during the rollout, to monitor energy suppliers' compliance with their obligations and potentially to enforce against any non-compliance. The Government have provided strong leadership and established governance frameworks, with clear roles and responsibilities, across all these parties. Under this leadership, the smart metering programme has already made substantial progress.

Given the scale of the challenge, I understand and welcome the noble Lord's appetite for information and reassurance on progress. I remind him of the commitments that the Government made earlier in the passage of the Bill—namely, that we will publish an annual report on the progress of the smart metering implementation programme as well as an updated cost-benefit analysis in 2019, to reflect the state of play after the transition from SMETS 1 to SMETS 2 meters has taken effect.

In that context, it is not clear what the additional value of a national plan of the type proposed by the noble Lord would be. The purpose seems to be to task Ofgem with the oversight of smart metering implementation and to reduce the Government's role. Such a change in approach would simply divert attention and resources from the rollout delivery and associated consumer benefits. The Government are rightly accountable for safeguarding the benefits of smart metering. The new clause would duplicate existing efforts to deliver an efficient rollout and would put an undue burden on Ofgem. Furthermore, requiring the Secretary of State to specify the final version of the national plan in regulations would limit his ability to use the Section 88 power, of which the noble Lord will be aware, to modify the smart metering framework in future. The purpose of the Bill is to enable the Government to respond to the operational realities of the rollout and to adjust the monitoring framework as may be required. The new clause would undermine that intent.

In summary, a high-level plan for the rollout of smart meters was set by the Government in their 2011 prospectus document, which establishes the framework for the rollout.

4.15 pm

Lord Campbell-Savours (Lab): I was engaged in debates on these matters with the noble Lord, Lord Teverson, 10 years ago, when the original legislation was put through. I am unable to understand what pressure is on the Government to get on with this before the National Audit Office produces its report. I would have thought that that report was critical in all this, as it may well make recommendations that do not fit within the proposals of this legislation. What is the pressure? Could we not have waited for another six months? What would have happened if we had?

Lord Henley: I have been criticised for the Government going rather slowly on something that was introduced in 2006 by the Government of whom the noble Lord was a supporter. As the noble Lord, Lord Teverson, said, this has continued through the length of two world wars and a bit more; I asked him not to specify any further wars. The NAO has already reported three times. As I said, we will respond to the NAO's report, but I do not see why we should not continue with what we are doing at the moment. As far as I know, we are all in full agreement on the general benefits of a smart metering programme and of getting as many people as possible on to it, so that they will be wiser about their use of energy and more able to consider which energy supplier to choose—I am just giving all the benefits of smart meters. I do not think that there is any need to pause for the NAO report. As I said, we will consider it and respond as appropriate.

Lord Campbell-Savours: Has the NAO expressed a view on whether the legislation should have been delayed? It will have a view. Is it happy for us to proceed with legislation without its report?

Lord Henley: I am not aware that the NAO has asked for any delay, but the noble Lord can look at its three reports, including the most recent one, which I have referred to. I will leave that to him.

As I said, we published our prospectus document in 2011, which established a framework for the rollout and was the basis for the regulatory framework through which the rollout is now being delivered. It is right that we have progressed from planning to implementation. Both the Government and Ofgem are focused on monitoring the rollout to ensure that it delivers in a timely way—albeit, as the noble Lord, Lord Teverson, put it, slightly less timely than he would have liked. Where our monitoring activity identifies areas where the course of the rollout needs to be adjusted, we will of course take action.

In due course, we want smart metering to be business as usual in a competitive retail market. The Government will then be able to step back when it is right so to do. However, in the short to medium term, the Government do not intend to step back from their leadership role. Through the powers in the Bill, we will sustain our active engagement with the industry to ensure that any risks to meeting the 2020 deadline are identified and addressed as quickly as possible. I repeat what I said about hoping to have ongoing discussions with the noble Lord and others, but I hope that in the meantime he will feel able to withdraw his amendment.

Lord Grantchester: Before the noble Lord sits down, could I just come back to the NAO report, just to be clear in my mind about exactly what is happening? Am I to understand that the NAO is still planning to report by July 2018 on the cost-benefit analysis of introducing smart meters? The noble Lord has correctly said that the NAO has already done two reports—in 2011 and 2014. It is now four years since the report of 2014 and I understood that the general consensus was that it was about time to do another cost-benefit analysis, in order to prove to consumers that what is happening is for their benefit, even though the costs are going up. However, if the review is being shelved, it is important to know that. We understand that it was not part of any legislative programme but that it was going to improve consumers' perspectives on accepting an offer that would be beneficial to them. Can the Minister be precise: is the NAO report going ahead in July 2018 or not?

Lord Henley: I do not know about the precise timing of that report. Obviously, that has to be a matter for the NAO. We will respond at that moment, but I do not think it is necessary for the Government to delay what we are proposing to do. As the noble Lord, Lord Teverson, said, there has already been too much delay. We will await with interest the report from the NAO.

Lord Grantchester: I do not think that the NAO wants to cause any delay. I understood that it did not have the resources to undertake this work and therefore that it would not happen, although it is crucial for the continuing rollout that consumers can easily see the benefit over and above the cost of the programme. It is not easy to understand it within their own bills, but if the NAO produced a report showing that overall it was beneficial to consumers that this was going ahead, it could be very constructive in allaying some people's fears that this is not for them because of the cost. I want only to understand whether the NAO still has a commitment to produce the report this year.

Lord Henley: Again, I do not know about this year. I understand that the NAO still plans to undertake a review. It has not confirmed its timetable. Obviously, that is a matter for the NAO. When there is a new cost-benefit analysis, obviously we will look at it—but I cannot go into the NAO's timetable.

Lord Teverson: Perhaps it might be useful if we could meet the NAO and go through this and make sure that the audit is broad enough in scope without it taking longer. I realise that this question is not completely to do with these amendments, but I did ask the Minister about the transferability of SMETS 1 meters, which is different from interoperability—SMETS 1 meters are surprisingly interoperable generally—and the problem of taking one out and replacing it with one that is almost identical but is from a different supplier. Is the Minister aware of that? Do his officials see that as a significant problem? Is there a solution so that we can stop this almost immediately, if it is happening?

Lord Henley: I think I had better take advice on that and possibly write to the noble Lord, or deal with it in any meeting that we have. I understand that some SMETS 1 meters can be upgraded. But I do not want to put on the record anything that I might have to make a personal statement about and correct the following day. Perhaps we could leave that to a letter or a discussion with the noble Lord.

Lord Teverson: I am very happy with that. I stress that it is an asset and financing issue, rather than an interoperability issue.

Lord Grantchester: I thank the Minister for his response, and I am grateful for all the comments made around the Committee today. It has been very helpful. I am not trying merely to tease the Government in offering them more time, I thought that the Minister might come forward with evidence to show that all this is going to be achieved well within the 2023 timeframe, and the different steps that are going ahead, such that we could be shown to be completely erroneous in our impression that the Government may need more time. I put it to him that we are trying to be constructive and trying to get the right solutions done in an effective way for smart metering to be well accepted, so that when consumers are offered a smart meter they are only too keen to go ahead because of the state of the technology, the benefits that can be shown to them, and so on, and we can all look forward to an early resolution of all these problems for a successful outcome. So if the Minister is happy to take it in that timeframe and does not see a critical issue in the 2023 deadline, I am very happy to beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Clause 1 agreed.

Amendment 3

Moved by ***Lord Grantchester***

3: After Clause 1, insert the following new clause—

"Cyber security

The Secretary of State must place a duty on the Government Communications Headquarters to conduct an annual risk assessment to ensure that the smart metering system is adequately protected from cyber attacks."

Lord Grantchester: My Lords, I shall speak to Amendments 6 and 11 in due course. Amendment 3 places a duty on GCHQ to conduct an annual risk assessment regarding the security of the smart metering system. One of the delays experienced in the rollout of smart meters concerns whether or not the system is secure from cyberattacks. Considering that the technology used to communicate the information from the smart meters is a basic 2G technology which can hardly be said to be secure, it is remarkable that GCHQ is able to pass the system as fit and secure.

In the Minister's letter dated 20 March, which I referred to earlier, he clarified that critical communications with smart meters will happen only when authenticated by strong encryption and independently countersigned by the DCC. I would be grateful if the Minister could

[Lord Grantchester]

clarify what that means, whether GCHQ is demanding technological improvements and whether security issues are part of the Government's review of the data access and privacy framework to be completed this year. What processes do the Government have in place to ensure the robustness of the system? Cybersecurity is a constant challenge, and we believe that an annual risk assessment will be required to keep the UK's infrastructure secure from potential attack. I beg to move.

Baroness Featherstone: My Lords, I tabled Amendment 11 to probe issues around the use of data obtained by the powers in the Bill. It takes the form of a review into the use and potential misuse of the data obtained via the smart meters scheme. The review would look at the risks of data theft and of data being passed to a third party without the consent of the consumer, and if the risk of theft or passing on without consent was substantial the report would bring forward measures to be implemented to combat such events. Lastly, the amendment would require the Secretary of State to lay a report of that review before both Houses within six months of the Act coming into force.

I think the intent of the amendment is quite clear. We have recently seen the extreme value of data to a number of organisations. It is clearly valuable in a world where we create and feed markets through information, and the more personal that information, the more targeted sales or persuasion can be. The amendment seeks to put measures in place to mitigate those risks.

Baroness Maddock: My Lords, Amendment 6, in my name, refers to issues that I raised at Second Reading. It calls for a review of the code of practice for energy suppliers. It is a probing amendment. I am anxious to get a bit more information from the Government about how they understand consumer engagement because I feel that whenever we are trying to deal with these issues human behaviour is the last thing about which we have serious concern. If we look back at the Green Deal, some of the disasters there were due to human behaviour, so it is important that we understand how people react. Indeed, the success of the rollout depends on consumers and consumer confidence, yet, as we have already heard, they are not obliged to have a smart meter. Therefore, how they react to the proposals is very important.

4.30 pm

We know that many people who have smart meters are quite satisfied with them but there is evidence that not all is well in the way they are dealt with by the suppliers. My amendment calls for the Government to look not only at people who have had meters but at those who have been approached and at what might have gone wrong during that process. As I have said before, I was approached but until very recently there was no guarantee that I could carry on benefiting from a smart meter if I changed supplier. However, whenever I tried to engage with the people on the phone who were trying to persuade me to have a smart meter, they did not seem to understand that at all. If consumers are to be in favour of smart meters, the people who talk to them need to have all the facts at their fingertips.

I do not know how many of your Lordships heard the recent edition of the Radio 4 programme "You and Yours", which covered the way in which the big six deal with people. They have a target to meet and sometimes find it difficult to get people to take up meters quickly enough. First, you have to talk to them, or sometimes they send a letter, and then they talk to you to make the arrangements. They had been sending letters and emails to people saying, "We are arriving next week to put in your meter". This created such a stir that lots of people contacted "You and Yours" on this issue. Having listened to the programme, even more distressing was the fact that Ofgem had said that it was okay for them to do that.

That is why it is important that we look seriously at the code of practice. Some people said that they definitely did not want a smart meter, yet the suppliers still turned up on their doorstep. Some people thought that they had to have a meter, although we know that that is not how it is meant to be. Therefore, it is important that we look at this matter seriously. My noble friend Lord Teverson has raised the issue of another, almost identical, meter being installed when someone changes supplier.

The other issue that has been brought to my attention is that there are sometimes long delays between people being contacted and the installation being carried out. The suppliers are clearly trying to do something about that by just turning up on people's doorsteps, which means that there is no delay at all. There is a serious issue here.

Another thing that has been brought to my attention is that, after installing the meter, installers do not always check that all the appliances work and that everything in the house is okay. This particularly affects gas supplies. Noble Lords will know—as I have known to my cost in the past—that if something is wrong with your boiler or the gas people see that your boiler is not quite right, they turn it off and that is it. That has happened to some vulnerable customers. The Minister and I have had discussions about the fact that boiler replacements have been taken out of the ECO scheme. A vulnerable customer's boiler might be turned off when they get their smart meter and they have no way of replacing it, so that is something that we need to look at.

I support this programme. It is very important that we have smart meters but, as the programme goes along, particularly because it depends on consumers taking up meters, we need to get this right. I hope that the Government can look seriously at the code of practice. Also, does the Minister think that the code of practice and Ofgem's powers are strong enough to deal with this?

Lord Campbell-Savours: My Lords, I do not profess to have huge knowledge of this subject. It is not an issue which I have researched recently.

When the original legislation went through—I refer to the role played by the noble Lord, Lord Teverson, in about, I think, 2006 or 2008—I spoke at great

length during the course of the proceedings because I knew the subject. However, my questions on this occasion are simple and elementary.

When my service charge for my flat in London is issued every three months by the management company, it always shows the amount of water consumed by each flat in a list that is circulated to all members of the residents' association—there are about 160 flats and a similar number of members—and therefore the occupants of flat 1 in my block will see how much water I use. I have always thought that was rather dangerous—depending into whose hands it fell—because from water consumption you can tell the scale of occupancy of the residents.

When I was having a chat with some colleagues and I saw Amendment 11, tabled by the noble Baroness, Lady Featherstone, in which paragraphs (a) and (b) of subsection (2) of the proposed new clause refer to,

"the risk of data obtained from consumers being stolen",

and,

"the risk of data obtained being passed on to third parties without the consent of the consumer",

I was left wondering what would happen with this 2G technology and how easy it would be to hack in and find out how much electricity is being used by the occupant of a particular flat or house. That is exactly the information that burglars, of all people, would want. I wonder to what extent these matters have been taken into account when deciding on the technology supplied. People have meters at the moment, but I do not know if there has been any research on whether this information is already being tapped into and given to people who would misuse it by breaking into people's homes. Has any work been done to establish to what extent that might be a problem?

The Minister cannot have all the answers—I understand that—but if we are not aware today of the incidence of this information being abused, perhaps he could write to the members of the Committee about it because it is important. We are going into a new era with all this technology and I wonder whether it could be abused by people having that important information when they are seeking to burgle or interfere with other people's properties.

Lord Grantchester: I support Amendments 6 and 11 which are also in this group. In Amendment 6, the noble Baroness, Lady Maddock, seeks a review of the code of practice energy suppliers must follow in the installation of smart meters. We agree with that as a necessary and constant reassessment of best practice should become part of any post-rollout review.

Similarly, Amendment 11, also in the names of the noble Baronesses, Lady Maddock and Lady Featherstone, calls for a review of the use of data from the operation of smart meters. I am grateful to them and my noble friend for highlighting some of the problems that could arise if we are not careful in this operation. We agree that it should be kept under constant review by the department to make sure that the risk of errors and non-compliance is kept to a minimum.

Lord Henley: Like the noble Lord, Lord Grantchester, I take it that we are dealing with Amendments 3, 6 and 11. The noble Baroness, Lady Maddock, caused me some confusion when she said Amendment 7. However, I am sure she meant Amendment 6 if she did say Amendment 7. I take it she was speaking to Amendment 7, and I will come to it in due course. I will deal with the amendments in the order in which the three leads took them and so I will deal first with Amendment 3, then Amendment 11 and then Amendment 7. If I get confused in my note I hope the noble Lord, Lord Grantchester—who is always quick on these things—will stop me.

I will also take note of the points raised by the noble Lord, Lord Campbell-Savours, and his general remarks about service charges in flats and the consumption of water by himself and others. Obviously that is wide of the Bill. I am sure the noble Lord uses appropriate amounts of water and comes to the House as clean as he always should be. We will read nothing into the amount of water that appears on his service charge. However, he makes a perfectly good and valid point about what people can understand from information about the use of a particular flat or residence by the consumption of gas, electricity or whatever. I hope that can be partly dealt with in what I have to say in about security but it might also be helpful if I write to the noble Lord and others about it in due course.

Amendment 3 asks GCHQ to undertake an annual risk assessment of smart metering's vulnerability to cyberattacks. Considerable effort has been invested by the energy industry as a whole and by government—including the National Cyber Security Centre, which is part of GCHQ—in designing security protection into the end-to-end, trust-based security architecture. Robust security requirements have been developed for smart metering equipment, the DCC and participating organisations, as well as assurance on the implementation of these requirements. These are a fundamental part of the smart metering regulatory framework.

In April 2016, the NCSC technical director published a blog on the security of smart meters in which he stated,

"we're confident that the Smart Metering System strikes the best balance between security and business needs, whilst meeting broader policy and national security objectives".

The NCSC continues to be fully engaged on smart metering, providing an annual threat report and practical guidance.

Underpinning the security requirements, assurance and governance arrangements currently in place is a security risk assessment. This has been through a number of iterations on the back of public consultation to ensure emerging and future security threats are appropriately addressed. This is in turn informed by the annual threat assessment that the NCSC provides. Additionally, each organisation must carry out an assessment of its processes for the identification and management of risk at least annually.

The end-to-end security model is also subject to ongoing monitoring and review. Smart metering regulations require that a review of the end-to-end security model is undertaken at least annually. This is undertaken by industry in the form of the Smart Energy Code security sub-committee, which is independent of government and composed of security experts from industry. Industry is also subject to an independent

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security assessment prior to using systems and annually thereafter. This assessment is set against a security controls framework, which is detailed in regulations. This is the basis for a consistent level of review across all organisations and provides a guide to the types of evidence that should be provided to demonstrate compliance.

Based on the detail I have just outlined, an additional security assessment annually by GCHQ, most likely by the NCSC, is unnecessary given the existing and ongoing risk management and security assessment arrangements and the close engagement GCHQ and the NCSC have had and continue to have in relation to smart metering. I hope that the noble Lord will feel that his amendment is largely dealt with.

I move to Amendment 11, tabled by the noble Baroness, Lady Featherstone, which deals with data privacy. It refers to data obtained by energy suppliers, both as a result of half-hourly settlement and due to smart metering in general. This data has the potential to deliver benefits for consumers, suppliers and the energy system, but we recognise again that appropriate safeguards are required on who has access to data, in which circumstances and for which purposes.

4.45 pm

A smart meter data access and privacy framework is in place and is designed to provide clarity and reassurance ahead of the rollout of smart meters. It complements broader data protection legislation to address more specific questions regarding access to energy consumption data from smart meters. That sector-specific approach was supported by the Information Commissioner's Office. The central principle is that households have control over who can access their detailed energy consumption data, except where this is required for regulated purposes—that is, obviously, billing.

Ahead of concluding on the provisions of this framework, the Government undertook a privacy impact assessment, which included consideration of the procedures in place to ensure that data is transmitted securely to authorised parties only. It also reviewed the safeguards in place to protect against the risks of unlawful and unauthorised access to data. The assessment concluded that the smart metering system was designed in a way that minimised the likelihood of a successful attack on the infrastructure and the impact of any such intrusion. As part of our ongoing monitoring of this area, we are currently undertaking a review of the data access and privacy framework to ensure it continues to protect customers while enabling proportionate access to data. That review will conclude later this year.

The principles underpinning the development of the data access and privacy framework are informing the extensive work that Ofgem is undertaking in exploring options for data access for settlement purposes. Ofgem is taking a "privacy by design" approach to this work, promoting consideration of privacy and data protection compliance from the start. It is also engaging with the Information Commissioner's Office and consumer groups. It is its intention to consult on its proposals, supported by that privacy impact assessment. I was going to say that that is to happen later in spring, but for the moment I had better say "in the coming months".

I hope that, with that assessment, the noble Baroness and others will agree that there are appropriate safeguards. I think that, with what I said on that and on the first amendment, the noble Lord, Lord Campbell-Savours, will be reasonably satisfied, but I offer to write if there is anything more I can say on that matter. Of course, I and no Government—indeed, no one—can give an absolute cast-iron guarantee that any smart meter cannot be hacked into because none of us knows what people will get up to. We also accept and acknowledge that information on any meter is something that could be of use to people outside. We want to make sure that the appropriate protections are in place while also making sure there is appropriate access.

Lord Campbell-Savours: I ask a consumer question: if someone wanted to know now whether it was possible for their meter to be hacked, who would they ask? Who could tell them?

Lord Henley: The first people to ask would be the suppliers of that meter, to ask them what evidence they have and to take it from there. The same is true for any IT equipment that the noble Lord buys for any purpose. None of us can give any absolutely cast-iron guarantees as to what can and cannot be done by nefarious people.

Lord Campbell-Savours: This is one of the reasons why the amendment asking for this sort of national plan would have been interesting. Those are the kinds of questions that the consumer would expect to find in a report of that nature. I would not ask my supplier; I would ask the manufacturer whether its equipment could be hacked. If it said that it could be, I would want assurances as to how that would be dealt with. I am not altogether convinced that manufacturers have been asked, or whether GCHQ has been asked that question for it to appraise separately. It is on the list; I presume it too has been asked about the system that is being introduced.

Lord Henley: The point I am making to the noble Lord is that it would be wrong for anyone to give an absolute cast-iron guarantee of any sort with equipment of this sort. I can think of a whole range of other questions on other subjects. I remember that it used to be said that if you went to a school and asked about its policy on bullying and were told there was no bullying, you should immediately reject that school because quite obviously it had no idea of what was going on. Similarly, if someone offered a cast-iron guarantee that their equipment was unhackable, I would have some doubts about it. They could say that they had done everything possible to make sure it was unhackable, but we have the right processes in place with suppliers and others to make sure that checks can be done—which is what I have set out—to make metering as secure as possible. In response to the noble Baroness, Lady Featherstone, who dealt with privacy, that is why we have also had consultations with the privacy commissioner. I think that we have all the

appropriate checks in place—but if I offered the noble Lord the guarantee he is asking for, he would know that I was a charlatan.

Lord Campbell-Savours: There is another question that would have been answered in this report. It is the question that the public ask all the time. If I have a supplier and I have a piece of equipment installed, will I be able to change supplier? Most people in this Room probably know the answer about retaining that equipment, but the great public outside do not know the answer, and that is what they worry about. So it is essential to the Government's case to make it clear when and in what circumstances that problem will no longer arise.

Lord Henley: I fully understand what the noble Lord is saying and the need to provide the public with as much reassurance as possible, and clearly to explain the range of steps that the Government have taken with security experts, including GCHQ, which I mentioned earlier, to provide robust security for the smart metering system. We worked in partnership with GCHQ on the blog on smart metering infrastructure. We will continue to support Smart Energy GB, among others, to provide a clear and reassuring message to the public on smart metering security. We will do all we can. Everyone else will do all they can. All I am saying is that one can never get beyond that 99.9% security up to 100%.

Lord Campbell-Savours: The noble Lord, Lord Teverson, drew a distinction between transferability and interoperability. The question I am asking is what the public are asking. When will they be given assurances that it will be possible to change supplier and retain their smart meter? It is a very simple question, and I do not think you will find the answer anywhere at the moment as far as the public are concerned.

Lord Henley: The noble Lord is moving on to another question.

Lord Campbell-Savours: This is one of the amendments.

Lord Henley: The noble Lord asked what assurance we can give to the public about security, and I think I have given as much assurance as I can. I acknowledge that it is important for the Government to continue to give as much assurance as possible. That is why we talked to GCHQ and others. With regard to changing supplier—is it changing the meter or changing supplier? They are two different matters.

Lord Campbell-Savours: One is the consequence of the other, as I understand it. That is the problem. When you change your supplier, I understand that on occasion you have to change the meter. Am I not correct?

Lord Teverson: Unfortunately, probably after the First World War, the Second World War and the Korean War, the phoney war bit during the coalition Government was around the whole process more or less coming to a halt because this whole security issue came up, which was a major delaying factor at the time. I do not want to talk on behalf of the Government of that time, but security was given huge focus. From a personal point of view, I feel that that area has been dealt with enough at the moment. It clearly needs an ongoing security look, but it was one reason why the whole programme pretty much ground to a halt during part of the period of the coalition Government—if that is at all helpful.

Lord Henley: We will get on to "helpful" again later on. I do not know whether I can take the noble Lord much further. We have talked about security, and I have made it clear that we must give the public as much assurance as possible. I think that the noble Lord is happy about that and the involvement of GCHQ and others.

The noble Lord raised the question about consumers in effect losing functionality when switching supplier. When installing a smart meter, it is necessary for energy suppliers to take reasonable steps to inform the consumer that they may lose some of the functionality when switching supplier—but only some. There is also the question of whether those with SMETS 1 meters can switch supplier. The noble Lord's question started on one level and moved to quite different levels at different moments, but I think that that was what he was talking about. Consumers with the first generation of SMETS 1 can still switch energy supplier, and they are often in a better position to do so. That is a matter for them, and they can continue to do that.

I shall now move on to the second in this block of amendments—the amendment tabled by the noble Baroness, Lady Maddock, Amendment 6, which suggests that there should be a review of the code of practice by the Secretary of State. Receiving a positive installation experience that leaves consumers satisfied and well informed is vital to ensuring that they can engage with their smart meter and take control of their energy use. Energy suppliers were required by their licence to develop and adhere to an installation code of practice when installing in domestic and microbusiness premises. In developing this code, energy suppliers were required to ensure that it both supported the delivery of overarching objectives and, in a number of key areas, met detailed requirements. Those requirements include providing energy efficiency guidance, not charging consumers up front for the installation, and meeting the needs of vulnerable domestic consumers. Energy suppliers were also required to take into account the views of consumer groups and other interested parties when developing the code.

The code was consulted on in draft in 2013 and subsequently approved by Ofgem in its capacity as the authority in this area. It is overseen by a code governance board composed of representatives from large, small and microbusiness energy suppliers. It also includes representatives from Citizens Advice. Any of those representatives has the ability to propose amendments to the code, which are then presented to Ofgem for consideration. This governance framework ensures that consumer interests are represented on an ongoing basis across all elements of the code's operation.

Energy supply licence conditions supporting the code of practice also require energy suppliers to put in place monitoring arrangements and procedures for reviewing and updating the code. As part of this activity, energy suppliers are required to obtain views

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from consumers on the installation process and conduct of their installers. To achieve this, the code requires all energy suppliers installing more than 5,000 smart meters a year to undertake a survey of their customers. These surveys are conducted regularly, the results are anonymised, and reports are provided to the code governance board on a quarterly basis, enabling any areas of concern to be identified and rectified, including through amendment to the code.

As a further backstop, in the event that significant concerns are raised regarding the suitability of the code, Ofgem also has the power to require energy suppliers to review specific features of the code and can direct modifications if necessary. The amendment here would require a one-off review of the code to be undertaken, but I hope that in outlining the governance and monitoring requirements already in place I have demonstrated that the code is already subject to ongoing review and continues to evolve to meet consumer needs.

5 pm

The noble Baroness also touched on the travails she has had on the telephone in dealing with some suppliers. She referred to "You and Yours", which I am afraid I do not often get the time to listen to but I will make sure that those particular concerns are brought to me. She also referred to examples of gas being turned off. She will be aware that it is obviously the duty of any gas operative—if there is any danger, even a small perceived one—to go down that route and if it is unsafe to ensure that it is turned off.

Baroness Maddock: I made two points about gas. When it is turned off, I certainly do not expect them to allow things that are unsafe. My point was that there is no provision for somebody in poor circumstances—say they are elderly and they have a smart meter put in and it is the middle of winter and they cannot use their boiler—to get a new boiler. I think the Government need to look at this. It is a very small point but there will be several people affected by it.

The Minister has explained how the process works at the moment and how the code of conduct works and how it can be amended. Can he tell us how it has been amended as the process has gone along?

Lord Henley: I would prefer to write to the noble Baroness regarding any amendments that have taken place. I, like others involved in this, but not all, am relatively new to the subject—but it has been going for some time, so I imagine that amendments have been taking place.

I think the noble Baroness suggested earlier—just in terms of the travails on the telephone—a degree of aggression.

Baroness Maddock: It was the lack of understanding of the person who was trying to persuade to have a meter of how it worked and what the options were and whether they were interoperable.

Lord Henley: If the operator could not cope with the noble Baroness, obviously they probably need further training. I think that is probably a matter for that particular supplier. There is guidance for them and they should take every opportunity to treat all domestic customers fairly and to be as transparent and accurate as possible in their communications. I hope that they will continue to do so. I note what the noble Baroness said.

I hope I have dealt with the three amendments in sufficient detail and I hope that the noble Lord will feel able to withdraw Amendment 3.

Lord Grantchester: I thank the Minister for his comprehensive reply. Initially I was slightly alarmed when he talked about the national infrastructure having to be a balance between security and business needs. I would have thought that our national infrastructure is critical and must be entirely secure at all times. However, he went on in his reply to further elaborate that energy threats are assessed each year and I was very satisfied that the situation is under constant review, so I am very happy to withdraw my amendment.

Amendment 3 withdrawn.

Amendment 4

Tabled by ***Lord Grantchester***

4: After Clause 1, insert the following new clause—

"National Plan for Smart Metering

(1) Within one month of the passing of this Act, the Secretary of State may direct OFGEM to develop a draft National Plan for Smart Metering which will deliver all the objectives of the smart metering implementation programme, together with an appropriate termination date.

(2) The Secretary of State must consult OFGEM before giving a direction under this section.

(3) When preparing the draft National Plan, OFGEM must consult—

(a) District Network Operators (DNOs);

(b) Data Communications Company;

(c) energy suppliers;

(d) consumer interests bodies;

(e) Smart Energy GB;

(f) the National Audit Office; and

(g) such other relevant bodies as may seem to be appropriate.

(4) The draft National Plan for Smart Metering must set out the obligations to be undertaken by the licensed energy suppliers and their associated organisations in delivering all the objectives of the smart metering programme and must include, but is not limited to, the following—

(a) detailed targets for each quarter of each year for each energy supplier in pursuit of the objective of complete roll out of smart meters by an agreed termination date;

(b) a detailed specification for the functionality and performance required in each meter, so as to ensure reliable service life, ease of installation and maintenance, appropriate inter-operability, future upgrading capacity, and removal and safe disposal of obsolescent equipment;

(c) an assessment of the future developments thought feasible and desirable for the smart meter programme, including monitoring of customer activity so as to deliver least cost tariff benefits combined with the maximum ability to engage with future appliance

applications, inter-operability, compatibility with smart phones and tablets, and the encouragement of self-generated capacity in the home;

(d) an assessment of the potential of smart meters to be the gateway to additional domestic energy efficiency measures;

(e) an analysis of technical developments to provide alternative solutions for Home Area Network (HAN) connections where premises are not able to access the HAN using existing connection arrangements;

(f) an assessment of the most effective way of dealing with the inclusion in the programme of hard-to-reach premises and multiple-occupancy dwellings;

(g) an assessment of alternative delivery arrangements as between energy suppliers and DNOs which might increase the effectiveness of roll out solutions over time.

(5) OFGEM must publish the draft National Plan for Smart Metering by 31 December 2018.

(6) After due consideration and consultation, the Secretary of State must in regulations made by statutory instrument specify the final version of the National Plan for Smart Metering.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of that instrument has been laid before, and approved by a resolution of, each House of Parliament.

(8) OFGEM must report annually on the extent to which the National Plan for Smart Metering is being delivered, in line with the termination date.

(9) If at any point it appears to OFGEM that the targets specified in the National Plan for Smart Metering are not likely to be achieved, it must prepare a report for the Secretary of State, who must lay such a report before Parliament, together with recommendations for what consequential action is required to enable the programmes to be completed by the termination date."

Lord Grantchester: Given the noble Lord's answer on Amendment 4, I merely wish to point out that in putting forward this amendment we are not suggesting a change in approach as he seemed to think. We are suggesting that Ofgem be used as the Government's regulator in order to critically analyse, on behalf of the Government, the plan that is unfolding in their own eyes and mind. The Minister made the point that there was a high-level plan somewhere in existence. It needs to be dusted down, expressed and promoted because it does not appear to be inspiring confidence around the industry at the moment. Indeed, if this high-level plan was more readily available, we could perhaps look at it and critique it because, in assessing the Bill as it goes through the House, we need to be robustly reassured that everything is in place and likely to be successful. Hence the need for the amendment we were proposing.

I will critically analyse the Minister's response and engage with him further in the coming week. In the meantime, I will not press Amendment 4.

Amendment 4 not moved.

Amendment 5

Moved by ***Baroness Maddock***

5: After Clause 1, insert the following new Clause—

"Review: use of powers to impact energy use in the United Kingdom

(1) The Secretary of State must commission a review to consider how the extended use of powers provided for in section 1 will impact energy use in the United Kingdom, with particular reference to—

(a) the impact on fuel poverty; and

(b) the impact on energy efficiency.

(2) The Secretary of State must lay the report of the review under subsection (1) before each House of Parliament within 12 months of this section coming into force."

Baroness Maddock: My Lords, I rise to move Amendment 5—I hope I have got the right number this time and I apologise if I confused people before.

This is a probing amendment. I have raised issues with the Government before about the interoperability and the joining-up of the different policies that we have. Fuel poverty is an area in which I take an interest and the Bill impacts on fuel poverty strategy and affects those in fuel poverty. It also impacts on energy efficiency, which, as the Government have made clear, is one of the reasons for the programme. However, I am never quite sure how good the Government are at joining everything up. The amendment therefore asks the Government to review how this programme is affecting the fuel poverty and energy efficiency programmes and how it can benefit them.

On fuel poverty, the ability for people on low incomes to get an accurate bill and save energy is important. We know that shock bills can create a sense of fear in people and quite often that is why they end up going into debt. Inaccurate bills can sometimes have the same effect and we recognise that part of this development is to prevent people receiving inaccurate bills. Any delays in the programme will have a greater adverse effect on those who are in fuel poverty or are vulnerable in some way or another.

The pre-payment meter price cap, to which we will come later, is still closely linked with the Smart meter rollout. One area of the rollout concerns me. Smart meters have been of great benefit to people on pre-paid meters but I understand there might be problems later when the SMETS 2 come in. Could the Minister reassure us that the Government have this in hand, because some people are concerned about how it might work out?

I learned today something that neither I nor my colleagues had heard of before. Photovoltaics on roofs is one of the energy efficiency programmes that we have introduced in the past, but when one of my colleagues in the House who has such a system asked for a smart meter she was told that she could not have one. However, she might be able to when SMETS 2 comes in. So there are two questions about the SMETS 2 meters: are people who pre-pay going to suffer and what are we doing about people with solar panels? Do the Government know how many houses have solar panels? That is a whole chunk out at the moment. If that is the case, they should be the first people to get SMETS 2. Somebody should try to target it in that way.

The other issue is one that I have discovered, I think from the briefings we got from Smart Energy GB, which is the fact that not everybody has an in-house display when they have their meter fitted. I was quite shocked by this because I thought that was the whole

[Baroness Maddock]
point. As it said in the briefings I received from it, some people have meters in very strange places—in cupboards under the stairs and all sorts of places. I cannot understand why the programme was not insisting that, when you have a smart meter, you have an in-house display, otherwise many of the benefits that we hope smart meters will bring are somewhat negated if you cannot read it very easily.

I am not going to prolong the Committee much longer, but it is important, whenever the Government review what is going on with the smart meter rollout, that they think carefully about the other areas of policy. As I said, and as I raised before, I am particularly concerned about those in fuel poverty. I know that the smart meter rollout companies are working quite carefully with other people to help those in fuel poverty. I declared an interest at Second Reading because I am a vice-president of a fuel poverty charity, National Energy Action. I would be interested to hear whether the Minister can answer a couple of the questions I have given him. I urge that, whatever reviews we have, we must sometimes refer to how it is impacting on other government policies. I beg to move.

Lord Teverson: My Lords, I shall speak to my Amendments 12 and 13. One of the things that has exercised me most about this programme is how, in the transition from SMETS 1 to SMETS 2, we assess that we are sufficiently there to fire the gun to roll out what is an £11 billion programme. That is not an insignificant amount of money. My noble friend Lady Featherstone pointed to the congestion charge. I do not know what it cost to roll out; it was expensive, but I suspect it was not anywhere near £11 billion. That is why it is important, before the rest of this happens, that we make sure we are in the right place.

I understand that we currently have some 300 SMETS meters out there being tested. I also understand that there is still a further software upgrade to happen in September—I would be interested to know whether that is the case—yet we have a deadline of October, which is only some six months away. That is why I am saying in the amendment—it is rather a blunt instrument and probably would not be absolutely correct for the final Bill—that there should be some 500,000 SMETS 2 meters out there to make sure that this market works. That seems like a huge number, but I remind noble Lords that it is 1% of the total number of meters that have to be smart by the end of this programme—some 47 million to 50 million. That is why, in terms of the size of the programme and the length of time we have already taken in getting it right and getting consumer confidence, I am trying to understand from the Government and the Minister what tests they have and what threshold they are expecting to see before they say that the programme is fully fit for purpose, they have confidence and they are going to roll the rest of it out as SMETS 2—SMETS 1 no longer, although we have 10 million of those meters already. What is the threshold that says that they have the confidence to roll out one of the most expensive projects? I am not sure that it is as expensive as Hinkley C, but it probably will be by the end of the Hinkley C programme. It is a huge amount of money and a huge national investment that is really important for the future, so what is the threshold test before we roll it out with confidence?

5.15 pm

Baroness Featherstone: I shall speak to Amendment 7, which is in my name and that of my noble friend Lady Maddock. Much was and is made about the upside of the benefits, or the hoped-for benefits, to the consumer of the rollout of smart meters. In the other place, the Secretary of State Greg Clarke said:

> "About a third of the savings come from the possible reductions in the use of energy. Just over 40% comes from the supplier's cost savings, which is a result of not having to read meters … We expect those savings to be passed onto consumers as savings in their bill".—[*Official Report*, Commons, 24/10/17; col. 238.]

We want a new clause that makes that expectation of the Secretary of State into a reality by putting it into the Bill, and we do that by amending the Energy Act 2008 to put in a provision,

> "requiring the holder of a supply licence to pass on any savings made by the holder as a result of the Smart Metering Implementation Programme to the consumer".

I do not really feel that I need to labour the point—I think that it is clear. A promise has been made, and this is the methodology for making sure that that promise is delivered.

Lord Stevenson of Balmacara: My Lords, this is a wide-ranging group of amendments and it is a bit hard to fight the right balancing point to address it, so I am going to give up at the beginning and just go through them one by one—in a slightly different order, just to confuse everyone.

Amendment 5 is right on the money in trying to make us focus again on why we are doing this and what it is about. It will not be worth doing unless there is an impact on energy efficiency. As we were reminded in the first group by the noble Lord, Lord Teverson, the problem we face and the one that the Government have to open themselves to be honest about is whether this will be worth having in the sense that it will actually change people's behaviour and therefore save us some of the costs that we have from our expensive use of energy. If that is not part of what we are thinking, we need to make it part of the process and, indeed, the plan, if we go that way.

I was listening hard to what the Minister was saying, but I was expecting him to say a lot about the industrial strategy, since it is seated in his department and it seems to me that this is part of the industrial strategy. Our energy efficiency should have a material effect on our ability as a nation to continue to operate as a net importer of energy and as we gradually try to be more effective and efficient in what energy we can produce and how we use it. Those things seem crucially the bedrock on which any industrial strategy, and therefore any chance of this country surviving in the long term, is placed. I would have thought that it would be important to the Government to put this at the heart of what they were saying about the future stages of this process, because that will be helpful in convincing consumers, both those in fuel poverty and others who are just interested in the overall economics and efficiency of the country. So the requirement to lay a report that focuses

on that might help us to win the battle of hearts and minds to get people more to accept it, and we support the amendment.

Amendment 7 is a bit more on the money in real terms, because it says that, if there are economic and other efficiencies in the process, the consumer should benefit from them. Again, we would support that. You do not have to be conspiracy theorist—well, probably you do, but you do not have to be a genuine conspiracy theorist to sense that there is something a bit odd going on here. In a curious sort of way, the noble Lord, Lord Teverson, said it. Here we have an £11 billion programme. It is not being financed out of general taxation; there is a money tree, and that money tree is consumers who are being asked to pay for this without actually knowing what they are paying for. This is being loaded on to their bills and recouped by the companies. It is not being passed on to those who are benefiting from efficiencies. Nor is it being used for useful purposes for trying to help those who are suffering fuel poverty. Have I got this wrong? If I am right in this, we ought to confess that this is what we are doing and think much more carefully about the £11 billion price tag. The noble Lord, Lord Teverson, put his finger on it in saying that we ought to be certain about the benefits that will flow from this before we push the button, and his amendment, which we are coming on to, focuses on that.

The noble Baroness, Lady Featherstone, talked about real benefits to individuals. If we were interested in the consumer approach and in consumers buying this programme, getting behind it and saying that everybody should have one of these things because not only do they give you pretty pictures about what energy you are using but you get money out of it because it shows you how to reduce your costs and that benefit comes back to you, that would be an advantage to the Government, who might otherwise be struggling to get people behind this.

Amendments 12 and 13—effectively, Amendment 13—take us back to our discussions on the first group of amendments and Amendment 4, which is tabled in my name and that of my noble friend Lord Grantchester. Amendment 13 sets as a condition of minimum confidence 500,000 SMETS 2 meters—still a very small number—which are so far really untested in operation. Going back to what I said earlier about the need to operate in the wider context of opening up for innovation and bringing in new ideas, new ways of saving money and new ways that consumers could try to do things differently in their home in their use of equipment and the internet of things, we know all these other things are there and should be part of this process and package, but they cannot be until this project goes well. This amendment might look like a simple delaying tactic, but it sets an important pausing point at which everybody who is concerned in this, whether there is a proper plan or not, can say that they have confidence to go ahead with this project because they know it works and that at least at the level of the first 500,000 of these SMETS 2 meters it is a going concern, it is terrific, we can talk it up and we can all get behind it. There is a lot to commend this amendment to the Minister and I look forward to hearing him respond to it.

The Government have a rather uncomfortable choice. It would be very sensible for them to accept either this amendment or Amendment 4 because without some sort of overall bringing together of the consumer interest, the supplier interest, the regulator interest, Parliament, which needs to have a role in this, and the Government we will not get this working properly. That will be suboptimal for the country and for everyone in the long term.

Lord Teverson: My Lords, may I correct something I said about Hinkley Point C? EDF's latest estimate is actually £19 billion to £20 billion. Preventing that sort of capital expenditure on energy generation is what this programme should be about. I apologise to the Committee that it is a rather larger sum than even I thought.

Lord Henley: My Lords, £1 billion here, £1 billion there and pretty soon we are talking real money. I will deal with the amendments in the order they came: that is, Amendments 5, 7, 12 and 13. Amendments 12 and 13 go together. Actually, all three go together, but there was some confusion.

Starting with Amendment 5, which was tabled by the noble Baroness, Lady Maddock, on energy efficiency and fuel poverty, I ought to say in passing that I very much support the spirit behind these amendments but I am concerned that they could undermine the efficient delivery of the rollout and could lead to unintended consequences and costs for consumers. But I will deal with the amendments one by one, starting with Amendment 5.

One of the main objectives of the smart meter rollout in Great Britain—it does not apply to Northern Ireland—is to put consumers in control of their energy use so that they become more informed and efficient, and save themselves money. Smart metering will reduce the costs for prepayment customers and enable remote topping-up, meaning that some of Britain's hardest-pressed energy consumers will have access to more competitive deals and more convenience in paying for their energy. I was grateful for what the noble Baroness said about people with prepayment meters and the price cap. We will get on to the price cap for others more generally, but it is already in existence for people with prepayments meters and I think that it has been working with some success.

If I heard her aright, the noble Baroness said that she had heard that SMETS 2 meters posed a problem for some prepayment customers. We believe that SMETS 1 meters provide significant smart functionality to consumers, but SMETS 2 will provide them with additional benefits and will allow consumers always to retain smart functionality when they switch suppliers. SMETS 2 meters will also allow consumers, if they choose, to share data with third parties, and those third parties may be able to offer, for example, tailored energy-efficiency advice, which could be of use to certain customers.

Amendment 5 would introduce a new clause requiring the Secretary of State to commission a review to consider how the extended use of powers would impact energy use in the United Kingdom, with a particular focus on the impact on fuel poverty and energy efficiency.

[LORD HENLEY]

With in-home displays offered to households as part of the installation, low-credit alerts are more visible, giving consumers an early warning. The ability for consumers to set a budget and to see exactly how much they are using, in pounds and pence, is giving prepayment consumers control over their energy use and contributing to greater levels of satisfaction among prepayment consumers. Certainly, the research that we have done shows that 84% of smart prepayment customers are satisfied with their smart meters and 88% are likely to recommend them. Government research shows that eight out of 10 would recommend them to family or friends, and 82% of people with a smart meter have taken at least one step to reduce their energy use. British Gas is reporting that its dual fuel customers with smart meters are making sustained 4% annual energy savings.

To some extent, that brings me on to the question about accessibility of meters raised by the noble Baroness. As she is well aware, the accessibility of existing meters can be pretty difficult, as I discovered in London the other day as I lay down on the floor trying to read a meter. I realised that I did not have my reading glasses with me but then realised that reading glasses would not help as I was wearing my contact lenses. It is a minor problem for someone in a reasonably fit state, but we accept that reading meters can be difficult for certain people, depending on where the meters are put.

The technical specifications for IHDs require them to be designed to enable the information on them to be easily accessed and presented in a form that is clear and easy to understand, including by consumers with impaired sight, memory, learning ability or dexterity. Energy suppliers, led by Energy UK, have been working together to develop a fully accessible IHD, and we expect that device to be available shortly. If it can be made available to those who have problems, the noble Baroness and I will also find it a great deal easier.

Baroness Maddock: The thing that surprises me—and I have not really had an answer to it—is why, when the Government planned the programme, it was not part of the plan that everybody with a smart meter should have an in-home display. It would be an obvious enhancement and would not be difficult. I do not know why it was not thought that this should be insisted on from the beginning.

5.30 pm

Lord Henley: This is going back in history. The past is another country. I do not think I want to go there just for the moment. I do not know the answer to that. If I can find out more, I will certainly let the noble Baroness know.

The noble Baroness also raised the question of smart meters working with solar panels and spoke about the information she had received from one of her noble friends. As I understand it, all SMETS-compliant electricity meters must be capable of both measuring the amount of energy the household consumes or imports from the grid and recording the electricity generated by solar panels or other microgeneration technologies that is fed back or exported to the grid. We are not aware of any technical reasons why smart meters cannot be installed in premises with microgeneration technologies. However, some suppliers may start installing for these customers later in the rollout. If the noble Baroness would like to go back to her unnamed noble friend—perhaps it was not a noble friend, perhaps it was someone misleading the noble Baroness—and get back to me, I will take this up and find out what the real answer is. The initial response is that we feel that this should not be the case, but I will respond when the noble Baroness gives me more information.

Amendment 7 was spoken to by the noble Lord, Lord Teverson, and the noble Baroness, Lady Featherstone. The rollout of smart meters offers an opportunity for consumers to take control of their energy use and realise significant savings as soon as the meter is installed. Like any infrastructure project, the smart metering programme involves some investment, but it will enable a net reduction in consumers' energy bills over time. Amendment 7 would give the Secretary of State power to modify licence conditions and industry codes so as to require energy suppliers to pass the savings they make from the rollout on to consumers.

We expect that competitive pressures will encourage energy suppliers to pass on the cost savings they make from the rollout of smart meters. If energy suppliers do not pass on the savings to their customers, their customers, as we all know, can switch to a better deal among an increasing number of competitors. As noble Lords will be aware, there is an increasing number of competitors and it is quite simple to switch. We recognise that the market is not working for all customers. That is why we have introduced to Parliament the Domestic Gas and Electricity (Tariff Cap) Bill—it is in another place at the moment—which will require Ofgem to set a cap that protects existing and future domestic customers who pay standard variable and default rates. The cap will last until 2020, and it may be extended annually, up until 2023, if it is assessed that the conditions for effective competition are not yet in place. In setting the cap, we expect Ofgem to take into account the benefits that energy suppliers will achieve from the rollout.

Smart meters are themselves an enabler to greater competition in the energy retail market. Smart meters provide near real-time information to consumers on their energy consumption and how much it is costing them, giving consumers greater awareness, which in turn is expected to further increase consumer switching. The signs on this are encouraging. According to a report on consumer engagement in the energy market, published by Ofgem in 2017, 23% of consumers who say they have a smart meter have switched supplier in the past 12 months, compared with 17% of those who say they do not have a smart meter. It is worth pointing out that we would expect the level of engagement from consumers to help inform Ofgem's review into whether the conditions for effective competition are in place.

I turn now to the final two amendments in the name of the noble Lord, Lord Teverson—Amendments 12 and 13. The Government want consumers to benefit as soon as possible from the advantages of smart meters. That is why we continually review the rollout and take action to remove any barriers to effective delivery. The amendments would require, as a condition

of extending powers that the Secretary of State has to amend or introduce new regulation for the purposes of smart metering, one of two conditions are first met first before those powers can commence. The noble Lord suggested either 500,000 second generation—SMETS 2—meters must have been installed or a review of the programme, focused on consumer satisfaction and value for money, must be complete. We do not believe that either of those conditions for commencing the extended regulatory powers are warranted or necessary. We are also concerned that the effect of those amendments would be to leave the Government without powers to intervene to unlock delivery barriers and ensure consumer benefits are being realised.

I will take each condition in turn. I shall deal, first, with the noble Lord's SMETS 2 target of 500,000. Like the noble Lord, we want to see the SMETS 2 meter installation accelerated. It is very small at the moment, but in the near term this should happen only if it is in the best interests of consumers. Setting a target would remove suppliers' flexibility to plan and manage the rollout efficiently in order to serve their customers effectively in a competitive market and could lead to unintended consequences. We are assured that larger energy suppliers have commercial and financial incentives to drive them to install SMETS 2 meters as soon as is practicable. SMETS 2 meters unlock more of the customer base, supporting more cost-effective marketing approaches. They also include capability for load control and additional support for consumer access devices, thereby supporting service offers in line with energy suppliers' potential future business strategies. These incentives align with regulatory imperatives to make progress, not least that our current expectations are that from later this year the installation of SMETS 1 meters will no longer count towards an energy supplier's rollout obligations. We intend to include in future quarterly statistical publications—subject to sufficient supplier anonymisation—information about the number of SMETS 2 meters that have been installed, allowing for progress to be tracked and transparent.

We agree with the noble Lord that the programme should understand its impact during operations, in terms of consumer satisfaction and value for money. As regards consumer satisfaction, the department commissions and receives, including via Smart Energy GB, regular survey updates on smart meter consumer satisfaction. I have referred to some of them, and the satisfaction levels that have been achieved. In terms of value for money, my right honourable friend the Minister for Business and Energy, Claire Perry, has committed, as part of the Bill passage in another place, to undertaking and publishing an updated cost-benefit analysis in 2019, which will reflect, among other things, the real benefit for consumers. On this basis, the noble Lord's condition would be duplicative and risks undermining the powers that the Government need to ensure the rollout is progressed smoothly and in consumers' best interests.

Lord Campbell-Savours: Can I just ask again a rather simple question? I understand that we are not the only country in Europe with a smart meter installation programme. The French claim that they have done it for half the price of the programme in the United Kingdom. They claim it is going to cost them €5.5 billion, whereas we are potentially spending £11 million. Is there any truth in that? Is our equipment the same as what the French are introducing? Is there some explanation for this suggestion that we are paying rather a lot for our equipment?

Lord Henley: I do not necessarily take all claims from France as seriously as the noble Lord does. I will certainly have a look at that claim being made by the French, but I believe we are doing reasonably well. Obviously, I will have a look at what they are doing and, if there are things that we can learn from that, we should do so. Just as we will continue to monitor delivery in this country, we will study and look at what is happening abroad. I have received advice about what is happening and whether we are sharing our experience with other countries and whether other countries have shared their experience with us. We have looked not just at what is happening throughout Europe—we have met representatives from Ireland, Sweden, Spain, Malta and, I understand, France—but we have looked further afield to India, Australia and the United States. Lessons we have learned include the importance of consumer engagement. That is why I emphasised earlier what we have done on consumer engagement.

On the actual costs, the advice I have received is that the EU average comes in at £181, compared with our figure of around £155 for a single-fuel electricity installation. So that is somewhat lower. On that front we are doing better. If there is anything further I can add about gas distribution grids in Malta or Italy that might be of use or even of interest to the noble Lord, I will pass it on. Another matter that came up was a concern about privacy, which is something that the noble Lord is concerned about and we discussed earlier.

In conclusion, we will continue to monitor the delivery of the programme and will continue to provide updates in annual reports and an updated cost-benefit analysis. I do not think the amendments add much. They risk duplicating those processes and could result, as I said, in unintended consequences that might delay getting the benefits to the consumer. I hope, therefore, that the noble Baroness, Lady Maddock, will feel able to withdraw her amendment.

Lord Teverson: The purpose of my amendment—I accept a lot of what the Minister said about its effects—was to get to understand what the test will be. What criteria will the department use to say, "SMETS 2 meters will work, they will integrate with the systems they have to integrate with, so we will give them the green light"? How will the assessment be made that SMETS 2 works—not just the individual meters but as a system—before we invest the other £8 billion?

Lord Henley: My Lords, we have started. The noble Lord gave his figure for how many SMETS 1 meters have been installed—I think it was about 10 million, which I do not dispute. I do not have the precise figure in front of me. We feel it is likely that we will be ready to cease to count the SMETS 1 meters towards the target in about October and therefore the suppliers will move on to SMETS 2, which brings further benefits. Over this year, we will see a growth in the number.

[LORD HENLEY]
I am not going to give a precise figure now for how that will grow, but we are likely to see the benefits from that. There is no point sticking with SMETS 1 when we can move on to SMETS 2.

Lord Teverson: I agree entirely with that, but it is not the point I am trying to make. SMETS 2 operates through DCC in a different system. It has different software and capabilities; otherwise, there is no point in doing this. SMETS 1 machines work on different systems. They work through the suppliers in bespoke ways. I understand the difference between the two. We need to stop operating SMETS 1 as soon as possible and we want to roll out SMETS 2. What is the test so that we can be happy that SMETS 2 functions correctly and confident that it is all systems go? I do not understand the test.

5.45 pm

Lord Stevenson of Balmacara: I suggest that the test has already been passed and we are doing SMETS 2 come what may.

Lord Henley: We are going ahead to SMETS 2. The noble Lord is right there. We will see benefits from that, just as we have seen benefits from SMETS 1. That process will continue. I am suggesting to noble Lords and the rest of the Committee that we will provide appropriate reports back as to how that goes in due course, but I cannot provide any figures on exactly how fast that is likely to go, particularly in the initial stage this year.

Lord Campbell-Savours: I shall put it another way: what would happen if, having fitted 500,000, we found that there was a problem?

Lord Henley: My Lords, I do not believe in crossing bridges until we get to them. When we get to that stage, if there is a problem, I will come back to the noble Lord.

Lord Stevenson of Balmacara: Let us put the noble Lord, Lord Teverson, to bed happily. There is no further testing. The Government have accepted this, on the basis of what we understand to be the evidence of 300 SMETS meters placed into the homes of employees of the companies commissioning them. The network is said to be working, and may or may not be, at two different levels in the north—I am not quite sure where—and the south because there are two different arrangements, with an imperfect but satisfactory, to all intents and purposes, gas approach based on the idea that the SMETS 2 meters that go on to the gas equipment have to be shut down for most the time that they are there because otherwise they will use up the batteries, which they are restricted to using because you cannot use electricity near gas since it might blow up. Therefore, they are battery-driven and the batteries cannot last forever. It would be ridiculous to have a situation where you had to have teams of people coming in right across the country replacing the batteries all the time because that is what we are trying to stop them doing when they have to read all the meters. The Government are going ahead with this—this is the point I still do not quite get—on the basis of very imperfect testing on a scale of £8 billion to be spent over the next few years, which is effectively a voluntary tax paid by people who did not know that they were being asked to pay it. It is bonkers.

Lord Henley: I am afraid I do not recognise what the noble Lord has offered. I suggest that we continue discussions on this. What the noble Lord is putting to me it is not what has been put in front of me in other places. As I said, we will continue to monitor matters and to provide information. That will be sufficient to deal with the amendments. If the noble Lord would like to continue to make these strange allegations about what is happening, we can continue to do that in the discussions that I offered when dealing with the first amendment.

Baroness Maddock: My Lords, I am grateful to the Minister for his full response to me on Amendment 5. I am still not totally convinced that the Government always look very carefully at how their different policies interact. I am grateful that he has asked for extra information about the photovoltaics. It was new to me and I will come back to him with a bit more detail. Let us hope that it is just a one-off—that the supplier was just not very interested in doing this particular person's house and that there is nothing more to it than that. I was quite shocked: lots of people have photovoltaics and if that really was the case we really need to do something about it. As I said, it was a probing amendment to try to open up discussion on these issues that I am concerned about. At this stage, I beg leave to withdraw Amendment 5.

Amendment 5 withdrawn.

Amendments 6 and 7 not moved.

Clause 2 agreed.

Clause 3: Objective of a smart meter communication licensee administration

Amendment 8

Moved by **Baroness Featherstone**

8: Clause 3, page 2, line 34, at end insert—

"(aa) that the cost incurred when the smcl administration order is in place is not passed on to the consumer; and"

Baroness Featherstone: Clause 3 seeks to protect the consumer from any costs that might ensue following a failure of the DCC. How could the DCC fail? It is a new service and there is a change in the top management at this critical point. No aspersion is intended but it is a change right at the top, and of course there are questions about the financial security of the DCC, should the parent company, Capita, run into problems. That is a timely point to make, given that my right honourable friend Vince Cable has secured an Urgent Question which is being debated right now. This afternoon Capita has revealed losses of £500 million last year, it has launched a £700 million fundraising effort to reduce its vast debt pile and its share price has plunged by 47.5%. At Second Reading it was mentioned by noble Lords across the House that Capita had issued a profit warning. They were right to do so.

We are all nervous since the collapse of Carillion. Is Capita too big to fail? What will we do if it does? Clause 3 is about insuring against the unknown, because the costs of any failure should not be a liability for the consumer. I beg to move.

Lord Stevenson of Balmacara: My Lords, in this group we have Amendment 10, which I think takes the debate a little further forward. The noble Baroness, Lady Featherstone, made the case very well about the immediacy of the problem that now faces the Government and how they make progress with a company which has given a profits warning and has had to raise funding. Although it says that it might have access to many billions of pounds in borrowings and other things, it obviously raises questions of an order similar to those in the Carillion episode of a few months ago. I look forward to the Minister's response on that, which I hope will cover the question of whether the Crown's official involved in checking out companies that have major contracts with the Government has considered its longer-term prospects, making sure that any contracts placed with that company are satisfactorily secured in terms of delivery.

Our amendment fits in very neatly with this, at least in the sense that the reality of an administration is that it is a failure not only of the operations but of the possible costs. Like the noble Baroness, Lady Featherstone, and the noble Lord, Lord Teverson, we do not wish to see those costs passed on to the consumer. However, it also raises wider questions about what is going on here. In a sense, this is relatively familiar territory in that the Government are achieving a social objective using private sector activities. As was said in the other place only this afternoon, this is not new to Governments; Governments of all shapes have for the last 20 years or so increasingly used the private sector. Indeed, it is a long and distinguished history: Governments do not do very much on the ground in terms of buildings or roads. They may well carry responsibility for them and pay for them but the physical work is done by others. Outsourcing can deliver benefits. However, at a time when margins are being decreased and there is a bit more concern about whether or not these companies will be able to survive, we have to be very careful in what we do.

The thinking behind Amendment 10 concerns not just the mechanics of what happens in a default but whether the Government can think a bit more widely about how the company operates. Obviously, the new company, the DCC, is crucial to the delivery of the SMETS 2 programme. It is wholly owned by Capita; it has a ring-fenced arrangement with Capita but is nevertheless entirely under the control of that company. Although there are independents on the board, and everything else, do the Government really feel that that is sufficient at a time when so much is riding on it? We are talking about £8 billion worth of investment and work going forward, and everything that we have said this afternoon in relation to the future of our energy policies and initiatives and to consumer interests is certainly part of the whole operation.

When we were considering the green bank—I am waiting for the head of the noble Lord, Lord Teverson, to snap up at this point—we came across a similar problem, which was trying to make sure that the body that was being set up in the private sector, which we knew at that time was to be sold, had imposed within its structures a set of conditions under which the Government retained a golden share, to make sure that its original purposes, and green purposes in particular, were not polluted or changed by subsequent changes in the operational management of the company when it was set up or in its eventual sale. It turned out to be a very complicated issue, and I pay due credit to the noble Lord, Lord Teverson, for pursuing it to the point where we found a solution, which was not one that the Government ever thought we would come up with. But it was possible to come up with something that met the requirements that the Treasury set, unrealistic though they were, that the arrangements should not leave the Government in a direct power relationship to the company, because that would require any costs and everything else to go on to the balance sheet, but still retained the ability of the company to operate so that the green objectives were retained and operated. I am simplifying to make the point.

Does not this arise also with DCC? Is there not a worry here that we are talking about an organisation, a structure, a delivery function and an operation which suggests that we really ought to be thinking harder about the overall structure here? If the narrow question about what happens in an insolvency is insufficient to probe it, should not the wider concerns about all the companies that are going through difficulties with their delivery of public service obligations? The newspapers will be full of questions about what is happening to recruitment to the Army, because Capita is not performing very well on that, and what happens to other areas of activity. We may find that, £3 billion into the programme, the main structural body responsible for organising the network for our safety and data and all the operations that will lead to customer buy-in to this is unable to fulfil its objectives because of other financial constraints, and we do not have the right regulatory structures in place to ensure that it carries on the way it does. This amendment gives the Government at least some incentive to look at that, and I hope that they will respond positively to it.

Lord Teverson: My Lords, I support the amendment moved by my noble friend Lady Featherstone. Indeed, I agreed with many of the points that the noble Lord, Lord Stevenson, mentioned. The structure of the company in terms of green shares or golden shares is an interesting point that may be well worth pursuing.

Perhaps I should know this, as it is a factual question, but how long is the contract with Capita for DCC? What are the arrangements at the end of that contract? However long the smart metering programme goes on for—and one hopes that smart meters will be there for many decades before the next technology comes along—what are the arrangements for selecting the next incumbent? Does the DCC remain, or does it transfer to the new contractor, or is there a new corporate structure at that time? I am just trying to understand the length of commitment that we have with DCC at the moment. I am sure that, if I had done that research, I would already know, but perhaps the Minister could enlighten me.

Lord Henley: My Lords, as the noble Lord, Lord Teverson, says, there is always a lot to be said for asking questions to which one already knows the answer. In fact, I was told that that was one of the firm rules—that one should only ask questions to which one knows the answer.

My noble friend Lord Young will respond to the UQ on Capita debated today in another place—in time, I hope, for noble Lords to go through and listen to it. We do not believe that any of our strategic partners, including Capita, are in anything like a comparable position to Carillion. The current licensee is wholly owned by Capita but is required to operate at arm's length from it. There are provisions in its licence to prevent Capita from taking working capital out of the licensee. Together those provisions mean that DCC would continue to operate while Ofgem, as regulator, sought to appoint a new licensee or for a new owner to be secured. I shall not say anything further on that subject at the moment but I hope I have dealt with the points raised by the noble Lord, Lord Teverson, and his noble friend Lady Featherstone. If necessary, I shall write to them in greater detail.

6 pm

I thank all noble Lords for their contributions to our final group of amendments—Amendments 8, 9 and 10—and should like to start by addressing Clauses 8, 9 and 10(2)(a), which broadly seek to achieve the same aim of preventing the pass through of administration costs to consumers.

Clause 6 grants the Secretary of State the power to make modifications to electricity and gas licence conditions where he considers it appropriate to do so in connection with the special administration regime for the smart communication licensee, which is currently Smart DCC Ltd. Clause 7 makes it clear that the power in Clause 6 can be used to allow the costs of smart meter communication licensee administration to be recouped from the industry insofar as there is a shortfall in the property available for meeting the costs. It is at industry discretion whether it chooses to pass its costs through to the energy consumer.

Without a SAR in place, if the DCC becomes insolvent the impacts could be significant for consumers and the energy industry. For instance, disruption to billing and settlement could lead to inaccurate billing for consumers and cash flow issues for energy suppliers. Energy suppliers may also incur costs by having to put in place new procedures to replace the services provided by the DCC. These costs could be significant and ultimately would form part of the energy supplier's cost base for providing gas and electricity services to consumers.

The proposed costs-recovery mechanism is in line with the mechanism that already exists for energy network and energy supplier special administration regimes and follows the already well-established principle in energy market trading arrangements. If a market participant, as a result of insolvency, defaults on any charges, it is required to pay industry costs and the cost is socialised across market participants. The proposed mechanism would allow for expenses of administration to be recovered via National Grid charges should there be a shortfall in meeting them.

This is the most efficient and equitable means of cost recovery available as it would socialise the costs across a wide range of consumers via, for example, electricity supplier and gas shipper charges. This could be drawn from a range of sectors, not only the domestic sector. As the £16.7 billion in quantified benefits expected from the programme will include the energy industry and energy consumers, it is right that the expected marginal increase in costs needed to ensure that the substantial benefits can be realised are met by the recipients of those benefits.

Moreover, in the unlikely event that administration did occur, the administrator would be under a duty to manage the company in a way that ensures that services continue to be supplied efficiently and economically and to conclude administration as quickly and as efficiently as is reasonably practical. As few additional restrictions as possible should be placed on the smart communication administrator in relation to its costs or in taking on new contracts as these could hamper efforts to rescue the company.

As my honourable friend the Minister for Business, Richard Harrington, committed during the passage of the Bill in another place, when we consult on this proposed mechanism we will consider and set out an assessment of the estimated potential scale of costs that might need to be recouped from industry. The figure would, of course, depend on a number of factors. These could include the timing of and reason for the DCC licensee entering special administration, how far those costs can be met by the property available—for example, through the proceeds of sale or restructuring—the operating costs of the DCC licensee at the time, and costs specifically resulting from special administration, such as the costs of any legal and technical expertise appointed by the administrator in support of the execution of its duties.

We remain mindful of the impact of costs arising from an insolvency event and the overall value for money which the programme should continue to demonstrate. However, we also remain mindful of the risks of not having an effective SAR in place. Ultimately we consider that the risk of insolvency is low. The DCC's financial arrangements are constructed so as to make the risk of insolvency low; for example, with users of the DCC's service required to put up credit cover. Putting in place a special administrative regime is just a sensible precaution.

Amendment 10 in the name of the noble Lord, Lord Stevenson, does more or less the same as Amendments 8 and 9 but adds a bit more, particularly in proposed new subsection (2)(b). This amendment seeks to give the Secretary of State the power to impose conditions on successor smart meter communication licensees, including a potential requirement that they are British owned. In consideration of this requirement, it is important to be clear at the outset that in awarding the smart meter communication licences the licensee will need to demonstrate that they are a fit and proper person to carry out the relevant functions. This can be expected to include factors such as the ownership of the proposed licensee. However, it is neither appropriate to judge suitability solely on the basis of whether a company is GB-based nor to exclude non-GB companies

by default. Doing so risks failing to deliver value for money for consumers and potentially undermining the effectiveness of the smart metering system.

Two key areas for consideration were highlighted during debates in the other place. The first was national security. We covered that earlier when I spoke about GCHQ. The Government certainly take the security implications of foreign control and ownership seriously and, as I made clear in a Statement the other day, repeating it on behalf of my right honourable friend, the Enterprise Act grants Ministers statutory powers of intervention in mergers and takeovers that give rise to national security issues.

I can at this stage highlight other reforms coming in that area to strengthen the Government's ability to scrutinise investment in the United Kingdom's most critical businesses on national security grounds. We will be discussing that, I think, next week. There was a question from the noble Lord, Lord Teverson, about how long the licence is for and what happens next. Initially it is going to run until 2025, and at that time Ofgem will be responsible for the next licence award. However, there might also be the opportunity to extend the existing licence for a further six years.

I hope that I have dealt with the concerns of the noble Baroness, Lady Featherstone, and that she will feel able to withdraw her amendment. As this is the last group that we are dealing with, I repeat what I said earlier: if noble Lords feel that it would be fruitful—or "helpful"—to have further discussions between now and Report, obviously I will be more than happy to arrange that. Noble Lords know how to get in touch with me. I hand over to the noble Baroness.

Baroness Featherstone: I thank the Minister. I am comforted to some extent to know that he believes that the service will carry on, regardless of financial issues. I look forward to seeing the potential scale of the costs, but I disagree with him about those costs. From what has been said and from what I can glean from this whole business, I do not think at the moment that the savings to the consumer will come anywhere near the costs to the consumer. However, for the time being, I am content to withdraw my amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

Clause 3 agreed.

Clauses 4 to 9 agreed.

Amendment 10 not moved.

Clauses 10 and 11 agreed.

Amendment 11 not moved.

Clauses 12 and 13 agreed.

Clause 14: Short title, commencement and extent

Amendments 12 and 13 not moved.

Clause 14 agreed.

Bill reported without amendment.

Committee adjourned at 6.13 pm.