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Monday
25 June 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

HER MAJESTY'S GOVERNMENT

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THE CABINET

Prime Minister, First Lord of the Treasury and Minister for the Civil Service—The Rt. Hon. Theresa May, MP

Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office—The Rt. Hon. David Lidington, MP

Chancellor of the Exchequer—The Rt. Hon. Philip Hammond, MP

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Secretary of State for Exiting the European Union—The Rt. Hon. David Davis, MP

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Secretary of State for Business, Energy and Industrial Strategy—The Rt. Hon. Greg Clark, MP

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Secretary of State for International Trade and President of the Board of Trade—The Rt. Hon. Liam Fox, MP

Secretary of State for Education—The Rt. Hon. Damian Hinds, MP

Secretary of State for Environment, Food and Rural Affairs—The Rt. Hon. Michael Gove, MP

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Secretary of State for Digital, Culture, Media and Sport—The Rt. Hon. Matt Hancock, MP

Minister without Portfolio—The Rt. Hon. Brandon Lewis, MP

ALSO ATTENDS CABINET

Chief Secretary to the Treasury—The Rt. Hon. Elizabeth Truss, MP

Leader of the House of Commons and Lord President of the Council—The Rt. Hon. Andrea Leadsom, MP

Parliamentary Secretary to the Treasury and Chief Whip—The Rt. Hon. Julian Smith, MP

Attorney General—The Rt. Hon. Jeremy Wright, QC, MP

Minister for Energy and Clean Growth—The Rt. Hon. Claire Perry, MP

Minister for Immigration—The Rt. Hon. Caroline Nokes, MP

DEPARTMENTS OF STATE AND MINISTERS

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Ministers of State—
The Rt. Hon. Claire Perry, MP (Minister for Energy and Clean Growth)
Sam Gyimah, MP (Minister for Universities, Science, Research and Innovation) §

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Richard Harrington, MP (Minister for Business and Industry)
The Rt. Hon. Lord Henley

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Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster—The Rt. Hon. David Lidington, MP

Minister without Portfolio—The Rt. Hon. Brandon Lewis, MP

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Chloe Smith, MP (Minister for the Constitution)

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SECRETARY OF STATE—The Rt. Hon. Matt Hancock, MP

MINISTER OF STATE—Margot James, MP (Minister for Digital and the Creative Industries)

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Lord Ashton of Hyde
Michael Ellis, MP (Minister for the Arts, Heritage and Tourism)

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Steve Baker, MP
Suella Braverman, MP

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The Rt. Hon. Alistair Burt, MP (Minister for the Middle East) §
Lord Ahmad of Wimbledon (Minister for the Commonwealth and the UN)
The Rt. Hon. Mark Field, MP (Minister for Asia and the Pacific)
Harriett Baldwin, MP (Minister for Africa) §

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The Rt. Hon. Lord Bates

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Lucy Frazer, MP

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Solicitor General—Robert Buckland, MP

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Leader of the House of Commons and Lord President of the Council—The Rt. Hon. Andrea Leadsom, MP

Leader of the House of Lords—

Leader of the House of Lords and Lord Privy Seal—Baroness Evans of Bowes Park

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Lord Duncan of Springbank §

Scotland Office—

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Parliamentary Under-Secretary of State—Lord Duncan of Springbank §

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Chief Secretary—The Rt. Hon. Elizabeth Truss, MP

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Sarah Newton, MP (Minister for Disabled People, Health and Work)

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Baroness Manzoor, CBE

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The Rt. Hon. Lord Young of Cookham, CH §

§ Members of the Government listed under more than one department

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25 June 2018

THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SEVENTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE THIRTEENTH DAY OF JUNE IN THE
SIXTY-SIXTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCXCII**

TENTH VOLUME OF SESSION 2017-19

House of Lords

Monday 25 June 2018

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Introduction: Lord Pickles

2.37 pm

The right honourable Sir Eric Jack Pickles, Knight, having been created Baron Pickles, of Brentwood and Ongar in the County of Essex, was introduced and took the oath, supported by Lord Hunt of Wirral and Lord Polak, and signed an undertaking to abide by the Code of Conduct.

Introduction: Baroness Sater

2.45 pm

Amanda Jacqueline Sater, having been created Baroness Sater, of Kensington in the Royal Borough of Kensington and Chelsea, was introduced and took the oath, supported by Lord Carrington of Fulham and Baroness Chisholm of Owlpen, and signed an undertaking to abide by the Code of Conduct.

Apprenticeships: Levy
Question

2.48 pm

Asked by ***Lord Fox***

To ask Her Majesty's Government what assessment they have made of the effectiveness of the Apprenticeship Levy.

Viscount Younger of Leckie (Con): My Lords, the apprenticeship levy is an important part of our reforms to raise the quality of apprenticeships. We are seeing real improvement in the quality of apprenticeships as a result of our wider changes. The number of people starting on new employer-designed standards is almost 10 times higher than last year, but there is still more to do and we continue to engage closely and regularly with businesses as they plan their future apprenticeship programmes.

Lord Fox (LD): My Lords, I thank the Minister for his Answer but, if he will excuse me, it is papering over the cracks. Last autumn we saw a big fall in the number of apprenticeship registrations, in February they were down 40% and in March—the latest numbers we have—they are down 58%. This is not a blip; this is a trend. When will the Government abandon their completely unreachable and unworkable 3 million target and really focus on quality?

Viscount Younger of Leckie: We are certainly not going to abandon this: we believe that it is working well. We have explained already that it takes time to bed in. Yes, I acknowledge that starts have dropped, but we make a comparison year on year to last March when there was a considerable spike in the old apprenticeships. At the moment, 37% of people doing an apprenticeship are now starting on standards, compared to 3% last year.

Lord Baker of Dorking (Con): My Lords, is the Minister aware that apprenticeships at 16 and 18 have fallen in the last two years? To call people in their 40s, 50s and even 60s apprentices is not really a meaningful expression of what they are doing. Is he also aware that youngsters at 16 will not be employed as apprentices by companies because at school all they are studying is a narrow, academic curriculum and all technical subject are being squeezed out of our curriculum? We are the only country doing this and it should be stopped.

Viscount Younger of Leckie: The whole gist of our programme is to ensure that anybody who wants to become an apprentice can do so, but the main thing is quality. We are very much focusing on standards and the Institute for Apprenticeships has a mandate to focus on quality. Quality is important, rather than quantity.

Lord Watts (Lab): My Lords, can the Minister say how long it will take for the British system to come up to the same level as Germany's?

Viscount Younger of Leckie: We are in a very favourable position in comparison to Germany because, for example, it has 30% off-the-job training and we are going for 20%. As the noble Lord will know, this is part of a two-year programme, so we have deliberately given employers who pay the levy two years in which to bed in these new changes and get used to the process. We believe that that is happening.

The Lord Bishop of Peterborough: My Lords, is the Minister aware that for small businesses and voluntary organisations the process of drawing up the standards is very complicated and time-consuming, that there is little guidance on this and no financial help for it from government, and that since the levy was introduced the grant for apprenticeships has fallen from £6,000 for an 18-year-old to £2,500, so the YMCA tells me? That makes it unviable for the YMCA to offer apprenticeships.

Viscount Younger of Leckie: I understand what the right reverend Prelate says. However, we have increased the funding for providers, particularly on the non-levy side. I hope that he can be reassured that small businesses are being helped by our encouraging better providers for them.

Lord Aberdare (CB): My Lords, apprenticeships and the levy are a key element in delivering the UK's vital needs for skills and human capital, but they are not the only element. What are the Government doing to develop an overarching skills strategy, embracing not just apprenticeships but all the different elements of skills development, including the proposed T-levels? How do they plan to monitor progress towards reaching the overall goals of such a strategy?

Viscount Younger of Leckie: The noble Lord is quite right that although the apprenticeships programme is a major one for us, it sits alongside other programmes. He will know that we announced in our industrial strategy in November 2017 that we wanted to up the progress, covering technical education. For example, we are investing an additional £406 million in maths, digital and technical education to address the shortage of science, technology, engineering and maths. This is a complementary programme.

Lord Storey (LD): The Minister will know that the Chartered Institute of Personnel and Development says that a fifth of employers and a third of SMEs are writing off the levy as a tax, rather than investing it into apprenticeships. Will the Government consider extending the deadline for spending the apprenticeship levy from 24 months to 36 months, to give sufficient time to develop new and more rigorous apprenticeship standards?

Viscount Younger of Leckie: We have already extended it from 18 months to 24 months and we think that that is fine. We are seeing strong signs that it is picking up, with the employers buying into the system. We always said that it would take some time, as I think the noble Lord knows. For example, we are seeing vacancies up and that is very encouraging.

Baroness Redfern (Con): My Lords, the apprenticeship levy offers organisations the chance to review their workforce strategies, diversify their workforces and address skills shortages. Does my noble friend the Minister therefore think that any underspend of levy money should be ring-fenced to be invested strategically, to tackle identified sector skills challenges?

Viscount Younger of Leckie: I think we made it clear that if there is any underspend, it will become apparent probably no earlier than May 2019. It is clear that if there is any underspend, the money available will go back into apprenticeships, so it is important that the focus is on these new level standard apprenticeships.

Lord Haskel (Lab): My Lords, the Minister will be aware that most business schools have set up management courses to be paid for by the levy. These courses are for mature managers. Was this part of the Government's intention?

Viscount Younger of Leckie: No. I know that the possibility of MBAs being attached to apprenticeships has been raised in the House before, but that is not the case. It is clear that the system is rigorous so it can check that apprenticeships are up to the right standard and are launched so that they cannot be dressed up as other types of qualifications.

Lord Watson of Invergowrie (Lab): My Lords, under the co-investment rule that applies as part of the levy, the 10% that members have to pay towards the cost of apprenticeships means that many of them are unable to access the levy funds. Given that the Government have next to no chance of achieving their target of 3 million apprenticeship starts by 2020 without the support of the small business sector, will they consider piloting the suspension of co-investment in order to let small businesses play their full part in boosting the number of apprentices?

Viscount Younger of Leckie: The noble Lord makes a good point about the 10%, but we want to introduce the transfers in a gradual and well-managed way, allowing levy payers to benefit from the added flexibilities while protecting the integrity and affordability of the programme and the interests of non-levied employers. I reassure the noble Lord that we are carefully monitoring the implementation of the transfers, including how the 10% is working.

Northern Ireland: Executive and Assembly

Question

2.56 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what assessment they have made of the effect on the people of Northern Ireland of not having a functioning Executive and Assembly.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): Northern Ireland officials maintain a regular dialogue with officials in the Northern Ireland Civil Service about the impact of the lack of devolution on Northern Ireland's vital public services. That dialogue informs ongoing UK Government work as part of the Secretary of State's commitment to ensure good governance and the continued delivery of Northern Ireland's vital public services.

Lord Dubs (Lab): My Lords, does the Minister agree that not having a functioning Assembly and Executive is detrimental to the interests of the people of Northern Ireland, who do not have a voice in the Brexit discussions, is damaging to the peace process, and means that key decisions are not being made? May I put this to the Government? Because the Government are so linked to one of the parties in Northern Ireland, they are not able to be a neutral umpire in this. Is it not time that they appointed an international figure of the same stature as Senator George Mitchell to bring the parties together and move the peace process onwards?

Lord Duncan of Springbank: My Lords, the answer to the first part of the question is yes. It is long overdue, and we need a fully functioning Executive for the very reasons raised by the noble Lord. Right now, we have two parties who are inching closer to some of sense of being back in the room. That is how we are making progress—not that we are getting an outcome from the room; we are just trying to get them back into the room. We will close off no doors in trying to ensure that we bring them back to the table and that they leave the table with a fully functioning, sustainable Executive.

Lord Lexden (Con): How much additional funding will be supplied to the health service in Northern Ireland as a result of the Government's 70th anniversary boost to the NHS, and who will be responsible for determining how that money is allocated within the Province?

Lord Duncan of Springbank: There will be a significant increase in the funding for the National Health Service in Northern Ireland. It has been deemed one of the areas that requires significant investment. To ensure that money is spent wisely, we will be relying on the Civil Service of Northern Ireland. I would much prefer that the answer to the question was not the Civil Service but rather politicians. If my noble friend will permit it, I will give him the exact figures in a written response.

Lord Faulkner of Worcester (Lab): My Lords, the Minister will know that one of the sticking points for an agreement is the status of the Irish language. Is he not able to point out to the DUP that as minority languages are accepted as equals in Scotland and Wales, there is absolutely no reason why the Irish language should not be accepted in Northern Ireland?

Lord Duncan of Springbank: My Lords, if the answer was as simple as that, we might have been able to achieve some progress by now. Unfortunately, it is a little more nuanced and a little trickier, but I am fully aware that both sides recognise the value and vitality of the languages in the Province of Northern Ireland.

Baroness Suttie (LD): My Lords, only 7% of pupils in Northern Ireland are currently in integrated education. In the absence of an Executive, what is the Government's strategy on delivering new integrated schools? Does he agree that moving away from segregated schools plays a significant role in helping society move on from the past in Northern Ireland?

Lord Duncan of Springbank: The noble Baroness is right to raise such an important issue but, of course, this is a fully devolved matter. It should not be the Government of the United Kingdom who seek to impose such changes on the school structure in Northern Ireland. None the less, Northern Ireland's Executive must grapple with these issues when they resume their role.

Lord Hylton (CB): My Lords, political parties and Members of the Northern Ireland Assembly have failed to agree on devolution and power-sharing. Will the Government now consult the elected Northern Ireland MPs to see whether they can find a way forward?

Lord Duncan of Springbank: The Government are speaking to one and all in an attempt to reach that magical moment of bringing the key parties back to the table. No party can be left out. We shall listen to all who have something to say.

Baroness Blood (Lab): My Lords, the Question asked was about the effect on the people of Northern Ireland. The Minister has just answered by saying that civil servants are civil servants. We have a practically non-functioning Civil Service in Northern Ireland, and an almost invisible Secretary of State. When will they ask the people of Northern Ireland about the effect that is having?

Lord Duncan of Springbank: I cannot give enough praise to the civil servants in Northern Ireland, who have been asked to stand above and beyond what they are expected to do. They are in regular dialogue, and we are in regular dialogue with them. The key issue now is that it does not matter how much dialogue you have, if you do not have a functioning Executive, what you hear cannot be taken forward in a meaningful way, and that silences the voice of the people of Northern Ireland.

Lord Hayward (Con): My Lords, while acknowledging that progress is difficult without a functioning Executive and Assembly, will my noble friend take the opportunity to welcome the fact that some progress can be made: for example, the decision of Arlene Foster to meet LGBT representatives later this week?

Lord Duncan of Springbank: Yes, that is quite extraordinary. It is the beginning, not the end, of a journey. I shall be joining Arlene Foster in meeting them in Belfast on Thursday evening.

Baroness Smith of Basildon (Lab): My Lords, the Minister is always an emollient voice on these issues, but we are in a serious situation. The courts have already made a judgment that civil servants exceeded their authority in decisions made. We have had the hyponatraemia case, which was a public inquiry that I set up in 2004. It did not report until 2018, and we do not know how many, if any, of the inquiry's 96 recommendations—following the deaths of five children—will ever be implemented, because it has not been considered by elected representatives. We have the issue of abortion for victims of sex crimes and in cases of fatal foetal abnormality, and we have Brexit talks where there is no one from the Northern Ireland Executive representing Northern Ireland, although we have someone from the Scottish Executive and someone from Wales. How much longer can this be allowed to go on? More importantly, how many other cases and examples are there where Northern Ireland is suffering and not functioning because of a lack of elected representatives taking the positions they were elected to perform?

Lord Duncan of Springbank: I can be very frank and say that Northern Ireland will be suffering in the absence of an Executive; of that there can be no doubt. It is not for me to try to work out what is happening in the Province of Northern Ireland; it is for the elected representatives, who listen to the voices of Northern Ireland, to move forward. The issues raised by the noble Baroness are absolutely correct: there needs to be a voice for the political communities of Northern Ireland inside Brexit. The Government do all we can to reach out to all those elected parties, but there is no functioning Executive. Until we have that, we cannot make the progress required for the people of Northern Ireland. The noble Baroness asks how long we can go on. The reality is: not much longer.

Legislation: Gendered Pronouns

Question

3.04 pm

Asked by ***Lord Lucas***

To ask Her Majesty's Government whether they will adopt the use of "they" as the singular pronoun in all future legislation in preference to gendered pronouns.

Lord Young of Cookham (Con): My Lords—if I may so use a gendered noun in defiance of my noble friend's Question—the Government are committed to gender-neutral drafting in legislation. There are a number of ways to avoid gender-specific pronouns, and the use of "they" in the singular is certainly one of them. Other ways to avoid gender-specific pronouns are discussed in the drafting guidance produced by parliamentary counsel.

Lord Lucas (Con): My Lords, I am grateful for that Answer, but does my noble friend agree that the drafting guidance, which followed a debate in this Chamber some while ago, is very much a half-way house? We still permit repeated use of the "Secretary of State" and the phrase "he or she", which is a binary rather than a unitary gender expression. In view of the forthcoming review of the Gender Recognition Act, and the expectation that that will further ease the ability of people to change gender, should we not be reviewing the whole aspect of gender in legislation and in public practice?

Lord Young of Cookham: My noble friend highlights the tension between etymological orthodoxy on the one hand and political correctness on the other. I was brought up to believe that "they" was a nominative plural pronoun and "he" or "she" was the singular. But that was a long time ago; popular usage has moved on, and so have the grammar guides. Indeed, the singular "they" is now used in legislation. It was used in the Terrorism Act. But, to go as far as my noble friend has suggested and use "they" in all circumstances would, I think, be a step too far. In many cases, the use of "a person" would do just as well.

Lord Pearson of Rannoch (UKIP): My Lords, while we are talking of nomenclature, is there anything the Government can do to discourage the growing and irritating replacement of the relative pronoun "which" by the demonstrative adjective "that"? How can we get back to using "which" when we mean it without having so many "thats" all over the place?

Lord Young of Cookham: So far as drafting legislation is concerned, I hope I can assure noble Lords that parliamentary draftsmen will use the correct grammar whenever it is possible. The main purpose of drafting legislation is that it should be clear, but I agree that, wherever practicable, we should also use conventional language as long as we do not upset people's sensitivities.

Baroness Lister of Burtersett (Lab): My Lords, my former students would tell you that I care greatly about grammar, but will the Minister explain why using "they" would be a step too far?

Lord Young of Cookham: The suggestion from my noble friend was that it should be used in all cases. I have conceded that we should use it in some cases, and I cited an example from the Terrorism Act, where we do indeed use the word they in the singular:

> "It is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action".

But to insist that it should be used in every case would be to deprive parliamentary draftsmen—parliamentary drafters—of the flexibility they need.

Baroness Barker (LD): My Lords, trans activists who I know very well do not wish to stop anybody using gender pronouns; they simply wish to add more ways in which people can use terms that describe them

more accurately. Private sector companies are way ahead of us and are latching on to this. Will the Government review gender markers which they use in official documents to stop the practice of asking questions out of habit to solicit lots of information that is never used?

Lord Young of Cookham: I understand the issue that the noble Baroness raises. We will soon be publishing a consultation on the Gender Recognition Act, and we will also be publishing the results from our national LGBT survey, which received over 7,000 responses from non-binary people. I hope that that reassures the noble Baroness that we take this issue seriously.

The Earl of Listowel (CB): My Lords, as important as it is to think about language and treating members of each sex equally and fairly, is it not also important to think about the range of experience in Parliament? Is the Minister shocked to learn that while midwives, health visitors and early years professionals provide a vital role of support, particularly for women, there is, according to my Library research, only one qualified health visitor—the noble Baroness, Lady Manzoor—in both Houses? I am not aware that there are experienced early years practitioners, health visitors and midwives in Parliament. Does the Minister think that that should be looked at as well?

Lord Young of Cookham: I am sure it should be looked at, but it goes slightly wider than the Question about parliamentary drafting.

Lord Skelmersdale (Con): My Lords, does my noble friend recall that the Interpretation Act states that the male embraces the female? Do the Government intend to revisit that Act?

Lord Young of Cookham: Section 6 of the Interpretation Act 1978 says that:

"In any Act, unless the contrary intention appears,—(a) words importing the masculine gender include the feminine; (b) words importing the feminine gender include the masculine; (c) words in the singular include the plural and words in the plural include the singular".

That remains on the statute book in order to assist the interpretation of legislation before 2007. After 2007, as I said earlier, all new legislation has been drafted using gender-neutral language.

Baroness Hayter of Kentish Town (Lab): My Lords, it did seem at that point that the Minister was competing with the Clerk Assistant for long explanations. I return the Minister to grammar, which he mentioned earlier. An area over which he has some authority is *Hansard*. Whenever I say "the Government has" done something, it is reported as "the Government have". This is a great inconvenience for a number of noble Lords. Might the Minister look, not at my words, but at all the stuff that we write which is still, I think, grammatically incorrect?

Lord Young of Cookham: If there is one group of people who have listened to what the noble Baroness has just said, it is *Hansard.* I am sure they will take on board the proposal that she has just put to the House.

Brexit: Identity Cards

Question

3.11 pm

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government whether they have assessed the value of introducing identity cards following Brexit.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in 2010 the Conservative-Liberal Democrat coalition decided to scrap the identity card scheme and the associated national identity register because it was expensive and represented a substantial erosion of civil liberties. The Government have no plans to revisit that decision.

Lord Campbell-Savours (Lab): My Lords, a very interesting question was asked on 3 May by the noble Lord, Lord Empey, who is a convert to ID cards. Recognising the possible difficulties post Brexit for unionists in accepting a de facto border with the rest of the UK at Northern Irish ports, would the introduction of biometric ID cards, across the UK—which includes Northern Ireland—further emphasise their identity and entitlements as UK citizens and help alleviate unionists' concerns by underscoring their national identity within the United Kingdom? In a way, passports in Northern Ireland will not always be able to do that in the future.

Baroness Williams of Trafford: My Lords, I thank the noble Lord for his Question. The status of Northern Ireland's citizens will remain the same post Brexit and they will still have access to the same identity documents. The Government are committed to protecting the Belfast agreement. One of the successes of that agreement, and the peace process, was to protect the ability of the people of Northern Ireland to identify as British, Irish or both.

Lord Sterling of Plaistow (Con): My Lords, the last time this question came up, last year, we were told that this was 20th century stuff, not 21st century. I have never personally met a police officer who does not feel that identity cards would be more than helpful. I am of an age to remember them during the war. There is another factor which all in this House are interested in. Last week, the Office for National Statistics brought out the results of their "surveys" about what the future will be. It would undoubtedly consider that identity cards would be a huge improvement in enabling us to forecast the future more accurately. That would be in all our interests: might the Minister consider it?

Baroness Williams of Trafford: I thank my noble friend for that question, and for forewarning me of it. I have talked about cost and civil liberties but, in addition to the things which my noble friend talked about, I draw attention to the fact that an increasing number of transactions and interactions, including the majority of identity frauds now occur online, where documents are far less effective in proving identity.

[Baroness Williams of Trafford]
I will take back what my noble friend said, but we should recognise that there is now a thriving market in fraud with actual, physical documents.

Lord Paddick (LD): My Lords, in 2005 experts at the London School of Economics estimated that the introduction of an ID card scheme would cost up to £18 billion. Taking account of inflation and the total absence of any Brexit dividend, does the Minister agree that £26 billion would be better spent on the National Health Service?

Baroness Williams of Trafford: The quite swingeing costs were certainly a consideration when the coalition Government decided to scrap identity cards or take them no further. I do not know about the £20 billion figure, but abolishing the scheme saved the taxpayer at the time £86 million and removed the need for a total investment of £835 million. What the Government choose to spend the money on will be a collective matter for the Government.

Baroness O'Neill of Bengarve (CB): My Lords, this is not a question about identity but identification. Is it not quaint that we still have people who imagine that ID cards are a threat to civil liberties, who walk around with mobile phones, which constantly give away far more information than any ID card I have ever heard of? When will the Government recognise that being able to show who one is is seriously important, matters particularly for people who may not be entirely sure about their place of birth, and is necessary for people in Northern Ireland?

Baroness Williams of Trafford: I hope that I have just addressed the Northern Ireland point. However, I totally concur with the noble Baroness that with mobile phones and on forums people give away information about their personal identification that they would never dream of telling the state or their banks. That is why I pointed out the more serious development of online fraud and the importance of proving identity in a lot of different situations. Whether it is proving your age in a nightclub or proving the right to rent or work, they all need different solutions.

Lord Grocott (Lab): Has the Minister noticed, over the period of time when questions on the subject have been repeatedly raised—by, to his great credit, my noble friend Lord Campbell-Savours—that the mood in this Chamber, if not more widely, has tended more towards recognising the necessity of ID cards? Has she noticed that no one these days defends it on grounds of principle—not even the Liberal Democrats—

Noble Lords: Yes, we are!

Lord Grocott: The question from the Liberal Democrats was entirely on an issue of cost, which is not irrelevant but not an issue of principle. To clear this thing up, and in the interests of transparency, can the Minister tell us, as this was done during the coalition Government, which party in the coalition she most blames for the decision to scrap the scheme?

Baroness Williams of Trafford: My Lords, I do not blame either of them. However, I do not disagree at all with the noble Lord when he says that the issue of proof of ID and identity assurance is becoming more and more important. I am making the point that different identity assurance proofs are required in different situations. One would not expect to go into a nightclub and have to prove one's immigration's status, and similarly, in other situations you might not have to prove other things. Therefore we are trying to get to both a proportionate and reasonable proof of identity.

European Union (Definition of Treaties) (Canada Trade Agreement) Order 2018

Motion to Approve

3.19 pm

Moved by ***Baroness Fairhead***

That the draft Order laid before the House on 21 May be approved.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, this order designates the EU-Canada Comprehensive Economic and Trade Agreement, or CETA, as an EU treaty pursuant to Section 1(3) of the European Communities Act 1972. This is a necessary step towards UK ratification of the agreement and part of the process to be followed in laying the treaty before Parliament for 21 days as set out in CRaG, the Constitutional Reform and Governance Act 2010. I am delighted that we have the opportunity to debate this agreement. It follows on from the thorough and constructive debate last year in the other place and the overwhelming support shown in a deferred Division. I very much hope that your Lordships will also agree to support this ambitious and progressive FTA today, and that the other place will again support the agreement when it is debated there tomorrow.

This Government are clear that CETA is a good deal for Europe and a good deal for the UK. Our total trade with Canada stood at £16.5 billion last year, up 6.4% on the previous year, and with a services surplus of £1.9 billion. CETA will improve on this already strong economic partnership. The agreement has the potential to boost our GDP by hundreds of millions of pounds a year: it will bring down trade costs by reducing burdens in the form of both tariffs and procedures; it will boost trade and investment; it will promote jobs and growth; and it will increase our ability to access Canadian goods, services and procurement markets to the benefit of a wide range of UK businesses and consumers. Canada is an important strategic partner too: as one of the Five Eyes group and a member of NATO, the Commonwealth, the G7 and the G20, we have bonds that go far beyond just our trading relationship.

As this House will know, CETA was provisionally applied in September last year, removing 98% of the tariffs previously faced by UK businesses at the Canadian border. Already, UK firms are benefiting from this. We have seen drinks exporters such as Dorset's Black Cow Vodka and Kent-based sparkling wine producer Hush Heath Estate improve their market access and

profitability following the reductions in tariff and non-tariff barriers. We are seeing new UK exporters to Canada, including Seedlip, the world's first distilled non-alcoholic spirit. Under the agreement, Seedlip does not pay the 11% pre-CETA tariff on its product. Yorkshire-based Moordale Foods entered the Canadian market in March 2017, helped by CETA duty elimination. In services, the UK and Canadian architect bodies, ACE and CALA, have notified the EU Commission that they are in discussions on future mutual recognition.

In September last year, during her visit to Canada, my right honourable friend the Prime Minister and Prime Minister Trudeau reiterated their intention to seek to swiftly and seamlessly transition CETA to a UK-Canada deal once the UK has left the EU. To ensure as seamless a transition as possible, they formally announced a working group to take this forward. Officials from our two countries have already begun to meet to discuss transitioning CETA. It is important as a first step that we prevent a cliff edge for British and Canadian businesses. Of course, while we remain in the EU we continue to support the EU's ambitious trade agenda. Free trade is not a zero-sum game, but rather a win-win. Ratifying CETA will send a strong message about our determination to champion the cause of free trade. This is a key part of the Government's vision of delivering a prosperous and truly global Britain as we leave the EU. It is important to the UK that CETA is ratified successfully by all EU member states.

During the implementation period, the United Kingdom will retain access to EU free trade agreements but we will also be able to negotiate, sign and ratify new UK-only free trade agreements for the first time in more than 40 years. In doing so, we will safeguard the benefits already achieved in CETA for UK businesses and consumers and lay a foundation for an even stronger relationship.

Those areas of the agreement that were not provisionally applied in 2017 include a large part of the chapter on investment, including the new investment court system, on which there has been extensive discussion both in Parliament and in wider civil society. The UK supports the principle of investment protection and looks forward to engaging further with the Commission on the technical detail of the investment court system. We support the objectives of obtaining fair outcomes of claims, high ethical standards for arbitrators and increased transparency of tribunal hearings. Investment protection provisions protect investors from discriminatory or unfair treatment by a state. They apply only to investments in place, not to speculative future investments. We have more than 90 such agreements in place with other countries and there has never been a successful investor-state dispute settlement claim brought against the UK, nor has the threat of potential claims affected the Government's legislative programme. Moreover, the agreement provides that member states should not reduce their labour and environmental standards to encourage trade and investment, ensuring that our high standards are not affected by this agreement.

Nothing in CETA prevents the UK regulating in the pursuit of legitimate public policy objectives—and that, of course, includes the NHS. The Government have been absolutely clear that protecting the NHS is of the utmost importance for the UK. The delivery of public health services is safeguarded in the trade in services aspects of all EU FTAs, including CETA. The UK Government will continue to ensure that decisions about public services are made by the UK and not our trading partners. This is a fundamental principle of our current and future trade policy.

On scrutiny, we have committed, through our White Paper published last year, that we will ensure appropriate parliamentary scrutiny of trade agreements as we move ahead with our independent trade policy. The Government can guarantee that Parliament will have a crucial role to play in the scrutiny and ratification of the UK's future trade agreements and we will bring forward proposals in due course.

I welcome the opportunity to make the case for CETA today and to give the opportunity for full scrutiny of this important agreement, as the Government have done for previous EU free trade agreements. I look forward to hearing noble Lords' contributions. I beg to move.

Lord Whitty (Lab): My Lords, I certainly do not wish to oppose an agreement with Canada in this way but I have a number of questions—to some extent the noble Baroness has anticipated me—for two reasons. First, the Government have made it clear that on the one hand they regard CETA as a template for future UK-third party agreements around the world post Brexit and, on the other, they intend that CETA will be rolled over post Brexit into a UK-Canada free trade agreement. Both of those may or may not happen, but two slightly troubling points arise.

My second reason for raising this is the same as I gave in a slightly rambling intervention in a debate initiated last Thursday by the noble Baroness, Lady McIntosh of Pickering. The proponents of free trade, among whom I include myself, need to recognise that there is a negative political reaction in many countries around the world to the prospect of greater free trade. We have seen this in Britain in terms of the Brexit vote, in my opinion, and of course very strongly in America, which has effectively stymied the G7 from making a step change in terms of multilateral free trade around the world. Given that political difficulty, it is important that key sections of our population do not regard the extension of free trade as a threat to their security or to their position.

3.30 pm

That relates in part to the investment court system and in part to how we can enforce the general aspiration in the agreement to maintain high labour and environmental standards. On the latter, while commendable commitments have been made, there is no method of enforcement. As long as we and the EU go on making free trade agreements which pay lip service to maintaining such standards without any process of enforcement, there is a difficulty. There would be a difficulty in a UK/EU treaty, were that to be the case, because at present within the EU we are able, not just as nation states or powerful corporations but as individual small businesses or, indeed, individual

[Lord Whitty]
persons, to raise through the European system, right the way up to the European Court of Justice, any miscreant breach of those standards. That will go once we are outside the EU and we need to ensure that any new treaty with the EU or indeed with anyone else replaces it with an equivalent system of enforcement. At present, that does not seem to be evident in the CETA agreement.

On the investment court system itself, it is of course true that it is similar to other arrangements made between the EU and elsewhere, but the EU has its own internal mechanism whereby, as I have said, other organisations and international corporations can make appeals to the court. In the case of the ICS, it will in effect be the investors who are able to bring cases against Governments if they believe that their interests are being jeopardised by a decision of a Government in relation to their investment. As we have seen, that can relate to laws enforcing better health standards or indeed restrictions on the public interest dimension of takeovers and mergers.

For the same reason that this was raised in the deal between the EU and the United States in TTIP, the two Governments have to address the issue very clearly before we give our approval to what is being proposed today. I hope that the noble Baroness can say some more about that because while it is clear that the EU and Canada—and, indeed, Britain and Canada if it ends up being a bilateral treaty—have very high standards, that will not necessarily be the case in other treaties which the Government seem intent on pursuing after the end of the transition period when we will be seeking to make free trade agreements with countries whose standards of environmental protection, worker protection and consumer protection are disturbingly lower. While I would not wish to hold up agreement to this treaty, if it is the template, I do not think that it is fully adequate and we need to do some more thinking before we move on to the next stage of our trading arrangements with the rest of the world.

Baroness McIntosh of Pickering (Con): My Lords, following on from the remarks of the noble Lord, Lord Whitty, which essentially I support, obviously it is a matter of regret that, if I understand it correctly, the agreement does not include services. That is a major omission. Also, on the Canada-US border, which I realise is not covered by discussions today, there is already tension, in particular over the flow of food and agri-food goods. This was raised at the G7 summit.

My noble friend said—I welcome this most warmly—that there will be proper scrutiny of the agreement. I wonder whether she will be in a position to share with the House this afternoon what form that scrutiny will take, and perhaps give a commitment that scrutiny will take place while the House is sitting—because I gather some procedures are being considered by the Procedure Committee that will allow some of the regulations flowing from the EU withdrawal Bill to be considered while the House is in recess. I do not know about other noble Lords, but it concerns me greatly that we were promised proper scrutiny and have given vast powers to the Executive to bring in regulations. My understanding was that all the regulations and statutory instruments would be considered while the House was sitting—and we have the September sitting, when we could give instruments close consideration.

My noble friend also said that no case in the investment sector against the UK had yet been successfully prosecuted. When we had the little debate last Thursday on the G7 summit, I pressed my noble friend on what the dispute settlement would be—this is in the White Paper—in relation to the free trade agreement that we seek with our current EU partners, and indeed other free trade agreements that might be agreed. In the context of concerns raised, certainly by the Belgian Government, this obviously is a source of concern that may have greater credence the closer we come to reaching an agreement with the EU, or indeed more broadly.

I take some comfort from the reassurance that my noble friend has given the House this afternoon that public services will remain a matter for the UK Government. Perhaps she could give a bit more substance to that commitment, because a lot of scare stories were going around at the time the TTIP agreement was being discussed, and it would be most unfortunate if, in the context of the CETA agreement, such scare stories were to persist.

Lord Fox (LD): My Lords, the noble Lord, Lord Whitty, was right to highlight consumer and voter concerns about such matters—but I should point out that there are also business concerns about the Government's stature in the trading environment. It is not just the content but the body language that goes with it. At the weekend we saw some appalling body language from senior Ministers about business and some of our most important exporters, so it is good that we can ameliorate that at least in some way with some positive body language here. It is good for us to be discussing this. Perhaps it is churlish of me to point out that the reason why we are discussing it is that we are in the EU, which has worked hard to deliver this treaty.

It is also heartening that we are discussing something that fits within the WTO legislative procedure rather than—sadly, and increasingly—within a worldview that is moving outside the WTO. So it ticks a number of multilateral boxes. As we have heard, Canada is of course an important current trading partner, and one that we hope to make larger. So CETA and its ratification are to be welcomed. It is a good arrangement and, clearly, as the Minister pointed out, the Canadians have made it clear that this is a framework by which a transition in the event of Brexit can be moved into a bilateral agreement between ourselves and Canada.

As the noble Baroness who spoke before me pointed out, it is clear that this does not include services—that is my understanding. I see that the Minister is shaking her head. Perhaps she might indicate which services are in and which are out. My sense is that very few are in. What would be the attitude towards a bilateral agreement on services between our two countries?

The Minister also pointed out that a working party to transition this has already been set up. Perhaps she could give us some sense of how long "swiftly and seamlessly" really means in terms of moving from one

to the other. She used some examples; quite a lot of them were agricultural and food products. Clearly, Canada has a very strong agricultural industry. I would be interested to know what impact analysis has been done of the relative flows in both directions of agricultural and food products between our two countries. The Minister talked about growing trade—I think she used the phrase "hundreds of millions" in extra trade. What kinds of targets do the Government have for increasing the flow between the two countries?

It is all good—except the context in which CETA could be transitioned between our two countries really does depend on the nature of the arrangement we have with the European Union. Canada has already made that clear and has expressed unhappiness on, for example, the division of quotas and other such issues. Perhaps the Minister can tell us how these kinds of things feed in to our negotiations with the European Union.

The investment court system—ICS—has already come up. The Minister mentioned it, as did both the previous speakers. This is clearly an area that has raised people's concerns. There is a perception that large multinationals will have an advantage in such a system. It is easy to understand that perception because this will be a complex and expensive process. How can the Government allay the fears of smaller traders and individuals that this will not be a charter for the larger, deeper-pocketed companies to play the system? Can the Government confirm that the ICS will be rolled over into any bilateral agreement should CETA be transitioned post Brexit?

Finally, the major exports between the two countries are in the engineering sphere, specifically nuclear reactors, boilers, machinery, vehicles and aircraft. I note that all these sectors could suffer severely under Brexit; for example, due to border friction, the restriction of movement of people, and exiting Euratom. There will be pressure on those businesses, so what assurances can the Minister give them? I note the particular importance in the aircraft industry of the Anglo-Canadian relationship at Bombardier in Belfast. Again, what assurances can the Minister give the workers there?

It is good that, instead of attacks on business by the Foreign Secretary or the Health Secretary, we are having a positive debate about business. CETA adds a long-term view to things, in respect of which business is desperately looking for stability. Within the context of those questions, we welcome this statutory instrument.

Lord Stevenson of Balmacara (Lab): My Lords, I am grateful to the Minister for introducing the draft Order in Council which classifies CETA as an EU treaty, and to the others who chipped in to this debate. It is the second week running we have had a debate on trade. Let us keep the momentum going and have more of this. It is a good topic and will become even more so as we get on to the Bill that has been prefigured. This debate is important in itself but, as my noble friend Lord Whitty said, it is also a harbinger of how we might do deals in the future; in particular, how the Government might bring Parliament into the process.

It is interesting and therefore a bit ironic that this order is a draft of an Order in Council—one of the most obscure aspects of our legislative structure—and does not actually deal with the content of CETA at all. The Minister was kind enough to go over some of the main points in it, but of course, as the noble Baroness, Lady McIntosh, said, we lack an opportunity to discuss in detail some of the ways in which this framework agreement has been created. I hope that by the time we get to a rerun of this, or to any other free trade agreement that will be brought forward, we will have a much more substantial, engaged and expert debate on the mechanisms being created, the detail of what is or is not included in the free trade agreement and some idea of the process that we will be involved in.

3.45 pm

We are dealing with Canada, which is not an inconsiderable country and a place with which we in Britain have strong emotional, family and other ties. It is important that we recognise its membership of the Commonwealth. It is good that the EU is trying to create a free trade agreement with Canada, although I thought that what we got from the Minister was a little short on detail, which bears on what I will say later. For the record, in 2016 our exports to Canada were about £8.3 billion. It is Europe's seventh largest export market outside of the EU. It is our third most important export market and our appetite for Canadian goods means that Canada is running a trade surplus with us of some $6.8 billion. This is not exactly on an equal basis; it is something on which we are spending more money than we are taking back. It is an importing situation.

We have to add to that the fact that a significant majority of the goods that come from Canada to us are going on to Europe; they are not staying here. While that is important, it also has to be factored into any post-Brexit situation. We also have to think about the investment side and the way our businesses work together. Bombardier has already been mentioned, but many other firms have an established presence in Canada. Some 1,100 UK firms, according to the latest figures, are owned or controlled by Canadian interests. It is a partner in more than just goods and services; it is a partner in the very industrial fabric of this country.

A couple of noble Lords mentioned the current state of play. It is a bit confusing so I hope that when she responds the Minister will shed a bit more light on where we are. This trade agreement was agreed by the European Parliament on 15 February 2017. Since then, the ratification process has been going on—but has it? It seems to have stalled somewhat. The Belgian Government have requested the European Court of Justice to examine whether the investment court system proposed in CETA is compatible with EU law, and the ECJ is holding a public hearing on this case in full court tomorrow, on 26 June. It will take representations from 11 EU member states, the European Commission and the Council. It is not clear whether the UK will be represented in that. I would be grateful if the Minister could confirm whether we will be represented on that occasion.

The Dutch Government have stated that they will not ratify CETA until after the ECJ has ruled on whether the investment court system is compatible with EU law. Germany has not even commenced ratification as the German constitutional court had

[Lord Stevenson of Balmacara]
been asked to rule separately on whether the ICS is compatible with the German constitution. The new Italian Government have stated that they do not intend to ratify CETA. Not ratifying a treaty of this type has huge ramifications that are important in themselves, but also important for the future. I hope the UK Government have taken their own legal advice on this. Will the Minister confirm that no other legal concerns are in play at this time as far as the UK is concerned? In any case, should we not wait until we have some clarity from the ECJ about whether this thing is legal before we go jumping into premature ratification of it? Might she comment on that?

We then have the question of what happens in the event that the treaty will not be ratified by the time we leave the EU, which seems rather likely. What happens then? That has real salience relating to the ISDS and the ICS because CETA's sunset provisions do not apply if we leave before the full treaty is ratified. Again, I would be grateful for some comment from the Minister.

Major concerns in the run-up to CETA mainly centred on services, but also on whether the National Health Service would be subject to the arrangements. The Minister was very clear about this. She said that the NHS would not be affected by it, but could she reflect a little on what she said and, if possible, give even more clarity?

CETA is the most far-reaching of all the EU services trade deals to date, and it is the first to use a "negative list" approach for scheduling of its liberalisation commitments. Under such an approach, all service sectors not explicitly exempted from liberalisation are, de facto, included. The use of this method represents a significant departure from the use of the "positive list" process used in previous trade agreements, where only those service sectors listed for inclusion were subject to the rules and disciplines of the agreement. So we have a default "in" arrangement here.

There are also the "standstill" and "ratchet" mechanisms, which prevent countries reversing liberalisation commitments already made in their service sectors whether now or in future. The standstill clause serves to lock in the existing level of market liberalisation, and states that only already existing non-conforming measures are exempt from the agreement's market access. The ratchet clause goes even further, so that Governments are allowed to introduce new reforms to their service sectors only if they liberalise the market still further; that is, future Governments will not have the right to reverse any liberalisation measures that might have been introduced in years to come.

Given the concern that many people have about protecting the NHS, which I am sure is shared by the Minister, it is important that we are definitively clear about whether the NHS is subject to CETA now and in the future. If she needs any help, I am glad to see that she has been joined by a Health Minister on the Front Bench. I look forward to any comment that he might wish to make on this.

On a slightly less weighty but still important topic, it was interesting to read in the CETA text that, uniquely among the major member states, the Government have singularly failed to protect the interests of British producers in the negotiations. CETA offers protection on the Canadian market for 145 products with geographical indications at a comparable level to that offered in the EU. While all other major EU member states listed national products for protection, the UK Government failed to list a single one, not even Yorkshire rhubarb—I am sure that the noble Baroness, Lady McIntosh, will be on her feet in a second to complain about that. This is an extraordinary oversight, given that the Government had managed in TTIP, which has been abandoned, to list Scotch beef, Scotch lamb, Scottish farmed salmon—there must have been some concern about the future of the SNP at that point—Welsh beef, Welsh lamb, West Country farmhouse cheddar and both white and blue Stilton for protection. Why not rhubarb? Why are there so few geographical indications for British products, and what assessment has been made of the impact of this on our favoured and treasured foods?

As pointed out by my noble friend Lord Whitty, trade unions have criticised the imbalance between the rights afforded to transnational corporations under CETA and those extending to workers. All the liberalisation commitments in CETA are binding, backed up by the double enforcement mechanisms of state-state dispute settlement and the new investment court system, which allows investors to bring their own claims against the host nation. Yet the chapter relating to labour standards in CETA is one of the weakest in all the recent EU free trade agreements, with far less exacting provisions than in previous agreements such as with Korea, Colombia or Peru. Further, as has been said, there is no enforcement mechanism to hold the parties to the minimal provisions on labour standards that exist in CETA. Instead, CETA provides for a "panel of experts" to be convened to investigate any allegations that one or other of the parties has failed to live up to their obligations under the labour chapter. All we get from that is a report on what has happened, with the parties then invited to respond. There are no trade sanctions or financial penalties—nothing; it is simply reporting.

In case there was any doubt, labour rights are excluded from the scope of the investor-state dispute settlement mechanism. In the event of any adverse reports, the parties are merely invited to,

"endeavour … to identify appropriate measures or, if appropriate, to decide upon a mutually satisfactory action plan"—

a most ineffectual form of words available for negotiators to include in a trade agreement. This is not satisfactory.

Unlike in some other EU trade agreements, there is no reference in CETA to human rights clauses and no ability to suspend the agreement in the case of a human rights violation by either side. Worse still, the human rights clause covered by the parallel agreement signed by the EU and Canada at the same time is less strong than many other human rights provisions in EU trade agreements. This seems a worrying point for any future negotiations. Clearly, what is done is done and there is little that we can do about it, but if this represents the template for future discussions, I give notice that we will not be satisfied.

Turning back to the economic assessment, a very full impact assessment has been provided on CETA, and I am grateful to the department for having worked on that, but the analysis is short on any comparison across all EU member states. As far as I can see, the best report published on that says that the UK will experience a small but significant decrease in both exports and trade balance as a result of CETA, with about 10,000 workers losing their jobs in the UK. The study also projects a decline in wages and a further widening of social inequalities in the UK. Will the Minister comment on that? Does it not send a bit of a shadow across these proposals, particularly as countries such as France, Germany and Italy will actually see an increase in their exports as a result of CETA?

CETA is remarkable in its disregard for the interests of small and medium-sized enterprises. At least the abandoned TTIP between the EU and the USA contained a dedicated chapter outlining what measures the EU and the USA would introduce for SMEs, but there are 2,255 pages of CETA text—I have not read them all but I have read most of them—and I could not find a single commitment furthering the interest of SMEs. This is a serious issue and I would be grateful for comment from the Minister.

On the environment, we know that the agreement will lead to an increase in the most harmful greenhouse gases, such as methane, nitrous oxide and CO_2, because of increased shipping of goods across the Atlantic. The increased investment in Canada's tar sands and mining industries arising from CETA will surely pose a particularly serious threat to environmental sustainability. I would be grateful if the noble Baroness would comment on that.

Finally, on the investor-state dispute system, the official initial assessment on CETA, carried out for the European Commission at the start of the negotiations, included a strong recommendation against including any ISDS mechanism in CETA, for the very good reason that foreign investors should have confidence in the existing domestic judicial systems of Europe and Canada to obtain redress for any of the torts that they might suffer. However, instead of accepting this recommendation the Commission has pressed for a new investment court system to be included in CETA that would provide for foreign investors to sue host nations. In the instrument issued at the same time, the EU and Canada gave notice of their intention to expand this system still further into a permanent structure available to foreign investors in the form of a multilateral investment court.

Is the Minister aware that more than 100 academic lawyers around Europe issued a strongly worded statement in October warning that the inclusion of such powers in CETA would undermine not only the rule of law but the democratic principles on which the nation state is founded? A group of Canadian lawyers with direct experience of ISDS published a letter in October 2016 drawing particular attention to,

"the undermining of democratic regulation, the special privileging of foreign investors, the lack of judicial independence and procedural fairness in the adjudicative process, and the lack of respect for domestic courts and domestic institutions".

Going back to the original point, given the maturity of the respective legal systems in our two countries, and the close links between the UK and Canadian law, why do the Government support an ICS system in CETA? The Minister will also be aware that the UK has been subject to investor-state challenges in the past and has had to disburse significant legal costs even when cases have not been lost. Fighting these cases is costly and can clearly have a chilling effect on public policy decisions. Have the Government made any assessment of the costs that are likely to be involved in that?

When we were in government we were pro-trade and pro-investment. We remain that way today and we are in favour of trade agreements with our allies and trading partners that protect jobs and economic development while protecting rights and standards. I think that CETA contravenes these principles. What we are looking for is an agreement that will protect and promote skilled jobs, human rights, workers' rights based on internationally recognised standards; that will preserve and enhance existing social, health and environmental regulations and the right of Governments to regulate in their public's interests; that upholds the principle of equality before the law, rejecting any privileged status accorded to foreign investors by way of special courts; that safeguards the provision of public services in the public interest and ensures no legislative restriction on public sector ownership or renationalisation; that allows national and local government bodies, when making procurement decisions, to take into account democratically determined public policy objectives; and that engages with civil society, is fully transparent and subject to full parliamentary scrutiny.

CETA in its present form contravenes all these principles on all fronts. If, as the Minister says, the Government wish to base a future UK-Canada trade agreement on CETA, the Trade Bill, if it remains in its current form, will give them the power to do so without proper parliamentary scrutiny. I give notice that this is a red line for us and we will seek to change the Bill if it is not amended before it arrives in your Lordships' House.

4 pm

Baroness Fairhead: I thank noble Lords for their contributions today in what has been an interesting debate on CETA. They have talked about the benefits of CETA and free trade agreements. I recognise the concerns, which I shall come on to, but I am happy to hear the enthusiasm about there being shares for free trade based on rules, with some of the requirements to uphold standards that the noble Lords, Lord Fox and Lord Stevenson, focused on. I will touch on as many of these points as I can in the moments that I have.

The numbers that I have on our current trade and investment are that our exports are £9 billion and our imports are £7.5 billion. From my information, we have a slight deficit of £265 million on the goods side but a trade surplus of £1.9 billion on our services side. I am also happy to say that CETA includes services but possibly not as many as we had hoped at the beginning of the process. However, there are new opportunities in areas such as telecoms, finance, professional and environmental services. It will also allow UK firms to

[Baroness Fairhead]
bid for a much broader range of Canadian public services, once Canada decides to open them up for such bids. Except of course for the public services, we will try to ensure that CETA guarantees the existing services' liberalisation. There are some ways of helping SMEs, particularly on the processes. There are rapid ways of processing below €6,000. There is also a certification where you just have to put your name forward, and HMRC has pre-certified around 12,000 of those.

I turn to the future trading relationship with Canada. As I said, we will begin to transition CETA into a UK deal once the UK has left the EU, following a clear commitment. We believe that is important because it will prevent the cliff edge and, while we remain in the EU, we will continue to support the ambitious trade agenda of the EU. This provision was undertaken within that agenda, so it will ensure that during the implementation period we retain full access to CETA and other EU FTAs. An independent trade policy will allow us to be more ambitious, particularly in services.

I believe it was the noble Lord, Lord Fox, who asked me what would happen if the treaty was not ratified by all member states. I apologise; it was the noble Lord, Lord Stevenson. We expect ratification to take a number of years. We have noted Italy's current position and will seek to ensure that everybody ratifies it. As it is currently provisionally applied, that will continue and we will be able to transition on that basis. It does not require such ratification for us to ratify it ourselves and transition that deal.

A number of noble Lords discussed ICS. Let me be clear that neither ICS nor any other investors' dispute resolution can force the privatisation of public services. We alone retain the right to regulate. None of these tribunals can overturn Parliament or laws, as has sometimes been claimed. If I may deal with ICS first, there was a question about whether we are in front of the ECJ tomorrow. The answer I have is that we are not on that issue. However, we are aware of the concerns that some parties have with the proposed ICS. We believe in investor protection only where they are treated unfairly or with discrimination. ICS is part of this CETA but in looking at the future, we will look at a number of options of which ICS is one. There are others, which we will bring forward to the House. To be clear, the practical details of ICS have not currently been fully worked through by the Commission but it has committed to consult fully when that has happened.

The noble Lord, Lord Stevenson, and my noble friend Lady McIntosh asked about the scrutiny process. There is an impact assessment that we have made public, and I will write to noble Lords to give them exact details of how to access it. We are working to make sure that in future the process of negotiating and implementing new trade deals is transparent, efficient and effective because we want a legislative framework that will enable future trade agreements to move quickly from agreement to ratification while supporting due processes for full parliamentary scrutiny. We are currently considering the legislative framework, but Parliament will have a crucial role to play in the scrutiny and ratification of future trade agreements and deals. The Government will bring forward those proposals in due course.

The EU has high labour and environmental standards. They are not affected by CETA, and we sign up to them with CETA. The agreements provide that member states should not reduce their standards to encourage trade and investment. I think that is important. We are determined not to compromise food safety or the environment or to reduce labour standards in pursuit of trade agreements. We will be rolling over all the current agreements when we transition CETA into a direct UK-Canada deal. The noble Lord, Lord Whitty, made a serious point about enforcement. We are looking at ways to improve compliance and enforcement. That remains something we are actively working on.

On the economic benefit figures, I referred noble Lords to the impact assessment. We have looked at impacts in a number of sectors. The total benefit to the UK is expected to be more than £730 million. The sectors that are likely to benefit the most are motor services and financial services. We see increases of £280 million and £70 million respectively. Detailed work has been done, so I would not like to believe it does not exist.

The noble Lord, Lord Stevenson, referred to geographical indicators. We expect CETA to be positive for UK agriculture. We have been in consultation and were in consultation when the geographical indicators were discussed. We think CETA is positive. It gives access to a market of 35 million people. The protected food names scheme remains in place in the EU. It is true that no UK GIs were included in CETA. That was because there was a process within the EU that it had to reach a certain hurdle. We consulted widely with groups and none of them at the time went above the hurdle that was eventually decided upon by the Commission. However, there is a mechanism to add new GIs in future, which I think will be actively pursued by a number of states. I know that a number of people have raised the question of Scotch whisky outside this House. It is not included because it is already protected. It has been formally registered in Canada since 1998, and it is also protected by the EU-Canada wine and spirits agreement.

I have tried to answer as many of noble Lords' questions as I could in the time available. I recognise their concerns; we are working on a number of them and developing our strategy for the future. I realise that their concerns are heartfelt, and we will be working with noble Lords on that. However, I believe that this is a good deal for UK businesses—SMEs as well as larger businesses—and for consumers, and in our national interest to ratify this agreement.

I thank noble Lords for our debate today and hope that they will feel able to support the ratification and the positive signs that it will send to our future trading partners. I commend the order.

Motion agreed.

Nursing and Midwifery (Amendment) Order 2018

Motion to Approve

4.10 pm

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

That the draft Order laid before the House on 17 May be approved.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, today we are debating legislation that puts in place provisions to regulate the nursing associate role in England.

Health Education England's *Shape of Caring* review made a series of recommendations to strengthen the capacity and skills of the nursing and caring workforce. The report identified strong support from employers, managers and staff in the health and social care sectors for a new nursing support role that would act as a bridge between the unregulated care assistant workforce and the registered nursing workforce. Health Education England undertook a public consultation on introducing the nursing associate role in England. The majority of respondents, a large proportion of whom were registered nurses, supported the new role, and there was strong support for it to be regulated.

Nursing associates will have their own defined role, augmenting and supporting the work of nurses in carrying out critical functions. They will deliver hands-on care, enabling registered nurses to spend more time using their specialist skills to focus on clinical duties and take more of a lead in decisions on patient care. We do not expect nursing associates to be primary assessors of care, but they will monitor the condition and health needs of those in their care and be able to recognise when it is necessary to refer to others for reassessment.

Although this new role will open a new career pathway into the nursing profession, I reassure all noble Lords that nursing associates are not substitute nurses. We want more not fewer nurses, which is why in October 2017 the Government announced a 25% increase in funded training posts for nurses to ensure that the NHS meets current and future nursing workforce needs.

It is vital that the right safeguards are in place. The Government's view is that the most appropriate way to achieve this is through statutory regulation. This will support employers to use the role to its full potential and help ensure patient protection.

First, the effects of the proposed amendments to the Nursing and Midwifery Order 2001 are to give statutory responsibility to the Nursing and Midwifery Council to regulate the nursing associate profession in England. Secondly, they are to extend the NMC's current powers and duties contained in the order to nursing associates, in particular the key functions of: registration of nursing associates in England; setting standards of proficiency, education and training and continuing professional development and conduct for nursing associates in England; approving nursing associate programmes in England; operating fitness-to-practise procedures in respect of nursing associates; and recognising Scottish, Northern Irish, Welsh, European Economic Area and international qualifications for the purpose of registration to the nursing associate part of the register.

Thirdly, this order amends the offence provisions in the Nursing and Midwifery Order. These amendments provide that a person commits an offence when falsely claiming to be on the nursing associate part of the register, falsely claiming to hold a nursing associate qualification or using the title "nursing associate" when not entitled to. The offences have been drafted to reflect that nursing associates will be regulated in England only.

Fourthly, the order makes provisions that allow admission to the register for those who have completed or commenced their training by 26 July 2019 through the pilot courses being run by Health Education England or an apprenticeship route. Fifthly, it excludes nursing associates from being given temporary prescribing rights in a time of national emergency, such as a pandemic flu outbreak. Sixthly, the order also removes the screener provisions from the Nursing and Midwifery Order 2001, as these are now redundant. Seventhly, it makes consequential amendments to the Nursing and Midwifery Council's rules and to other legislation.

Finally, the order closes sub-part 2 of the nurses' part of the register by amending the Order in Council which determines the parts of the NMC's register and the titles which may be used by persons included in the register.

These are important changes to the governing legislation of the Nursing and Midwifery Council which introduce the nursing associate role into regulation. Employers have told us that they need a more flexible workforce to keep pace with developments in treatments and interventions. This role will enrich the skill mix available to employers within multidisciplinary teams and support the increase of nurse numbers by providing a clear pathway into the nursing profession.

Once the order comes into force, it is proposed that the Nursing and Midwifery Council will open the new nursing associate register in January 2019. I beg to move.

4.15 pm

Baroness Thornton (Lab): I thank the Minister for his excellent explanation of this order, which provides the Nursing and Midwifery Council with the necessary legal powers to regulate the nursing associate profession. On these Benches, we will be supporting the order, and I thank the Nursing and Midwifery Council and the RCN for their excellent briefs.

We are ready to accept that the creation of nursing associates is a welcome addition to building capacity. Some of us who are long in the tooth—there may be one or two in the House today—will remember SRNs and SENs and wonder whether we have gone full circle to move forward. However, I accept that there is some urgency to get this on the statute book because, initially, 2,000 nursing associates were training at 35 Health Education England test sites, with a further 5,000 starts planned for this year. The first nursing associates will qualify to apply for registration with the NMC from January 2019, so I accept the urgency to implement this order.

The Minister says that the nursing associate role is a defined care role to act as a bridge between unregulated healthcare assistants and the registered nursing workforce. Now that that role has been created, we agree with the Royal College of Nursing that,

"there must be absolute clarity that the nursing associate … is not a separate profession, but a new role within the nursing family that works under the delegation of the Registered Nurse".

It went on to ask for "urgent guidance" to be published on "the precise relationship between" nurse associates and registered nurses,

[Baroness Thornton]

"in terms of delegation and accountability".

I hope that the Minister has taken that on board.

It is important to recognise that this new role is not the answer to the huge workforce challenges faced by the NHS and the social care system. Last week when the Government announced their funding proposals for the NHS, and the creation of a 10-year plan, many noble Lords said—we agreed—that it would be meaningless if this does not cover healthcare workers and social care workers together, given their importance in the future of our healthcare and social care system. Given that Health Education England has had its budget slashed, that we have a huge decrease in healthcare workers from the European Union, and the soon-to-be-removed—I hope—ridiculous visa system for non-EU health workers, the fact is that more nurses are leaving the profession than joining it, and there is a demographic challenge in that one in three nurses is due to retire in the next decade. In that context there is a well-founded anxiety that nursing associates could be used as a substitute for registered nurses.

Also in that context, has this new role been thought through, or is it a quick response to nursing shortages, with unfilled nursing posts which, as we know, are at a record high? Linked to that, how do we ensure that this new role does not impact negatively on the social care workforce? The head of Health Education England has highlighted that problem.

The role of a nursing associate was created before this SI was even introduced. Has there been enough time to consider the standards and levels of training for nursing associates to be registered with the NMC? I have to say that I am comforted by two things. One is the comprehensive brief from the NMC which suggests that it is on top of this, and indeed the notes accompanying the amendment order itself. I want to raise two things with the Minister, which are on page 5 of the accompanying notes and concern the cost-benefit impact analysis and the regulation of the nursing associates. Two risks are identified:

"First, there is a financial risk that the agreed initial set up costs escalate beyond those currently agreed with NMC. Second, the unquantified costs mentioned above relating to setting up and/or amending existing nursing associate courses as well as the accreditation of education providers".

Those risks need to be mitigated before this moves forward in an orderly fashion. Finally, I think that there is provision in the order to take account of European Economic Area nursing associates, but I understand that this is not a uniform description or role that fits the narrative across the board. Will the Minister also comment on that?

Lord Willis of Knaresborough (LD): My Lords, I rise from the second Bench—I am not quite trusted to be on the front yet—

A noble Lord: Oh!

Lord Willis of Knaresborough: Thank you for your commiseration. I support the Nursing and Midwifery (Amendment) Order 2018. I do so with a very personal endorsement and declare my interest as an honorary fellow of the RCN; as a consultant to HEE and the NMC, with which I have been working on these regulations; and as the author of the *Shape of Caring* report, which is the origin of the nursing associate proposal. I recognise the work of two people in particular. The noble Baroness, Lady Thornton, kindly and quite rightly mentioned the NMC and the work that Jackie Smith has done to bring this through the process. The NMC was presented with two big issues: the new standards for nurses and those for nursing associates, which it took on at the request of the Government. She has led both those processes admirably. Although she is leaving her post next month, this House, and the profession, owe her a great deal of gratitude for what she has done.

I also want to mention and put on record Samantha Donohue, a registered nurse currently studying for a PhD. Her job has been to deal with all the pilot sites, the 8,000 applicants and the 2,023 colleagues who have started training. This has been a Herculean job; at every stage there has been some objection to overcome. I hope that, when he responds to this debate, the Minister will recognise that at times we have in our midst people who do fantastic jobs and do not require to be told how to do them by people elsewhere: they just get on and do it.

The noble Baroness, Lady Thornton, suggested that this matter has been rushed through. I understand that the regulation has followed the start of the pilots but, as independent chair of the Shape of Caring review, it took me over two years' work to produce the 34 recommendations that led to this process and the recognition that nursing standards needed to change. Quite often, we look at the healthcare workforce in silos, instead of looking at it as a complete, interdependent ecosystem. There are also silos within silos in every section of the healthcare workforce—medics, consultants, physios, care workers or registered nurses—each of which fights for its space. When I was doing this work, particularly when I visited the United States and looked at the Magnet hospital set-up, I was drawn to the fact that nurses are right at the centre of and pivotal to a 21st-century healthcare system. Unless you put them at the centre, the rest of it will not work as smoothly as it should.

I totally support the move of the workforce to graduate status, but we have not fully realised the potential of a graduate nurse workforce. This role frees the registered nurses for the leadership in care that they have been prevented from doing because they are bogged down—I do not mean that in a disrespectful way—by the host of other tasks they have to do. The idea of being able to lead this care while safely delegating is at the heart of the report's recommendations. Both Robert Francis, in the Mid Staffs report, and the noble Baroness, Lady Cavendish, who produced the superb report on care workers, recognised that unless those two groups of workers—the noble Baroness, Lady Thornton, mentioned them, too—are properly trained and get a recognition within the training organisation, you cannot safely delegate to people when you cannot rely on their having the skills to carry out those tasks. The nursing associate fills that gap. It liberates the registered nurse and at the same time makes sure that there is safe regulation. The establishment of the nursing associate is not, as the Minister rightly says, a substitute for a registered nurse; nor is it an investment in their long-term career.

It is a point of registration—that is all. This is not the time for this debate, but unless we make provision for ongoing professional development of the whole of the nursing and care workforce, we will not get the benefit from either the nursing associate or the new role of the registered nurse.

I shall ask the Minister a number of brief questions. The first is about the apprenticeship route. I support that route, as I think most Members of the House do, and the apprenticeship levy is an obvious route for employers to take when expanding the nursing associate workforce. There will be a temptation, however, which the apprenticeship route encourages, to tailor the experience of individuals to the needs of the organisation, rather than to recognise that huge strands are working through this role which need to be applied elsewhere. We must not fall into the trap of having people who can work in only one organisation. They need to be able to develop skills that are transferable to wherever they are expected to work. Will the Minister therefore confirm that apprenticeships, in common with other routes into nursing, must be NMC-approved programmes and must be delivered by NMC-approved providers? Will he also confirm that the requirement in the pre-regulation apprenticeship standard that programmes are delivered by NMC-approved AEIs that deliver nurse education will continue? Will he also confirm that any change to those processes will be reported to Parliament for debate?

My second question is on overseas applications. How we deal with that will be a real challenge as we move forward past Brexit. Will the Minister confirm that such applicants will not be eligible for the nursing association register unless they have comparable qualifications from a higher education establishment and have passed a competence test set out by the NMC? I hope the House will appreciate that I am trying to guard against a second class of nurses. We want people whose standards are set and we want to maintain them, wherever they come from. That is important.

Thirdly, on Scotland, Wales and Northern Ireland, I was disappointed—like I think many people in the House—that they are not part of this process. The NMC regulates across the United Kingdom, not just in England, and it is a sad state of affairs that we now have this separation between England and the other three countries. If the countries decide to introduce a similar post, will they be able to instruct the NMC separately to regulate it, or can they introduce a post with identical requirements—let us call it a nursing assistant—without regulation? It would be wrong if we found ourselves within the United Kingdom having different regulatory or non-regulatory systems around the same post in different jurisdictions.

There has been much concern about the new nursing associate role being a role in its own right or an adjunct to a registered nurse. The issue is clarified in paragraph 7.20 of the Explanatory Notes, but I think it will remain an issue. Therefore, will the Minister confirm that nursing associates will not simply be the handmaidens of registered nurses? That cannot be the case. This is part of the nursing profession, full stop. It is part of that family, with a distinct role, primarily to underpin the work of the registered nurse but also to carry out functions in its own right wherever needed. A classic example is nursing homes. At the moment, a host of relatively poorly qualified people are working in nursing homes, often under the direction of just one registered nurse. At night, that provision is often only at the end of the phone. We really must not have that. We must simply say that we want people we can rely on, who will have the confidence of patients and their families.

With those comments in mind, I say to the Minister that in 10 years' time there will be some 70,000 nursing associates registered and working in the system. What a present it is that, on the 70th anniversary of the NHS, we are establishing a new workforce to supplement and support the existing workforce to deliver an even better NHS.

4.30 pm

Baroness Watkins of Tavistock (CB): My Lords, I support the Minister and the Motion to approve the Nursing and Midwifery (Amendment) Order 2018. I acknowledge the challenges that the noble Baroness, Lady Thornton, has raised, in particular those that the Royal College of Nursing is concerned about, but believe that they are capable of resolution. I believe that the registered nurses who stand today will ensure that substitution does not happen for the roles that they really must undertake themselves.

I qualified as a nurse in 1976, when we still had enrolled nurses. For some time, I led a team that included enrolled nurses, but I was very clear, both as a district nursing sister and as a ward sister, that I was accountable for the elements that I delegated. That did not mean that enrolled nurses were not able to undertake routine care by themselves unsupervised, but rather that they were very aware of how to get help when they needed it. I believe that, if we get the nursing associate role right, a similar structure will occur.

I applaud the fact that nursing associates will have a clear ladder—probably through the apprenticeship route, as the noble Lord has just raised—to enable those who want to and who are capable to get university-level associated registration as a nurse. I do, however, regret that we have not called this new role a "healthcare associate", because I believe that some of the work they will do will be undertaken in social care as well as in routine nursing care. We may need to reflect on that in years to come.

I also want to make it clear that this route should enable people to come relatively young into an adjunct profession that is associated, without them necessarily having A-levels on entry. That is important, because we know that a lot of young people would like to go into nursing or associated healthcare roles but are not able at that point to enter a three-year degree course. This is why I am so supportive of the structure.

The order makes provision for the new role of nursing associate to be subject to professional regulation by the Nursing and Midwifery Council. As has been explained, the first cohort should qualify in January 2019 and it is important for this legislation to be approved in sufficient time for the Nursing and Midwifery Council to open the register and put in place safe and

[Baroness Watkins of Tavistock]
effective standards and requirements for new staff entering the workforce. By regulating the role, the Nursing and Midwifery Council will contribute to the protection of the public by ensuring that nursing associates have high standards of education, will be required to keep their skills and knowledge up to date, and will be held accountable to a code of conduct.

As others have said, this new role has been rapidly developed as the result of successful work between employers and educational providers, with leadership from the CNO for England, Professor Jane Cummings, and the lead nurse at Health Education England, Professor Lisa Bayliss-Pratt, both of whom should be commended for their tenacity and work to achieve this end despite reluctance in some areas of the profession.

To reiterate an issue recently raised by the noble Lord, Lord Willis, many overseas applicants will want their qualifications recognised in relation to the nursing associate qualification, particularly licensed vocational nurses from a variety of Commonwealth countries. I urge the Government to ensure that proper funding is made available to map similar qualifications across the world so that we can make sure that we protect our own public if we allow overseas registrants to apply for this kind of qualification. It may be that they will need some kind of top-up, depending on the final standards that are agreed for nursing associates here.

I am aware that there have been challenges at the NMC recently but I echo the point of the noble Lord, Lord Willis, and acknowledge the commitment of the Chief Executive and Registrar, Jackie Smith, which has ensured that nursing associates will be registered at the NMC in order not only to protect the public but to achieve a proper career route for nursing associates if they wish to proceed to study for registration as a nurse in the future. In the longer term, I hope the nursing associate route may provide a successful apprenticeship approach for some members of the public to become registered nurses, without necessarily having to enter graduate-level study at a time that is not suitable for all.

Lord Clark of Windermere (Lab): My Lords, I too welcome the order; I am struck by the knowledge of the noble Lord, Lord Willis, obviously, and of the noble Baroness, Lady Watkins, from her own practical experience. It is right and proper that we have this debate because a number of questions ought to be raised. To be fair to the Government, they have not been able to answer all the questions beforehand because, as we all know, this order is somewhat rushed. I understand the reason why and I concur with it.

As the Minister mentioned, the order was laid on 17 May; that is absolutely right, but it was first laid on 11 May and had to be withdrawn because it was inaccurate. That is an example of how the legislation has been rushed. It is therefore important that we, as a legislature, challenge the Executive on a number of issues. As has been indicated—the Minister understands this—the Government have consulted widely to try to get the feeling that, if the report by the noble Lord, Lord Willis, was implemented, it would be done in a sensible and correct manner. However, there has been a problem in that a number of the consultees have a vested interest. For example, the local commissioning trusts have an interest about who is going to pay for this. Will the funding come from the centre or from them? I shall come back to that point in a moment. Obviously the providers—the universities—have an interest because they need the income from running these courses. But of course I now see, and this is slightly worrying, that it is not only higher education institutions which are involved—further education institutions are too. The noble Lord, Lord Willis, possibly referred to this point when he said that he was "slightly concerned"—I emphasise the word "slightly"—that there could be some downgrading of the teaching input.

However, one group has not really been represented in these consultations: the nurses themselves. People will refer immediately to the Royal College of Nursing and its equivalent for midwives. But the trouble is that that organisation, in terms of this area, also has a vested interest. It is a registration body for nurses, yet at the same time it is a member organisation and there can be a conflict of views which I have come across quite often. I have no problem with the RCN registering nurses because it is both right and sensible, but we must recognise that there is a potential difficulty. I have talked to a number of nurses who are concerned about nursing associates. However, they can be reassured by this order. As the noble Baroness, Lady Watkins, and the noble Lord, Lord Willis, have both said, nurses are professionals. Indeed, the noble Lord, Lord Willis, made a very wise point. The pivotal role of caring in hospitals ought to rest with registered nurses. That is where we ought to begin because they are professional people.

Even so, nurses are concerned that their views have not always been represented in this consultation. I am therefore pleased to note that paragraph 7.20 of the draft Explanatory Memorandum makes that clear. I shall repeat that because it is important that it is on the record and nurses can see what the position is. The Government say, quite rightly:

> "Nursing Associates are identified as a separate profession with different qualifications and education and training to nurses and midwives".

Nursing associates are not nurses. They are not fully qualified and registered so in that sense they do not represent a challenge to nurses. That point must be rung out aloud because we need to ensure that a profession which is under pressure and suffering from low morale is reassured.

Paragraph 7.9 provides even more reassurance when it makes it clear that nursing associates will not be capable of,

> "providing, supplying and administering medicines".

That too needs to be shouted out. Moreover, I assume—perhaps the Minister can confirm this—that this includes giving injections. I should think it does because it refers to "administering medicines", but we need clarification. The point is reinforced where the draft memorandum talks about situations of national emergency, when nurses and midwives can be empowered to prescribe. A flu pandemic is cited as an example. That is very sensible because we need the hands and

brains of these people to do the job. Nurses help doctors, but it is made quite clear that the education and training of nursing associates is not of the same high standard as that of registered nurses. They will not be allowed to prescribe medicines in a national emergency situation or even a hospital emergency situation. I have spoken at some length, more than I would normally, but this House perhaps needs to help the Government to reassure qualified nurses that their status is not under threat.

I will deal with one or two other points. Paragraphs 7.14 to 7.16 talk about the two-year pilot courses. We understand why they were brought in, and I hope that we have learned a lot from them. Perhaps I might press the Minister on the number of people pursuing nursing associate courses at the moment. The Health Education England plan is for 5,000 nursing associates in training this year. I recollect a debate not long ago in this House in which the number of nurse associates in training was given not as 5,000 but 30—not 30,000 but 30. The Minister said, "I'm pretty sure those figures are wrong—they are too low—but the figure is disappointing". I wonder whether he has up-to-date figures for the number of students expected to be on NA courses this year, because the projection is important in planning ahead for the workforce.

4.45 pm

The other issue that concerns me is apprenticeships. Having done an apprenticeship, I would say that there are two ways of looking at it. Many people think that apprenticeships are a very good way of getting a trained workforce—and, if the courses are right, they certainly can be. But they are not always the answer. In this case, narrowing it down to nursing associates, we are thinking of two routes: there is the apprenticeship route and there is what you might call the normal route. As I understand it, at this stage it will be a two-year course, mainly but not exclusively for ex-healthcare workers, and the course will be in-work coupled with classroom training at a university or college of further education. Will the Minister give us a bit more information on the two training routes?

I will raise another point. There is a lot of detail in the order about set-up costs, but what about the ongoing costs of nursing associates? For example, taking the more conventional two-year route to get the status of registered nurse associate, who will pay for those two years? They will have to be paid for: the universities will need the money. There is talk of charging £7,000 a year for each student, which is £2,000 less than qualified registered nurses will have to pay. Who is going to pay that? Will the Government give a commitment that they will pay the fees?

The same argument applies to apprenticeships. Who is going to pay the fees? Is it the local employing body? If that is the case, there will be a lot of encouragement for local trusts not to have NAs, because they will have to pay for them. Why are the figures related to that?

Lord Willis of Knaresborough: Perhaps I might help. Some of the thinking behind the funding model, in particular for apprenticeships, relates to the levy. It will not apply to very small trusts, but most large trusts have a 0.5% employment levy, and to apply that through the apprenticeship route seems very logical. Whether it will work is a different matter, but that is the logic.

Lord Clark of Windermere: I am very grateful for that—and I understand that many trusts contribute to the levy. Perhaps the Minister could give us an indication of what the breakdown will be between the conventional course and the apprenticeship course for nurse associates. That would be helpful, because one has to bear in mind that the cost to a registered nurse undergraduate is £9,000 a year. That is what they have to pay—which means that they will pay £27,000 to get their qualification.

We need to continue at a high level. As the Minister said, we have increased the number of nurses in training; I found that very encouraging. He is absolutely correct. But why should somebody who wants to become a registered nurse spend £27,000 over three years when they could do a conventional NA qualification for two years at no cost, then do another year to become a fully qualified registered nurse? It just does not make sense. The Government have to look at the funding of nurse support training as a whole. I hope that they do so.

I felt that it was right and proper to raise these difficulties as they have not been raised elsewhere because, as I said, many of the consultees have other interests in putting forward their points of view.

The Earl of Listowel (CB): My Lords, the noble Baroness, Lady Thornton, and the noble Lord, Lord Willis, asked about the impact of this new profession on the wider healthcare workforce. I wonder whether it is helpful to ask the Minister at this point a little about possible impact, if any, on health visitors. There is real concern about the decline of health visitors; they had a resurgence in recent years but are in serious decline now. I do not wish to detain the House for too long if this seems a bit beyond the main business.

I am a patron of the charity Best Beginnings, which provides mental health and perinatal support for parents. I spoke with the chief executive last week. We recognise that health visitors are very important, as healthcare professionals working in the vital perinatal period to ensure the best attachment between parent and child. I recently spoke with the president of the Institute of Health Visiting, Dr Cheryll Adams. Again, she expressed concern about the decline of the number of health visitors. As we establish a new healthcare profession, do we not need also to think about this other, declining profession under the healthcare umbrella?

I imagine that there is no plan to replace health visitors with these new healthcare professionals, but sometimes there is a misunderstanding that health visitors are just there to weigh the baby, when anyone could do that. In fact, when family-nurse partnerships were introduced to support vulnerable parents, the outcome was significantly better when higher qualified practitioners worked with the families. This job is challenging, because people are often working with vulnerable families in poor housing and poor conditions. It is a demoralising profession, unless one has a good professional foundation.

I emphasis the importance of the vital early years. As Graham Allen and Mr Field MP have established, the first 2,000 days in a child's life are the most important. We need to ensure that the best professionals

[The Earl of Listowel]
are available to them. Two or three years ago, health visitor funding went from the Department of Health to local authorities. We all know that local authorities have very little money to spend, so it is not surprising that there has been a significant decline in the number of health visitors. Does the Minister recognise concerns about that decline? Will he assure the House that he is keeping in mind the health visiting profession and what can be done to sustain it and ensure its continued health?

I have a final question. This particular new brand of healthcare professional gives rise to the problem of professionals from the developing world being pulled in to fill the niche. I am sure that the Minister can assure us that we will not poach healthcare professionals from Nigeria, Ghana and elsewhere, but the possible risk of that certainly comes to my mind. I welcome the order and I look forward to the Minister's response.

Baroness Jolly (LD): My Lords, my contribution will be very short, as noble Lords have already said everything. We, too, welcome the role of the nursing associate. I commend the work of my noble friend Lord Willis of Knaresborough in making this happen and say to him that he can have the Front Bench if he is happy to take all that goes with it.

The noble Earl, Lord Listowel, made the point about impact. I just make one extra point. In remote locations—I live in Cornwall, but this could account for anywhere far-flung where there are hospitals and health establishments—there will be uptake from healthcare assistants who feel that they cannot leave home to train as a nurse because the distance is too great and they have family responsibilities or other commitments, but they could manage the two-year course. That would be really positive. Nursing associates would then improve in those establishments the quality, but also the skill mix, of nursing teams in areas where it is also particularly difficult to appoint.

I understand the timing of this SI. The noble Lord, Lord Clark of Windermere, said that perhaps there was still stuff to look at. It is really important that it gets on to the statute book, because we will have real live trainee nursing associates who need to register next year. Sadly, we cannot take any more time to do this, but from these Benches we really welcome the role of the nursing associate and the help it will give the NHS.

Lord O'Shaughnessy: My Lords, I sincerely thank every noble Lord who has spoken in the debate and engaged with these regulations so thoroughly. It has been a really important discussion about not just the new role of nursing associate but its impact on the overall health and care workforce. I am very grateful to all corners of the House for the broad welcome, albeit with questions and conditions, for the creation of this role.

I want to deal up front with the urgency of these regulations. I agree that there has been an element of rush, and I think we are all agreed on the requirement for it. But like all overnight successes, this has been a long time brewing, as the noble Lord, Lord Willis, pointed out. A lot of work has been done, and I salute, along with all noble Lords, the many people at the RCN, the NMC and others who have contributed to this, and the many people behind the scenes. It is quite right to acknowledge them. No doubt there is more work to come.

The primary debate, or part of it, revolved around the distinction between the nurse role and the nursing associate role. It is very important to be clear, as I hope I was in my speaking note, that these are distinct professions. They may all be part of the same family—there is a certain amount of semantics involved here—but they are distinct professions, which will be regulated distinctly, albeit in a joined-up way through the same regulator, which is quite right. The NMC is currently consulting on standards of proficiency. The department, with all the necessary arm's-length bodies and others, will develop guidance for that separate profession. While nursing associates can inevitably support nurses, doctors and others, they will not just be the handmaidens to others, in the evocative phrase of the noble Lord, Lord Clark. They will be professionals in their own right.

It is also worth pointing out that, in the consultation going on at the moment on standards and proficiency, the NMC is also looking at the code of conduct and amendments to it. That consultation ends on 2 July so, again, I warmly encourage all noble Lords to contribute to that, because some of the ideas set out today could have an important role in getting that right.

The noble Baroness, Lady Thornton, asked about the financial risks involved in setting up the courses—making sure that they are properly constituted and so on. My department has a memorandum of understanding in place with the NMC to keep the costs of the set-up within agreed cost parameters. The costs of accrediting nursing associate courses are met from the annual registration fees paid by the NMC's registrants. Therefore, the financial modelling has been investigated and we understand what we need to stick to.

5 pm

I, along with the rest of the House, congratulate the noble Lord, Lord Willis, on his role in helping to bring the nursing associate position into being. He made a very good point about it being a role that will help us to get the most out of our highly skilled registered nursing profession. The introduction of skilled teaching assistants into the education profession involved work that could be done by teachers. However, as teaching became not just a graduate profession but, in many cases, a master's graduate profession, the introduction of that role helped to unlock the skills of the teaching workforce and provided a balance with clearly delineated boundaries—although arguably education could do with more delineation—and that is what we are aiming for by going through this route.

The noble Lord asked about the apprenticeship route. The apprenticeship courses under consideration for nursing associates are level 5 and they will be about creating transferable skills. The pilot schemes are not NMC-approved but, once nursing associate training is on a full statutory footing, the schemes will have to be NMC-approved. The order ensures that the only way for nursing associates trained in England to join the register is by holding an NMC-approved nursing associate qualification. I can also tell the noble Lord that the

NMC will need to approve higher education institutes or education providers wishing to deliver nursing associate training once it is the regulator, so I hope that provides reassurance.

Several noble Lords asked about overseas applications. Again, it is important to distinguish between overseas citizens already resident in this country and those currently resident abroad. The noble Earl, Lord Listowel, made an important point about not wanting a system that relies on taking skilled individuals, in particular, out of developing countries, although we have to acknowledge that we currently allow for that in some cases. Clearly, it is important to have comparable qualifications and to pass a language test. Our future relationship with the European Union and mutual recognition of professional qualifications and so on will determine what that looks like for that particular group. However, we are clear that, once the NMC opens its register, overseas applicants who can demonstrate that they meet the standards will be able to join it. It is of course about maintaining those high standards throughout.

Noble Lords were right to comment on the absence of the devolved Administrations in taking forward this route. That of course is their right and prerogative. This route has been designed to meet the specific needs of the English health and care workforce. We have had very positive discussions and relationships with the devolved Administrations in developing this role. They intend to see how it develops and is implemented before making a decision about whether to implement it in their own countries. I can confirm that it would require a further order if they wanted to extend the regulation of the role into Scotland, Wales or Northern Ireland. I would be amazed if they wanted to introduce this kind of role on a formal basis without any kind of regulations, and I am certain that that is something we would not want to see happen and would strongly argue against.

The noble Baroness, Lady Watkins, who speaks with great experience in the area of nursing, quite rightly pointed out that this is a good route for people without qualifications to enter the nursing family, to coin a phrase. I am sure she will have seen the NMC briefing, which has a rather wonderful quotation from a nursing associate trainee at the Cheshire and Wirral NHS trust about what it has enabled her to do. She clearly has that aspiration in the long run and that is fantastic. However, equally, it is right that, when she takes those qualifications, she will gain a qualification and be a professional in her own right.

The noble Lord, Lord Clark, was right to put the Government under scrutiny, as he always does, and to ask several incisive questions. He made a point about potential conflicts, but that is in the nature of the beast. It is worth saying that the consultation responses included 203 from individuals working in the NHS or in healthcare delivery. The responses were not separately coded for nurses, although perhaps in retrospect they should have been. This was to make sure that we were talking not just to the institutions, because they can have a vested interest. Having all these professions under a single regulatory framework but as separate professions is the right way to balance those issues.

On the number of nursing associates in training, about 2,000 are on the pilot scheme. The intention is for that to rise to 5,000 in training and then 7,500 the year after. That is just for nursing associates; we are not talking about nursing. On who pays the training cost, this is absolutely intended to be an apprentice route—a level 5 foundation course. The apprenticeship levy therefore comes into play as a source of funding.

The noble Earl, Lord Listowel, talked about health visitors. I do not believe that there is any specific impact on health visitors. I absolutely agree about their importance in the early years of a child's life, and indeed for their parents. I do not think there is any direct impact, but I will double-check and write to him.

The noble Baroness, Lady Jolly, made a very interesting point about this being particularly attractive in areas where it is hard to recruit. In one way it solves one problem, but it serves only to highlight another: if these are not substitutes, which they are not, that does not mean that we have necessarily solved the nursing shortage in rural areas. It is important that we keep those issues distinct.

Lord Clark of Windermere: May I press the Minister a little further on the training costs? Is he saying that all students on the nursing associate courses will be apprentices and that no student on the nursing associate course will pay towards the cost of that course?

Lord O'Shaughnessy: I thank the noble Lord for that question. My understanding is that the nursing associate is a two-year apprenticeship that provides a level 5 qualification. Therefore, there is currently a consultation about the nature of the role—the balance between work and training and so on—but obviously if it counts as an apprenticeship any organisation providing it can draw down on the apprenticeship levy fund to pay for those training costs. Whether it is in theory possible to train through an alternative route that would involve the paying of fees is something I will need to investigate and write to the noble Lord about. Of course, I will put that letter in the Library. The funding is there and the NHS is paying it. It is not necessarily drawing it down at the moment; this is an opportunity for us, with a course that is tailor-made for apprenticeships, to take advantage of that money to fund the courses.

I hope I have been able to answer noble Lords' questions. This is an exciting moment in the development of the workforce. It provides an extra gear to the workforce to provide for the ever more complex care needs of our population. This is a good step forward. We are moving quickly and I look forward to working with noble Lords in the coming months to make sure we can put this course and its regulation on a statutory footing, attract many thousands of people into it and welcome a new profession into the health and care family. On that basis I commend the order to the House.

Motion agreed.

Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, E, F, and H) Order 2018

Motion to Approve

5.08 pm

Moved by ***Baroness Manzoor***

That the draft Order laid before the House on 21 May be approved.

Baroness Manzoor (Con): My Lords, clearly I am not my noble friend Lady Williams, in whose name the Motion stands on our Order Paper. I will be taking forward this SI today.

This order will bring into effect four revised codes of practice issued under Sections 60, 60A and 66 of the Police and Criminal Evidence Act 1984, which I shall call PACE from now on. These are: Code C, which concerns the detention, treatment and questioning of persons detained under PACE; Code E, which concerns the audio recording of interviews with individuals suspected of committing offences; Code F, which concerns the visual recording with sound of interviews with individuals suspected of committing offences; and Code H, which concerns the detention, treatment and questioning of persons detained under terrorism provisions. I shall now briefly describe what the PACE codes are, how the revised codes came before us today and the changes they introduce.

For England and Wales, PACE sets out the core powers of the police to prevent, detect and investigate crime. The exercise of these powers is, however, subject to codes of practice, or PACE codes, which the Secretary of State is required to issue under Sections 60, 60A and 66 of PACE. The PACE codes do not create powers but put in place, among other things, important procedural safeguards for the public when the police exercise their powers. Together, PACE and the codes are designed to strike a balance between the need for police to have powers to tackle crime and the need for safeguards for suspects and members of the public.

Periodically, as a result of policy development, new legislation, case law or operational developments, and subject to parliamentary approval, revised PACE codes are issued. A statutory consultation on the draft codes took place last year. In addition to the bodies that the Secretary of State is required to consult, bodies such as the Crown Prosecution Service, Liberty, Justice, and the Youth Justice Board were invited to comment. The draft codes were also published on GOV.UK to enable the public at large to respond. This order was approved last week in the other place. Subject to it being approved by this House today, the four revised codes will come into force 21 days after the order is signed.

The main revisions to code C concern safeguards for vulnerable suspects, voluntary interviews—which are interviews with suspects who are not under arrest—and the use of live link technology introduced by the Policing and Crime Act 2017 to interview detained suspects and authorise extended detention before charge. There are revised safeguards for vulnerable suspects which introduce a new definition of "vulnerable". It replaces references to persons being "mentally vulnerable" or having a "mental disorder". Instead, the revisions describe a range of functional factors for assessing an individual's ability to understand their position and exercise their rights and entitlements. If there is any reason to suspect that any may apply, the police must secure an appropriate adult for that person. The appropriate adult's role is to help ensure that the suspect understands what is happening and why, and that they are able to exercise their rights and entitlements under PACE. There is a new requirement for the police to take proactive steps to identify and record any functional factors which indicate that an individual of any age may require help and support from an appropriate adult and to make that record available for police officers and others to take into account when they need to communicate with that individual. The requirement extends to juveniles to ensure that specific relevant factors are not overlooked simply by virtue of their age alone. An appropriate adult must always be called.

Other changes update the role description of the appropriate adult and who may or may not act in this capacity. These changes reflect established good practice and take into account the work of the Home Office-chaired working group on vulnerable people and the responses to the statutory consultation on the codes. These changes are mirrored in Code H.

For voluntary suspect interviews, the rights, entitlements and safeguards that apply and the procedure to be followed when arranging for a voluntary interview to take place are strengthened and extended. These changes take account of concerns that a suspect might not realise that a voluntary interview is just as serious and important as being interviewed after arrest. For example, this may be particularly applicable when the interview takes place in a person's home rather than at a police station. The approach mirrors that which applies to detained suspects on arrival at a police station, with the interviewer standing in for the custody officer.

5.15 pm

The new code provisions also reflect the amendments to PACE made by the Policing and Crime Act 2017. These allow a live link to be used when detention without charge is extended by a superintendent for up to 36 hours and by a magistrates' court for up to 96 hours. The live link provisions also allow a detained suspect to be interviewed by an officer who is not present at the police station where the suspect is detained. These provisions will enable the police to take advantage of technological developments in cases where the live link does not adversely affect a suspect's ability to communicate effectively and exercise their rights. Other amendments reflect changes introduced by the Policing and Crime Act 2017 and ensure that 17 year-olds are treated as juveniles for all purposes under PACE.

Revisions to Code E, which are mirrored as appropriate in Code F, introduce substantial changes to the audio and visual recording of suspect interviews. The new and revised provisions cover all interviews for all types of offence and for all suspects, whether or not arrested and irrespective of the outcome. They specify the types of devices which, if authorised by the chief officer, are to be used to audio record suspect interviews and mean that, whenever an authorised recording device is available and can be used, it must be used. A written interview record may be made only if such a

device is not available or cannot be used and the interview cannot be delayed until an authorised device can be used. Again, these provisions will enable the police to take advantage of technological developments.

Code F mirrors the revisions in Code E by setting out the requirements and modifications that apply exclusively for the purposes of making a visual recording with sound if the police wish to, although visual recording is not mandatory. This avoids replication of the full Code E provisions that govern audio recorded interviews and makes it clear that a visual recording with sound comprises an audio recording made in accordance with Code E together with a simultaneous visual recording. The changes clarify and extend the circumstances under which police may make a visual recording. The device specification also extends the range of devices that may be used for recording suspect interviews to include body-worn video devices, as long as they comply with the revised operating specifications and manufacturers' instructions and the interview is conducted in accordance with the code. Body-worn video is increasingly being deployed across forces and I know that this change will be particularly welcomed by the police.

Finally, minor typographical and grammatical corrections have also been made and out-of-date references updated.

The revisions strike the right balance between the need to safeguard the rights of suspects and supporting the operational flexibility of the police to investigate crime. They are being introduced to bring Codes C, H, E and F in line with current legislation and to support operational policing practice. The revised codes provide invaluable guidance to both the police and the public on how the police should use their powers fairly, efficiently and effectively. I therefore encourage all noble Lords to support the revised codes and commend the order to the House. I beg to move.

Lord Rosser (Lab): I thank the Minister for setting out the purpose and content of the draft statutory instrument that we are considering, which is applicable to England and Wales. We support its objectives. The revisions to the codes of practice are intended to reflect changes in the light of the Policing and Crime Act 2017 and current operational policing practice. The changes cover the audio and visual recording of interviews with suspects and the detention and questioning of persons by police officers, including under terrorism legislation. All four codes have been previously revised, two as recently as, I think, February last year. Has it really been necessary to revise Codes C and H twice in 16 months, when the revisions we are discussing relate in part to a 2017 Act? Surely, frequent revisions are time-consuming and hardly encourage an understanding of what the codes say at any one point in time by those who are expected to pay regard to them.

I want to raise the question of resources. No impact assessment has been prepared. Can the Minister confirm that none of the revised codes of practice will require any additional police resources to implement them, whether human or financial, in any police force or organisation, and that they will take up no more police time to implement than that already required for the existing applicable codes of practice?

The revision to Code C also reflects the provision in last year's Policing and Crime Act to ensure that 17 year-olds are treated as children for all purposes under the Police and Criminal Evidence Act 1984. When this order was considered by the Commons, one of the issues raised was whether this change meant that children aged 17 could no longer be named in media reports when they are a victim, as applies to children up to the age of 16. I believe the Government said in the Commons that they would take this matter away to see what more could be done. What has so far happened in respect of this undertaking, albeit I accept that it was given only pretty recently?

Codes E and F introduce what the Explanatory Memorandum describes as,

"substantial changes to the approach to audio and visual recording of suspect interviews".

The Explanatory Memorandum goes on to say:

"The new and revised provisions cover all interviews for all types of offence, for all suspects—whether or not arrested and irrespective of the case disposal outcome".

How many extra audio and visual recordings per year is it estimated that this provision will lead to compared to the current figure? Does this have any additional resource implications, after taking into account any expected decrease in written interview records?

Finally, paragraph 8.4 of the Explanatory Memorandum refers to the outcome of the consultation, which,

"prompted a number of significant changes to the original proposals".

Were any concerns or proposals in the 32 separate responses not reflected in those changes to the original proposals to which the Government refer in the Explanatory Memorandum and, if so, what did those concerns or proposals relate to?

Lord Paddick (LD): My Lords, I too thank the Minister for explaining these measures but I want to take up the theme that the noble Lord, Lord Rosser, mentioned about resources. While we welcome the tightening of safeguards for children and vulnerable people, we are concerned that some of these measures are a worrying sign of the pressure the police are under. I shall come to that in a moment.

In the meantime, is the Minister aware of the difficulties in the police securing appropriate adults to attend police stations? This has arisen out of the centralisation of charging, meaning that appropriate adults are having to travel much longer distances than when they simply used to attend a local police station. Has any work been done to quantify the problems of centralised charging, set against a potential need for more appropriate adults to attend interviews as a result of the tightening of the guidelines in these codes of practice?

A worrying sign of the times is the fact that a superintendent could potentially authorise an extension of detention of up to 36 hours using a live link. This is an indication of the worrying reduction in the number of senior police officers. The noble Baroness will agree that this is a serious decision. Bearing in mind the rank of the officer required to authorise the detention, is it really appropriate that this be done via a live link rather than by the superintendent attending the police station in person? The lack of detectives in the police service has been in the news recently. There is a national shortage of detectives. Allowing a live link to be used

[Lord Paddick]
so that a detective can question a suspect, even if the detective is not at the police station, seems a retrograde step. I speak from personal experience when I say that nothing beats being in the room with the suspect when you are trying to determine whether he or she is telling you the truth. Have any concerns been raised by police detectives about the extension of the use of a live link in the way suggested in this order?

Clearly, we welcome the fact that 17 year-olds are going to be treated as children for all purposes under PACE, but that goes back to what I was saying about the need for more appropriate adults and the difficulties that have been brought to my attention in securing appropriate adults.

It is very important that suspect interviews are recorded, except in exceptional circumstances, and therefore we support this order. However, recordings have to be made on suitably compliant authorised recording devices. Has any work been done on whether there will be additional cost to ensure that these suitably compliant authorised recording devices are available in every circumstance, in order to ensure that the interviews can be recorded? The noble Lord, Lord Rosser, also asked this question.

As the noble Lord, Lord Rosser, also said, the outcome of the consultation has prompted a number of significant changes to the original proposals. It is to the credit of the Government and the Home Office that the consultation has taken into account these concerns, such as not raising the level required to determine whether somebody is vulnerable to "belief" but keeping it to "any reason to suspect" the suspect is vulnerable. We welcome that approach. Overall, we agree with the changes to these codes of practice, but we are concerned that they may have some operational and financial impact on the police service that is not reflected in any of the surrounding literature the Home Office has provided in connection with these provisions.

Lord Jones (Lab): My Lords, I thank the Minister for her careful and detailed introduction. She probably knows far more than I ever will at this stage about this subject; Chief Inspector Morse was a very impatient tutor, as his long-suffering sergeant always indicated. First, and briefly, the chief constable of North Wales, Mark Polin QPM, is retiring. He has led and leads a very dedicated team of officers. Mr Polin has been a fine professional in difficult times of austerity. He has led with shrewdness and good judgment, and he has served the far-flung communities of north Wales very well. It is a very demanding bilingual, mountainous and industrial area—not the easiest beat to operate in. He must be a fine public servant, because he has accepted the invitation of the Wales Assembly Government to take on the chairmanship of our National Health Service trust, which again means more difficult choices in an austerity climate.

5.30 pm

The Explanatory Memorandum is helpful and quite detailed. At paragraph 7.2(b) it is good to read:

"These changes take account of concerns that suspects might not realise that a voluntary interview is just as serious and important as being interviewed after arrest. This applies particularly when the interview takes place in the suspect's own home rather than at a police station … In particular, it requires the suspect to be informed of all the rights, entitlements and safeguards that will apply before they are asked to consent to the interview and to be given a notice to explain those matters".

It is good to read those sentences in the Explanatory Memorandum. The Minister may answer here this question, or perhaps later: how many interviews have taken place in suspects' homes for the latest year for which statistics are available?

Consultation is mentioned at paragraph 8, and I read at paragraph 8.2 a list of those who took part. It is a considerable list, and must be welcomed for its detail in the memorandum. Can the Minister give details about some of the consultees who I have not heard of: Revolving Doors, Just for Kids Law and the individual independent custody visitor, particularly the latter? What do these organisations and individuals do?

Lord Judge (CB): My Lords, the increased protection for those who are vulnerable, for 17 year-olds and for those who are suspects must obviously be welcome. I share the reservations expressed by the noble Lord, Lord Paddick, about frequent changes to the codes, but they are essential steps to protect those who find themselves engaged with the police. The only further matter that is welcome is the provision of audio-visual recording. In the event of a case going to trial, it will be of great advantage to a jury to see the way in which the suspect, as he would then have been—the defendant, as he will be at the trial—actually answered the questions. It will improve the jury's opportunity to judge whether the denials made in the interview are genuine or, indeed, whether the confession is a true confession made voluntarily. I therefore welcome the proposals.

Lord Elton (Con): My Lords, the interest in your Lordships' House in these codes of practice is far less intense now than it was in 1984, when they were born. I was the Minister in charge of the Bill at the time, and I carry away a clear memory of the two focuses of the House's interest. One was on stop and search—what happened between the police and the public on the street—and the other was what happened in the police station and the bearing that that had on the result of a fair trial.

I therefore very much welcome the way in which this work has been carried forward, and not allowed to gather dust and become out of date. I also understand the concern of the noble Lord, Lord Paddick, about frequent amendment; on the other hand, I understand the need to bring things up to date without waiting for the next change to come in.

What we have now is immensely detailed, and the complication of what police officers are required to absorb is considerable. The original codes of practice, including stop and search, occupied 97 pages. Today, just the part that we are dealing with takes 192 pages, and that does not cover stop and search.

My sympathy all down the way is with the policeman. I am astonished at the extent to which policemen on the street know their law, when it has taken us so long to make that law and we have found it so difficult to understand in its totality until it was on the statute book. These people have to make decisions on the spot, in a hurry, probably with fairly difficult circumstances surrounding them, and get it right.

That is not covered by the order: in here is what happens in the police station, when the public are most open to suspect what is going on because they cannot see, and the suspect, who may well be innocent, feels most threatened because he can see no sign of help. The extension of the criterion of vulnerability is extremely welcome. The extension of the means of getting evidence of how things went in the police station, not only for barristers or solicitors to ensure that their clients were protected but also for juries to make up their minds, is extremely welcome.

As, in a sense, the godfather of all this, I welcome its coming of age.

Lord Reid of Cardowan (Lab): My Lords, first, I apologise to the Minister for having missed the first two minutes of her speech.

I generally welcome the essential principles of the order. I have one point that is tangential, not central, to the present provisions and gives me a little worry. That is the one to which the Minister referred in passing towards the end of her speech, which is the use of body-worn cameras and videos. This is becoming increasingly the norm, and some of the material may be adduced later in evidence. Will she respond to me now or later in writing as to her level of satisfaction about the protection given to the masses of data that will necessarily be accumulated as the use of body-worn cameras becomes the norm? Presumably the evidence, or at least the recordings, will be retained for some period, and there have been incidents where there has been leakage of such information—not in its normal use through due process but outside that. Can she say a word about her level of satisfaction about the protection given to that data? If she feels that that is tangential to tonight's debate, will she write to me on it?

Baroness Manzoor: My Lords, I thank all noble Lords who have taken part in this debate and for the support that I have heard from around the House. I also give a very warm welcome to the noble Lord, Lord Rosser, who is back in his place on the Front Bench. Noble Lords have asked me a range of questions, and I will do my very best to answer them, but if there are any that I do not answer, I will write to noble Lords and place a copy in the Library for the House's information.

It is in the interests of justice and operational necessity that PACE codes of practice are kept under review and brought up to date. As the noble and learned Lord, Lord Judge, and my noble friend Lord Elton said, it is a necessity that we take account of relevant changes and developments in policing practice and the law to ensure that key safeguards for suspects and citizens are preserved.

I want to move quickly on to the questions asked by noble Lords. The noble Lord, Lord Rosser, asked about 17 year-olds and what the Government have done to make sure that their names are not in the press. As the noble Lord rightly suggested, this matter has recently been considered and is still under review by the Government. As soon as I have anything further to add, we will undertake to make sure that it is known. The noble Lord also asked whether it was necessary to change the code so frequently. The noble and learned Lord, Lord Judge, referred to that, and also to the reason why. The answer is, of course, yes. As I said in my opening remarks, we need to update codes as and when there are legislative changes or changes in case law, and invariably when there are changes in police practice or, indeed, when new technology is available. When changes are made we try to make them all in one SI. It is not always possible to do it in the previous SI.

The noble Lord, Lord Paddick, asked about safeguards and how we ensure that suspects are not unfairly disadvantaged when a live link is used to authorise extending their detention, or indeed if they are young or vulnerable. A live link cannot be used unless its use has been considered and authorised by an appropriate custody officer and the suspect consents to its use and has had legal advice on the use of a live link. When the person is young or vulnerable, the custody officer and the superintendent should have regard to the detainee's ability to understand the purpose of the authorisation or court hearing. It will not happen if that authorisation has not been given. The noble Lord, Lord Rosser, and another noble Lord asked whether the Government did not include in the updated codes of practice measures that individuals recommended in the consultation. Of course, all sorts of things come up during consultations but none arose here that was within the scope of the codes. I have already referred to the two areas that were changed as a direct result of the consultation and the Home Office working group.

The noble Lord, Lord Paddick, also raised the issue of finding an appropriate adult. Having worked in the police force, he has vast experience, and I take on board the point he raised. The Government are aware of the problems and keen to work towards resolving them. We will shortly be introducing a voluntary national framework to address this issue. There will be more work and closer partnerships between PCCs, police forces and other authorities to find solutions to this issue. The noble Lord also asked how forces will afford to implement the changes. The noble Lord, Lord Rosser, also raised the issue of finance and resources. The NPCC and police have not raised any issues concerning affordability in relation to these codes and, if anything, the provisions enable forces to use technology to ensure that there is greater efficiency and savings. The changes do not mandate live link or body-worn video.

The noble Lord, Lord Jones, asked about the number of voluntary interviews in people's homes. I am sorry but I do not have that data and, as I understand it, the Government do not routinely collect it. I am therefore unable to answer that question, although it is a good point. As more people are interviewed, potentially in the home should they wish it, perhaps forces themselves will routinely start to collect it. The noble Lord, Lord Paddick, also talked about the safeguards for suspects using live link. I raised that issue myself. If you are there face to face, you will be able to see someone's body language and what they are saying, so will the police officer concerned or, indeed, the suspect be disadvantaged if it is not? As I said and want to make absolutely clear, before the interview the suspect's solicitor and an appropriate adult must be asked for their views. If there is any doubt that the suspect can

[Baroness Manzoor]
adequately cope with the live link arrangement, it cannot be used unless it has been authorised by an inspector. The onus is on the interviewer to ensure that the interview is conducted in accordance with the codes. If it is not, it may not be admissible in court, so it is very important that authority is sought and given and that due process is appropriately followed.

The noble Lord, Lord Reid, asked an important question. I do not have the answer but, if I may, I will write to him and place a copy in the Library so that all noble Lords can see the answer. I will endeavour to do that. I think that that was all the questions that were asked. I thank my noble friend Lord Elton for his kind comments. I am glad that it is not 96 or so pages of codes. Just looking at the codes as they stand, one might think they pose a bit of a challenge. I conclude by saying, as I did in my opening remarks, that the balance is absolutely right between the codes and safety and security for vulnerable people on the one hand and aiding and supporting the police on the other. I thank all noble Lords for their constructive consideration of the very important issues before us today.

Motion agreed.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018

Motion to Approve

5.48 pm

Moved by ***Lord Bates***

That the draft Order laid before the House on 9 May be approved. *(Special attention drawn to the instrument by the Joint Committee on Statutory Instruments, 26th Report).*

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the UK and London are world-leading financial centres, providing access to a wide pool of investors and international capital. This is built on the expertise of the UK's financial services sector in providing products that meet the needs of a variety of economic actors in the UK and around the world. The UK has therefore sought to establish itself as a leading western centre for Islamic finance, illustrated by the UK becoming the first western country to issue a sovereign sukuk, or Islamic-equivalent bond, in 2014. The UK attracts business and investment from Muslim and non-Muslim countries around the world, supporting growth and jobs in the UK, as the UK's financial services framework accommodates Islamic finance instruments alongside their conventional equivalents.

The Government are committed to ensuring that this continues to be the case. Changes were made to the law in 2010 to define alternative finance investment bonds, which cover sukuk, as a specified investment. More recently, we took measures in the Finance Act 2018 to afford such instruments the same tax treatment enjoyed by conventional bonds when traded on new types of trading venue. This was accepted by the House, but the specified investment definition in financial services legislation requires updating to match the tax change.

The order in front of the House today does exactly that and ensures that there is an alignment of the tax and regulatory treatment of alternative finance investment bonds to provide certainty, clarity and consistency for issuers of these instruments in UK markets. The order adds two types of financial trading venue—so-called multilateral trading facilities and organised trading facilities—to the list of permitted venues for alternative finance investment bonds. Conventional bonds can already be traded in these venues. The order also amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 so that a person administering a benchmark, as specified in the regulated activities order, will be regarded as carrying on the activity by way of business. This technical amendment is consequential on the coming into force of the EU benchmarks regulation which was given effect in February of this year by the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018.

The order tracks an amendment made by the Finance Act 2018 which came into force on 1 April 2018. This left a gap in the treatment of alternative finance investment bonds in financial services regulation. We intend to close that gap as quickly as possible in the interests of certainty, clarity and consistency. Similarly, the amendment to the "by way of business" order is the final part of the legislation needed to complete the implementation of the EU benchmarks regulation into UK law. We wish to reassure issuers of and traders in alternative finance investment bonds that these instruments will be legally recognised in UK markets, giving certainty to the market. The London Stock Exchange has warned that continued failure to update the legislation for alternative finance investment bonds in regulation is causing issuers to look elsewhere.

The changes do not cause any new costs for business, as the regulatory framework for alternative finance investment bonds has been in place since 2007. The Financial Conduct Authority confirmed that there is currently only one firm in the UK authorised to operate a trading venue of the type which might be impacted by the proposed amendments. Instruments of this nature are very sophisticated and highly unlikely to be traded in this manner by anyone without a significant level of expertise in financial services—in other words, firms authorised by the Financial Conduct Authority.

We have a situation where differing treatment in regulation and taxation is afforded to alternative finance investment bonds compared to their conventional counterparts. This is unintended from a policy perspective and the Government want to act quickly to address this gap to protect the competitiveness of the UK markets. For that reason, I beg to move.

Lord Jones (Lab): My Lords, I thank the Minister for his assured and persuasive introduction. I recollect him in another place, where I realised that he always mastered his brief. My remarks will be very brief; I have but one question. The Explanatory Memorandum refers, at paragraph 10.1, to the impact on voluntary

organisations and charities being minimal. Can the Minister give an instance of a charity or voluntary organisation, to facilitate further understanding of his introduction?

Lord Lexden (Con): My Lords, I shall comment briefly as a member of the Joint Committee on Statutory Instruments. The committee's recent 26th report drew the attention of the House to this instrument, on the grounds that it appears to make an unusual use of enabling powers conferred by the Financial Services and Markets Act 2000. It is a long-established principle of the joint committee that, where an affirmative instrument imposes new duties significantly more onerous than those that existed before, and where it requires those affected to adopt different patterns of behaviour, there should be a period of at least 21 days between the making of the instrument and its commencement, to give those affected a reasonable chance to adapt to the changes required. This instrument allows only one day.

My noble friend explained that very few firms—possibly only one—would be affected by this change. He also made clear that the Government were responding to a grave concern expressed by the London Stock Exchange that the continued failure to amend the permitted arrangements for alternative investment finance bonds is damaging the competitiveness of UK markets. The committee was unpersuaded that the changes to the law made by the proposed order are so urgent that they must have immediate effect. If the need for amendments was really so pressing, the draft order should have been laid before Parliament much earlier, with a commencement date of 1 April 2018 to coincide with the tax changes referred to in the Treasury's memorandum

Because of frequent and recurrent poor practice, the Joint Committee on Statutory Instruments has recently published a special report, *Transparency and Accountability in Subordinate Legislation*, to remind the Government of the need for new law to be published promptly, so that those affected by the changes it makes are protected from being subjected to them before they have had a reasonable opportunity to understand and prepare for them. That is a general principle to which the Government should always adhere. I commend the committee's important recent report on the major issues of transparency and accountability to my noble friend and all his colleagues in this House and the other place. I hope the House will have a brief opportunity to consider it in due course.

Baroness Kramer (LD): My Lords, I think that we all recognise that Islamic finance—the sukuk market—is the fastest growing global financial sector, with growth of 10% to 12% a year. The current stock is some $3.5 trillion, with $100 billion of new issuance a year. The UK plays a very important role, as the most significant western market. As the Minister said, in June 2014 we became the first non-Muslim country to issue a sukuk.

I have no problems with the content of this statutory instrument. It is an "oh, oops!" and should have been included in the April order. This underscores the complexity we now have in dealing with FSMA 2000. It is now so complex that it is not at all unusual for real issues to fall through the cracks. If ever there was a candidate for a piece of consolidated legislation, it is this whole financial area. In 2012, we found ourselves with a Bill that, when tracked through the legislative trail, required the Governor of the Bank of England to appoint himself. Another issue, which we could not find a way to get rid of, was the Governor of the Bank of England being required to write himself a letter to update himself on what he was doing. Those are slightly humorous examples, but this one is a real "oh, oops!" and I hope that the Government will take that on board.

Picking up the point made by the noble Lord, Lord Lexden, there is a growing sense that the Government do not quite respect the procedures of this House and this Parliament. There is a rationale for saying that there should be a period between an order being approved and it being implemented. In this case, it seems that only one company may be involved, but for that company it makes no difference whether there was one day's notice or 21. It would have been an opportunity to show that the general procedures of this House are treated with that kind of respect and are followed, unless there is a genuinely exceptional circumstance; I do not think it can be argued that there is in this case. The concerns of the London Stock Exchange would have been met by the approval. It did not require that the order should become effective instantly.

6 pm

I wanted to raise a couple of other issues. A sukuk is equated here to a government bond but it is much closer in character to an asset securitisation. Can the Minister give an assurance that that is recognised, as the various regulatory phases are put in place for this to become a much more widely and generally used instrument? The reason why that matters is that it basically shifts where the risk lies. In a sukuk structure there is much more risk to the investor than there would be in a traditional government bond structure. It is important that the Government have that in mind rather than thinking of these as essentially instantly equated. There are also issues because, obviously, those who determine what an appropriate sukuk is are religious leaders because this is a sharia instrument, and in many different places there are different views on what qualifies. We probably need a clarifying framework as this becomes a much more significant instrument to use. I hope the Government can give us some reassurance that they are taking that on board.

Finally, as we look at this crucial sector, the whole issue that is not being tackled is Islamic student finance. The Government did their consultation back in 2012, knew exactly what they had to do and now intend to rectify the problem—but not until 2020, leaving year after year of students who feel that they cannot take out a student loan on conventional terms but are unable to access that kind of financial support to go to university and to follow the studies that we all want them to be able to follow. Surely, as the Government recognise the urgency of making sure that the sukuk market is liquid, viable and growing in the UK, they

[Baroness Kramer]
could put their skates on to deliver something for our students, who need an equivalent instrument to deal with student finance.

Lord Tunnicliffe (Lab): My Lords, I too thank the Minister for introducing this instrument. The noble Baroness, Lady Kramer, says that we all know that the sukuk is an important feature in the growing and important Islamic finance sector. I have to tell her that before Friday, I did not even know that the sukuk even existed, and this instrument has truly spoiled my weekend.

Clearly, I welcome London's aspiration to become a major Islamic finance centre, and this caused me over the weekend to try to understand what the differences are and what is special about Islamic finance. I found six characteristics set out in one of my searches, which are quite positive. I will pick three of them. There is a,

"prohibition on uncertainty—to ensure that no party has an unfair advantage over another … prohibition on speculation—profit should be made through hard work and effort, not purely by chance",

and,

"no unjust enrichment".

At the level of principle, it seems that this style of finance is intrinsically moral and that we will have nothing to fear from it being a major part of our financial system.

I note that a sukuk, to comply with Islamic law, is like a bond, but it is based on an asset, not debt-based. I also note that they already exist; indeed, a major sukuk was issued here in February for £250 million. That started to confuse me—why do we want these instruments if they already exist? I therefore tried to understand it, and traced it back—for once I read the order, because I could not immediately understand the Explanatory Memorandum. I got as far as FiSMA Article 77A, and after that, I am afraid, I gave up. I could not see how the mechanism of the order was such as to embrace the sukuk as part of the legislation. I would be grateful if the Minister could take me through the steps. However, assuming that the order embraces the sukuk and fully integrates it into legislation, what are the consequences? What changes will there be to the way in which the instruments are supervised, sold, traded and taxed? I would also like to know of any other features of the instrument that are changed.

On the matters raised by the JCSI, which were admirably expressed by the noble Lord, Lord Lexden, and supported by the noble Baroness, Lady Kramer, I too agree with the conclusions of the 26th report. The committee says that the case for an order coming into force the day after it is made should be compelling, and repeats its proposal that the normal period of time should be a minimum of 21 days. Without going on about this point, I register my agreement with that. This is particularly worrying because it seems a bad precedent, going into a period during which we expect to handle many SIs. Setting that precedent at this point is bad news, and I put down a marker that we will continue to resist it as the SI scene develops in the light of Brexit.

I also make a plea about the Explanatory Memorandum. I am afraid that it did not work for me. I accept that I may be a bear of little brain, but that should be the test. A decent Explanatory Memorandum should, to a bear of little brain, be straightforward and readable without excessive prior knowledge of what the order does, and describe why and how it does it. For me, at least, this Explanatory Memorandum failed. It is important that the standards of Explanatory Memoranda are held to a high level. I remember making some major changes to FiSMA that introduced bail-in, and the Treasury wrote some brilliant memoranda explaining how it worked. I would hope that the high standard it achieved in the past could be repeated in the future.

Finally, returning to the sukuk, if the market in these instruments is to grow rapidly and become large, one has to recognise that it is innovatory in the sense that it has not been a big part of the market in London, and it could—I am not saying that it does—create systemic risk. After all, the crisis was caused by the way in which clever instruments reacted with each other. Can the Minister therefore assure me that someone—whether at the FCA, the Bank of England or the Treasury—has done an analysis to assure themselves that encouraging this style of instrument does not develop systemic risk in the marketplace?

Baroness Morris of Bolton (Con): My Lords, I had not intended to speak, but I declare an interest as a chairman of the Centre for Islamic Finance at the University of Bolton. During the financial crisis, the Islamic banks were not affected in the same way, because there is a much better relationship between the customer and the issuer. I place on record my thanks to the Government for ensuring that Islamic financial instruments are not an odd investment on the side but are becoming part of the mainstream. Many people can now participate in them, and certainly in Asia, where the markets are booming, a lot of non-Muslims are also taking part in these instruments because they rather like the idea of them. I was going to sit very quietly, but I thought I would place that on record. I also thank the City, which has put a lot of effort into making the UK such a strong centre for Islamic finance.

Lord Bates: My noble friend should not apologise for a contribution such as that, which is very welcome. I know that she follows these matters closely and is an outstanding trade envoy to Jordan and to other parts of the Middle East. This instrument carries a strong message: that the UK and London are very much open for business.

The noble Baroness, Lady Kramer, was quite right to highlight the importance of this particular market, worth $3.5 trillion now, but it is also the fastest growing element. If we desire, as we do, to seek to retain our position as the world's pre-eminent financial market, we need to be as strong in areas of Islamic finance as we are in other areas of finance. Whether it is Masala or rupee-denominated bonds from India or renminbi-denominated bonds from China, this is a great financial centre and we want to keep it that way. That is why we are introducing this instrument.

I want to prioritise my remarks, if I may, by taking probably the most important point first. Several noble Lords raised the 26th report of the Joint Committee

on Statutory Instruments. I put on record that I accept that we have not met the standard that we would want to set ourselves for conduct in this. I know there is concern in the committee that, with a lot of SIs about to come down the track, we must maintain very high standards and be held correctly to them. I draw your Lordships' attention to the substantive response we made which presents the reasons for the provision, contained in appendix 4 of the report. I reiterate to members of the committee—including my noble friend Lord Lexden—that we do take on board the criticism and will look at ways to ensure that this type of situation does not happen again.

Let me turn to some of the points raised in the debate. The noble Lord, Lord Tunnicliffe, undersells himself. Having stood frequently on the other side of the Dispatch Box from him, I know that he is nothing if not assiduous and sharp in getting to the heart of the issue. His point on the Explanatory Memorandum is reflected in the text of the Joint Committee's report. It falls into the category of things that we need to do much better. The amendment was very narrow and technical, and I do not envy the officials who then had to produce the Explanatory Memorandum. However, I take on board his point.

Similarly, the noble Lord, Lord Jones, drew our attention to paragraph 10.1 of the Explanatory Memorandum. Its reference to the impact on,

"business, charities or voluntary bodies",

as minimal is standard wording. We certainly would not expect, in instruments of this nature, charities to get involved, but that does not mean to say that they cannot. Despite his great build-up, I am struggling to come up with an example of a charity or voluntary organisation that might want to take advantage of this. I do not know if he has one in mind but, if not—

Lord Jones: I could not bring myself to take advantage of the Minister. I have been a Minister and have been in the same predicament, but if I were challenged in such a way, I would never have such facility or charm as he has.

Lord Bates: I think I should just sit down now. The noble Lord is very kind.

I will deal with some of the points raised by the noble Baroness, Lady Kramer, and then I will come back to the noble Lord, Lord Tunnicliffe. The noble Baroness asked whether a sukuk could be an asset-backed security as they are not always a sovereign bond. That is exactly right. We keep our regulatory framework under constant review to make sure that it can adapt to emerging market practice. As for it becoming difficult to comprehend, this is not an easy task given its size and complexity. The Government have no current plans to do so, but will revisit the topic later.

The noble Baroness asked about compliance with Islamic principles, which the noble Lord, Lord Tunnicliffe, also touched on. As secular entities, UK regulators do not operate on Islamic compliance. We set the framework to allow consumers to decide what to do with this. We operate on the basis of no barriers but no favours for these types of instruments.

6.15 pm

The noble Baroness also asked about the position on student finance, which is an interesting question. The Department for Education is looking at this. I do not have an exact status for it at the present, but this will be a helpful opportunity to give the department a nudge in that direction and to draw its attention to the instrument, which I hope will be approved by your Lordships today.

The final question was from the noble Lord, Lord Tunnicliffe, who asked how this might work in practice. The reality is that the instrument expands the definition of AFIBs to allow these to be admissible for trading on additional types of financial trading venues, known as MTFs or OTFs. These are markets for the issuing of trading of debt securities, which are regulated on platforms operated. The London Stock Exchange's Alternative Investment Market and International Securities Market are examples of markets in which these instruments would operate.

Lord Tunnicliffe: Can I check that point? My understanding is that these are not debt securities but asset-backed securities, and it is hoped that these platforms will change their rules so that it can be done.

Lord Bates: The securities that are there are allowed to deal with a variety of different securities; they are not limited in the asset class that they can use. It is simply a catch-all phrase to mean that they can be traded on those platforms. That is very much the view of the London Stock Exchange, which has drawn our attention to the fact that people are interested in using those particular markets for that purpose. This instrument will help the City of London to take advantage of these investment opportunities, which will create jobs and wealth for this country. I commend the order to the House.

Motion agreed.

Childhood Obesity Strategy

Statement

6.17 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my honourable friend the Parliamentary Under-Secretary of State for Public Health and Primary Care to an Urgent Question in another place. The Statement is as follows:

"Today, the Government have published the second chapter of the childhood obesity plan. This plan is informed by the latest evidence and sets a new national ambition to halve childhood obesity and to significantly reduce the gap in obesity between children from the most and least deprived areas by 2030.

Childhood obesity is one of the biggest health problems this country faces, with almost a quarter of children overweight or obese before they start school,

[LORD O'SHAUGHNESSY]
rising to over a third by the time they leave. This burden is being felt hardest in the most deprived areas, with children growing up in low-income households more likely to be overweight or obese than more affluent children.

Childhood obesity has profound effects that compromise children's physical and mental health both now and in the future. We know that obese children are more likely to experience bullying, stigma and low self-esteem. They are also more likely to become obese adults and face an increased risk of developing some forms of cancer, type 2 diabetes and heart and liver disease. Obesity is placing unsustainable costs on the NHS and our UK taxpayers, currently estimated at around £6.1 billion per year. Total costs to society are higher, estimated at around £27 billion per year, with some placing this figure even higher than that.

The measures we outline today look to address the heavy promotion and advertising of food and drink products high in fat, salt and sugar on TV, online and in shops. Alongside this we want to equip parents with the information they need to make healthy informed decisions about the food they and their children are eating when out and about. We are also promoting a new national ambition for all primary schools to adopt an 'active mile' initiative, such as the Daily Mile, and will be launching a trailblazer programme working closely with local authorities to show what can be achieved and find solutions to barriers at a local level to address childhood obesity.

In conclusion, childhood obesity is a complex issue that has been decades in the making, and we recognise that no single action or plan will help us to solve the challenge of childhood obesity on its own. Our ambition requires a concerted effort and a united approach across businesses, local authorities, schools, health professionals and families up and down the country. I look forward to working with them all".

6.20 pm

Baroness Thornton (Lab): I thank the Minister for repeating the Statement. The last time we discussed childhood obesity in your Lordships' House it centred on chapter 1 of the Government's policy, which scored a C-minus at best among noble Lords. Today we have chapter 2, which we can probably score as a C. It offers 13 consultations, a review and a great deal of promotion.

My questions are as follows. First, does the Minister believe it is possible for voluntarism to deliver even in the generous time the Government have given themselves to reduce childhood obesity? For example, Alpro soya growing-up milk contains unnecessary fructose and sugar, but the packaging will tell you it is good for your child, particularly if your child is lactose intolerant, where there are fewer choices. Will that be on the noble Lord's agenda for legislation or persuasion, and what would be the timeline? Secondly, given that the evidence is clear, why does the Statement not include a proposal and a timetable for legislation and regulation to ban the advertising of high fat and sugar content products on TV and social media? When will we see a draft Bill?

Lord O'Shaughnessy: An upgrade in our grade is, I suppose, something to be welcomed. The noble Baroness is being a little unfair. The last obesity plan probably went beyond that of almost any country in the world, and this one certainly goes well beyond that. We know that we need to do more—that much is obvious from the facts—because, unfortunately, obesity continues to rise. We have taken big action through the soft drinks levy, improvements in reformulation and so on but it has not gone as far as we want. So we recognise the need to do more.

The noble Baroness referred to consultations but, if anything, you can accuse this paper of being too honest because any action requires consultation to go forward. I would not want her to be distracted by that because within it are some hard commitments. There is a commitment to voluntarism if we can make it work but, equally throughout, there is a commitment to legislate if that does not produce the right outcomes.

The noble Baroness asked about milk products. Again, if voluntary reformulation does not work, these will be considered by the Treasury as being liable for the levy on soft drinks to bring down the sugar content.

On advertising, the idea that we should have a 9 pm watershed across broadcasting is truly radical, and it is only right that we consult properly. There is a desire to do that by the end of this year, so the noble Baroness cannot accuse us of not moving quickly enough.

The Obesity Health Alliance, which counts dozens of bodies among its membership, has welcomed the plan set out today. Of course it wants us to get a move on—and we will—but it is important to note the radical change in policy to try to deal with this epidemic that we all face.

Baroness Jolly (LD): My Lords, I thank the Minister for repeating the Answer to the UQ. Anything is welcome and I am at the stage where more questions are being raised than answered. A debate in this House would be useful and perhaps put some flesh on the bones. That is absolutely the wrong thing to say, but the House knows what I mean. It would give more clarity.

I wish to push the Minister a little further on the advertising issue. I appreciate that a consultation is coming up. We welcome the idea of using the watershed, but I am not clear from the Statement or from chapter 2 whether it includes all programmes before 9 pm or only programmes that are aimed at young people before 9 pm. That is an important distinction and it will be useful to know what is going to be consulted upon.

Families were mentioned in passing. I would like to know what work is to be done with families. I appreciate that there is not in this land a typical family, but we are trying to take out 500 calories a day from people's diets and we need to point out the high calorific value not only of chips, which may seem obvious, but of pasta, rice—which everyone thinks is healthy—bread and buttered mash. There is still work to be done with families to make them understand quite what they are putting on their children's table which seems healthy and fine.

Lord O'Shaughnessy: It is always a pleasure to debate issues in this House. This topic is worthy of that debate because there is a huge interest in it in this House.

The noble Baroness is quite right to talk about advertising. It states in the paper:

"Consult, before the end of 2018, on introducing a 9pm watershed on TV advertising of HFSS"—

high in fat, sugar and salt—

"products and similar protection for children viewing adverts online".

I take that to mean across the board as opposed to those solely aimed at children, which are already subject to world-leading restrictions.

The noble Baroness asked about families. Much of this is about helping families to do the right things. We know how difficult it can be when you are with young children in a shop to resist this, that or the other. You talk about protecting your teeth or eating well, but it is not always obvious what is good for you and what is bad for you. Again, in the paper there is reference to calorie labelling and going much further in terms of restaurants and store promotions. The noble Baroness and her party are always keen to make sure that we can get the most out of Brexit, and going further than the European Union will allow us with food labelling and simple nutrition information is just one of the many opportunities we will enjoy after 2019.

Baroness Jenkin of Kennington (Con): My Lords, my noble friend may be aware that I chaired a commission for the Centre for Social Justice last year, so I welcome the acknowledgement that this issue particularly affects children in the most deprived areas. Can my noble friend give more clarity about the consultation and when it will end? Although I have not read every word in it yet, can he also say whether the Government will look at the "eatwell plate", which is carb heavy at the moment? I am not sure whether that advice is covered in the paper.

Lord O'Shaughnessy: I thank my noble friend for her questions. I salute the work she has done and the leadership she has shown on this issue. As to the content of the consultations, that will depend on when they are launched but it refers in the paper to consulting before the end of 2018 on a number of issues, so that will go through the normal process, I suppose, of a three-month consultation.

I shall look at the issue of the "eatwell plate". It is worth pointing out that, under the "Schools" heading, there is a desire to update school food standards, reduce sugar consumption, strengthen nutrition standards and the government buying standards for food and catering services. So there is a desire to look at the official guidance that goes out and to make sure that it reflects the best science and enables any institution that is looking after children, families, schools, adults and others to give the best possible nutritional food that they can.

Lord Brooke of Alverthorpe (Lab): My Lords, I welcome the proposals for further action, but I am sorry that the Government have not seen fit, if they are taking this really seriously, to make a Statement about it without the requirement for an Urgent Question to elicit a response. I have two points. I regret that there is still no mention of the point that the noble Lord, Lord McColl, has been pressing so vigorously—that we need to bring together these numerous initiatives and try to present a single campaign for parents and children. I also regret that there is still no mention of the Government dealing with the major broadcasters, in particular the BBC, to see how a longer-term plan might be produced which would make a direct link with children and thus try to ensure that effective changes take place.

My second point is that last week the Minister was kind enough to reply to my Question for Written Answer about the extent to which the Government are aware of how much children between the ages of 12 and 16 weigh. I am surprised to hear that while we weigh children at the ages of four and 11, nothing is done about weighing children beyond that age. We do not know what the scale of the problem is up to the age of 16. A survey has been undertaken in which only 2,000 people were involved. There is a requirement that we move towards weighing these children. Is the Minister prepared to consider doing that?

Lord O'Shaughnessy: There is a single campaign which is exemplified in the document and we need to put that across. I know that the noble Lord is working with broadcasters. I am not sure about the merits of weighing teenagers, but I will look into that and write to him.

Baroness Neville-Rolfe (Con): My Lords, I declare my interests as set out in the register. I have a few doubts about some of the interventionist proposals in this strategy and therefore I welcome a consultation process on the detail. However, I am keen that people should be able to take responsibility for themselves by helping them to develop good habits, so I congratulate the Government, and indeed the *Daily Mail*, ITV, INEOS and local authorities on the Daily Mile initiative, which could be transformational.

The Minister and I are both interested in the advances in the science of sleep. We know that poor sleep is linked to obesity. Could the Minister agree to making use of this new science in his strategy?

Lord O'Shaughnessy: My noble friend makes an excellent point and I am glad that she has welcomed the introduction of the Daily Mile initiative, which is an important national ambition embedded in the strategy. I know of the benefits of sleep by its absence, but nevertheless I agree absolutely with my noble friend. This second chapter sets out a lot of good progress and intent. Clearly it is not the last word because this is a developing science, although we know more and more both about the causes of obesity and its consequences. Given that, there is a good opportunity through the consultations to bring the science about the benefits of sleep to bear in this conversation, not only for younger people but for adults as well so that it is properly reflected in the final documents that come out.

Energy Policy
Statement

6.32 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, with the leave of the House, I shall repeat a Statement made in another place by my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy. The Statement is as follows:

"Mr Speaker, I would like to make a Statement about the proposed Swansea Bay tidal lagoon. Britain's energy policy towards electricity generation is based on meeting three needs: ensuring that we can count on secure and dependable supplies of electricity at all times, minimising the cost of supplies to consumers and taxpayers, and meeting our greenhouse gas emission reduction obligations. To these three requirements we have added, through our industrial strategy, a further ambition to secure long-term economic benefits in terms of jobs and prosperity from the decisions we make.

Our policy has been successful. Britain has one of the most secure and reliable electricity supply sectors in the world. Last winter, one of the coldest in recent years, the margin of capacity in our electricity generating system was more than 10%, around twice what it was in 2016-17. We have the strongest record in the G7 of reducing our greenhouse gas emissions. Between 1990 and 2016, the UK reduced its emissions by more than 40%. We have massively increased our deployment of renewable generation. Renewable electricity now makes up almost 30% of our generation. Our renewable capacity has quadrupled since 2010 and the auction prices of offshore wind have fallen from £114 per megawatt hour to £57.50 per megawatt hour within two years.

Coal, the most polluting fuel, last year contributed less to generation in Britain than in any year since the Industrial Revolution. This has been achieved while the UK has maintained a position in the overall cost to households of electricity well below the average for major European countries. But the cost of electricity is nevertheless a significant one for households and for businesses, and the policy-related costs have been growing. We have made a clear commitment to bear down on these costs. It is in this context that the Government have assessed whether they should commit consumer or taxpayer funds to the programme of six tidal lagoons proposed by Tidal Lagoon Power Ltd, the first being the proposed project at Swansea. We believe in renewable energy and we believe in the benefits of innovation. The conclusion of this analysis, which has been shared with the Welsh Government, is that the project and proposed programme of lagoons do not meet the requirements for value for money and so it would not be appropriate to lead the company to believe that public funds can be justified.

The proposal for the Swansea tidal lagoon would cost £1.3 billion to build. If successful to its maximum ambition, it would provide around 0.15% of the electricity we use each year. The same power, generated by the lagoon over 60 years for £1.3 billion, would cost around £400 million for offshore wind even at today's prices, which have fallen rapidly and we expect to be cheaper still in the future. At £1.3 billion, the capital cost per unit of electricity generated each year would be three times that of the Hinkley Point C nuclear power station. If a full programme of six lagoons were constructed, the Hendry review found that the cost would be more than £50 billion and would be two and a half times the cost of Hinkley to generate a similar output of electricity. Enough offshore wind to provide the same generation as a programme of lagoons is estimated to cost at least £31.5 billion less to build.

Taking all the costs together, I have been advised by analysts that by 2050, the proposal that has been made, which would generate around 30 terawatt hours per year of electricity, could cost up to £20 billion more to produce compared with generating that same electricity through a mix of offshore wind and nuclear once financing, operating and system costs have been taken into account. That could cost the average British household consumer up to an additional £700 between 2031 and 2050 or the equivalent of £15,000 for every household in Wales.

However, in recognition of the potential local economic benefits that might result from a lagoon in Swansea, I asked officials to go back and consider what additional benefit could be ascribed to a number of other factors, including a beneficial impact on the local economy. For £1.3 billion, a Swansea lagoon would support, according to the Hendry review, only 28 jobs directly associated with operating and maintaining the lagoon over the long term. Officials were also asked to make an assessment of the potential for valuable innovation and cost reductions for later lagoons that might come from embarking on a programme of construction. Independent advice concluded that the civil engineering used in Swansea Bay offers limited scope for innovation and capital cost reduction, estimated at 5%, in the construction of subsequent facilities. I asked for an assessment of the export potential of embarking on a programme of implementing the technology, but the Hendry review concluded that it would take a,

'leap of faith to believe that the UK would be the main industrial beneficiary',

of any such programme.

In terms of energy reliability, the generation of electricity would be variable rather than constant with a load factor of 19% compared with around 50% for offshore wind and 90% for nuclear. The inescapable conclusion of an extensive analysis is that however novel and appealing the proposal that has been made is, even with these factors taken into account, the costs that would be incurred by consumers and taxpayers would be so much higher than alternative sources of low carbon power that it would be irresponsible to enter into a contract with the promoter. Securing our energy needs into the future has to be done seriously and, when much cheaper alternatives exist, no individual project and no particular technology can proceed at any price. That is true for all technologies. The fact that this proposal has not demonstrated that it could be value for money does not mean that its potential is not recognised. My department is also in receipt of proposals from other promoters of tidal energy schemes which are said to have lower costs than the Swansea proposal, although these are at an earlier stage of

development. Any proposals must be able credibly to demonstrate value for money for consumers and public funds, but I am sure that many people in the House and beyond would wish that we were in a position to say yes to the Swansea proposals.

I appreciate the contribution of Charles Hendry, whose constructive report led to this further analysis being made, and to the engagement of the Secretary of State for Wales and Members of the Welsh Assembly, including the First Minister, and the leader of the Welsh Conservatives, Andrew RT Davies. But all of us have a requirement to be responsible stewards of taxpayers' and consumers' money and to act at all times in their interests. It is in discharging that responsibility rigorously that I make this Statement today, and I commend it to the House".

My Lords, that concludes the Statement.

6.39 pm

Lord Stevenson of Balmacara (Lab): My Lords, the Hendry report comes out with headline figures that it is important to bear in mind as we think about and discuss what was said in the Statement. The report states:

"Across the National Audit Office's three Value for Money tests, Tidal Lagoon Swansea Bay can match or outperform the Contract for Difference awarded to new nuclear power station Hinkley Point C with relevant support from Welsh Government …Tidal lagoon capacity can reduce UK system carbon emissions by 36% in 2035 … Lifetime CfD subsidy cost of £302-£390m achieves net positive social NPV benefits of £787-875m".

That is a factor of more than 2:1, which is a lot better than the return HS2 and some other projects that I can think of will get.

Of course, that is not the whole story. Although the Statement was very strong on direct costs and the problems that the Government would have in justifying them, there are other benefits that would come from a project such as this. This is a first in its class—a first attempt to do something new in alternative energy production—so there is a difference there that cannot be measured in terms of the direct costs of well-tested wind or solar arrangements. There is an amenity, because clearing up Swansea Bay and costing a very small amount to provide something that is visually attractive and also rather beautiful cannot be costed. In order to give confidence to the overall task that we as a country have to make sure we have a diversity of supply, starting things that are new and different would add something that is not easily costable.

In the past two years, the Government have repeatedly kicked a decision about Swansea into the long grass, and the handling of this must surely be agreed by everyone to have been absolutely atrocious. Not only have the Government taken an inordinate amount of time to come to the House today, they have kept Tidal Lagoon Power, the Welsh Government, the trade unions and other stakeholders completely in the dark about what was happening. Indeed, they had to learn about it through leaks in the press. Indeed, it emerged in a Select Committee hearing last month that the Minister had not spoken to Tidal Lagoon Power in more than 16 months. In the last few days there have been conflicting reports indicating that a Statement was coming last week, then that it was coming this week, and then that there would not be a Statement—and now here we are. This is no way for the Government to conduct themselves on an issue that is so important for Swansea, the UK economy, the climate and therefore the world.

The key point here is that tidal lagoon power is a new, world-first technology, and yet it has been judged as if it were just one of a number of things that could be done in order to get us on the path to a carbon-reduced energy supply. The Government's decision on Swansea tidal lagoon is of public policy importance not only because of its impact but because of the potential it offers the UK economy to meet our global climate change targets.

The project is estimated to generate and support more than 2,000 high-skilled construction and manufacturing jobs. It could engage more than 1,000 businesses in its supply chain—from figures in the Hendry report we know that the supply chain reaches right across the UK—and it could power directly more than 150,000 homes once it is constructed.

I go back to the point about being a pathfinder. The technology that is tried out successfully in Swansea could be rolled around the UK. It is not surprising that we might have problems exporting it since it is a very geography-specific solution. However, given our tides, our climate and our particular style of landscape, it seems to be something that would work in the UK.

Finally, tidal technology could make a valuable contribution to the UK's transition to renewable energy, which is becoming ever more urgent. The UK is currently on track to miss its globally agreed climate change targets, so the Government's plans in relation to Swansea Bay and renewable energy generation as a whole are of greater significance than they would otherwise be.

If we are going to have a diverse energy mix, tidal lagoon technology has an important part to play in our transition. The Government say that the costs are too high, but that seems to be a very narrow description of the costs involved. I understand that, even though that is the main reason why they are not going forward, they have not even met Tidal Lagoon Power to work out what additional funding could be supplied by the market. Perhaps when he responds the Minister could tell us what the acceptable cost is that would allow the project to go ahead.

Lord Teverson (LD): My Lords, we on these Benches believe very much that this is the wrong decision. I will very quickly give the reasons why. First, in order to meet our climate targets, we need all technologies to contribute. We believe very strongly—as was shown in a number of studies—that there would be a reducing price in terms of scale as the technology rolled out. We have seen this very strongly with other renewable technologies.

There are other elements to the project. It is also partly an energy-storage project—an area that is particularly needed in terms of the variability of other renewables. And of course, perhaps not in Swansea but in other lagoons where something similar could have happened if this had gone ahead, there is the whole area of flood management that would also save considerable costs in terms of a holistic management approach to the coast.

[Lord Teverson]

Of course, the irony is that 2018, the year we are in at the moment, is 10 years after the Climate Change Act, yet between 2016 and 2017 we saw a 56% reduction in renewables investment. So the curve the Minister talked about in terms of our improved performance will go down because of lack of investment. In fact, renewables investment last year was at its lowest since 2008, when the Climate Change Act came in. We are not heading to meet our fourth or fifth carbon budget and we need to reduce our carbon emissions by 3% per annum to get to our target in 2050. So we have an investment crisis at the moment.

The noble Lord, Lord Stevenson, mentioned the time taken over this. The Hendry report came out 18 months ago. I remember that the original discussions were during the coalition Government period. What message is this to investors in renewable technologies? The way that it has been dealt with, the timescales and the opaqueness of the decision taking are difficult to understand, particularly when it was obvious that the Government were going to say no several months ago and have only just got round to giving that reaction and decision.

I come back for a moment to costs and refer to the Hendry review. Charles Hendry was a Conservative politician and Minister of State. He was highly respected across the whole of Parliament when he was an MP. He said about the project:

"I believe that the evidence is clear that tidal lagoons can play a cost effective role in the UK's energy mix and there is considerable value in a small … pathfinder project … Most importantly, it is clear that tidal lagoons at scale could deliver low carbon power in a way that is very competitive with other low carbon sources".

That is something that cannot be written off in the way the Minister did.

I have the following questions. Why has it taken so long to take the decision, which was clearly going to be taken some time ago? How are we going to meet the fourth and fifth carbon budgets? Given the regular quote in that Statement about the costs of technologies, when are the Government going to bring back onshore wind, which is the cheapest of those technologies and the one that would help to bring down energy bills tomorrow and in the years to come?

Lord Henley: My Lords, I thank both noble Lords for their contributions and for their questions. I hope that I can deal with the points they made.

I will start with the point made by both noble Lords about the delay in getting the decision right. I have to say that the noble Lord, Lord Stevenson, in a sense answered that point. The important thing was that we wanted to get the decision right and wanted to look at it as a whole, not just in relation to the cost of energy but also taking into account all the other factors that the noble Lord mentioned, including, for example, the amenity advantages and—this was raised in another place—the use of steel and the effect that that might have on the Port Talbot steelworks. Of course we did. We looked at those issues, which made the sums much more complicated. At the same time, we were also seeing quite a reduction in the cost of offshore wind, as the Statement made clear. I quoted those figures; the reduction complicates matters further. It also makes clearer the case put forward by my right honourable friend about making this decision. That is why—at the right point, I would say—my right honourable friend came to another place and made decisions. It is my privilege to repeat them today.

The noble Lord, Lord Stevenson, asked about other potential benefits. There are some, which we looked at. In the end, one has to come back to them, whether they are amenity advantages or jobs in the construction phase, as mentioned by the noble Lord, Lord Teverson —or perhaps it was the noble Lord, Lord Stevenson. The benefits are necessarily limited and the jobs are limited to the construction phase. Though great, the amenity benefits are not enough to deal with the fact that, over the period of this project's existence, we will still pay three times as much for electricity as for electricity that could be obtained from offshore wind, because the cost of that wind has reduced so much.

The noble Lord, Lord Stevenson, also talked about the need for diversity of supply. Again, I have discussed that at some length in this House a number of times. Occasionally, I put to noble Lords on the Liberal Benches the need to look at the advantages that might come from the extraction of shale gas. I know that the noble Lord, Lord Teverson, does not like to comment on that, but his noble friend Lord Bruce offered praise for shale gas, whereas his noble friend Lady Featherstone is not so keen. The noble Lord, Lord Teverson, looked as though he did not want to comment on this when we discussed it last week. We want diversity of supply because, as made clear by the noble Lord, Lord Stevenson, it brings us security. We want security, but not at excessive cost. I will not rehearse the figures in the Statement about the potential cost, but it is too great on this occasion.

The noble Lord, Lord Stevenson, also talked about new technology and the possibility of costs coming down. On this occasion, I do not think that the technology is particularly new. We are talking about boring earth, concrete and other things with steel into the ground or the sea to make barriers. That is the major cost. I do not think there is the scope for cost reduction that came with the development of offshore wind, where we saw installations getting bigger and blades getting more efficient. As a result, we saw the great advantages of technology moving forward. Here, we are dealing with what one might call relatively old technology that will not come down in cost.

The noble Lord, Lord Stevenson, asked what the acceptable cost was. As my right honourable friend the Secretary of State made clear in another place, he was not prepared to put a figure on the cost because other factors would be taken into account for each project, which we would look at in the context of other possible benefits and the cost of the electricity. We are not ruling out the prospect of tidal lagoons in the future but this particular one looked expensive. Other tidal lagoons might be cheaper if they are bigger. There are economies of scale in electricity costs. Each project would have to be looked at individually.

Both noble Lords talked about the reduction of carbon emissions. We accept that there would be such a reduction in this case. We want to go on doing what we can to reduce our emissions as much as possible. But again, as I want to make clear, we can do that only when taking costs into account.

I want to comment briefly on the alleged reduction in investment. There has been a reduction but a great deal of investment was made. We have seen rapid growth in renewables since 2010. We have seen the use of renewables go up from 6.9% in 2010, at the beginning of the coalition, to around 30% today.

I think I have dealt with most of the points made by noble Lords. I hope they will accept that, in the end, the case is pretty clear. The scheme was imaginative and good, and it was right that we looked at it in some detail, but the cost of the electricity is just too great.

Baroness Vere of Norbiton (Con): My Lords, I respectfully remind noble Lords that this is an opportunity to question the Minister. Therefore, short questions rather than long comments would be much appreciated.

6.55 pm

Baroness Finn (Con): My Lords, I am deeply disappointed by the Government's decision. It is short-sighted and a huge missed opportunity. The Government rightly insist that the Swansea Bay tidal lagoon should represent value for money, but the Government have consistently failed to name the price. Therefore, will the Minister agree to publish the Treasury Green Book business case, including all the supporting value-for-money calculations and evidence that were used to arrive at today's decision?

Lord Henley: My Lords, as I made clear, this electricity was going to come in at some three times the price of electricity produced by Hinkley Point. I think that many noble Lords would feel that Hinkley Point is expensive enough as it is. I will certainly make whatever documents are appropriate available to my noble friend, and to the House more generally, with the obvious caveat that any commercially sensitive information cannot be released. However, considerable information can be released.

Baroness Humphreys (LD): My Lords, the rejection of the Swansea tidal lagoon is a bitter pill to swallow. It feels like yet another betrayal of the people and economy of Wales. The Government have cancelled rail electrification to Swansea and now reject the Swansea tidal lagoon, in contrast to their seeming ability to find money for projects in south-east England. As other noble Lords have said, the lagoon would have acted as a pathfinder project, particularly for other lagoons across Wales, including Newport, Cardiff and Colwyn Bay. It would have been a vital first step in making Wales a world leader in green energy, bringing untold environmental and economic benefits to the community, Wales and the UK. More in sorrow than in anger, I ask the Minister this: how is today's news any more than another slap in the face for the people of Wales?

Lord Henley: My Lords, I totally reject what the noble Baroness, Lady Humphreys, says. It would be a slap in the face to go ahead with this project and impose costs on the Welsh consumer, in terms of the extra amount that they would have to pay for their electricity, and Welsh business. I think in particular of the Port Talbot steelworks and how much more it would have to pay for the vast amount of electricity that it uses. Having looked at the figures in front of them, it would be irresponsible of a Government to go ahead with this project.

Lord Marlesford (Con): My Lords, I congratulate the Government on increasing the generating margin from 5% to 10% for cold winters. That genuinely makes us feel a lot safer. My noble friend the Minister mentioned Hinkley Point several times. It is interesting that, with the remarkable fall, the price of offshore wind is now 5.75p per kilowatt hour—a figure quoted by the Minister—compared with the strike price of nuclear energy from Hinkley Point, which is 9.4p per kilowatt hour, index linked for 35 years. Does he agree that it is very difficult to justify that 63% extra cost for nuclear power? Can I ask—I declare my interest because I live near it—when the Government are expecting to announce whether Sizewell C is going ahead?

Lord Henley: My Lords, I cannot assist my noble friend with announcements about Sizewell C—but, as always, I shall say "in due course". My noble friend is right to point out the costs of nuclear; that decision has been made. What we are talking about here is a potential decision to generate electricity at three times that price at a time when the cost of, for example, offshore wind had come down so dramatically. That is why we had to make that decision, and why we have made it. It is possible that for other nuclear power, in due course, if more work is done in the world of modular nuclear power stations, the cost could come down. But we have made the decision on Hinkley, and have now made the decision not to go ahead with Swansea—but we will continue to look at all possible sources of energy to make sure that we have green energy and secure energy.

Lord Whitty (Lab): My Lords, like others, I find this decision depressing. On the other hand, I recognise the Minister's dilemma. The figures that he quotes at us appear irrefutable, even though they are somewhat at odds with those from Charles Hendry's report and any long-term view. This seems a similar decision to the closure of the carbon and capture elements in Peterhead. In effect, we are not looking over a long enough timescale.

I have two quick technical questions and two strategic ones. First, were the costs clearly incorporating the benefit of having attached to this not only tidal power but some offshore wind power, which was part of the project, and—as the noble Lord, Lord Teverson, said—a significant amount of storage of electricity, which would be of great benefit to future lagoon technology, were this to be proven?

Secondly, can the Minister really envisage a situation whereby, in 50 years' time, these islands will not in part be powered by wave and tidal energy? We have a huge natural advantage and a huge relative benefit around our shores of having power that is predictable, not intermittent, as other technologies are not. We would be a world leader in this, and abandoning this

[Lord Whitty]
project makes it more difficult. However, I take some comfort from the Minister's reference to other projects. Which other projects does he have in mind and how soon, given the delay on this decision, can we get a decision on some of those? Are the Government still committed to looking at wave and tidal technology as part of our long-term future?

Lord Henley: I correct the noble Lord on just one thing. He said that tidal power was predictable—and I agree with him that it is predictable—but it is also intermittent because, as he knows, tides go up and down and there are slack periods as well. The intermittency is variable, so it is predictably intermittent, which makes for complications—but it also leads on to the noble Lord's point about storage.

Obviously, with all these sorts of renewables, storage becomes very important, and developments on that front will change over the coming years. The noble Lord asked us all to look 50 years in the future. First, most of us will not be around in 50 years—but we can all remember 50 years back, and we all know just how much things have changed over those past 50 years. The point that I am making is that it would be wrong for me to predict what might happen over the next 50 years.

I want to make it clear that we have not ruled out tidal power. As the noble Lord says, we have some of the best tides in the world. I am reminded of those lines that noble Lords will remember from "Lochinvar":

"Love swells like the Solway, but ebbs like its tide".

It comes in very fast in those areas and goes out very fast. The variation in the Bristol channel is as good as anything that you will get anywhere else in the world, except I think in the St Lawrence estuary.

Much can be done, and we should certainly look at those in future. I cannot say which might then turn out to be suitable. Some of the other tidal power projects being looked at here could offer electricity somewhat cheaper—but only somewhat—than the Swansea bay, because the Swansea bay one is relatively small. We should look at any project on its merits. But I think that the noble Lord, who is as diligent as I am about the view that we must preserve taxpayers' and consumers' money, would not want to go ahead with a project that was going to cost three times as much as electricity from, say, Hinkley Point.

Lord Birt (CB): My Lords, the ministerial Statement makes a compelling economic case—at its heart, the notion that the unit cost of electricity from the Swansea barrage would be three times as expensive as not only Hinkley C but the current price of offshore wind. In the circumstances, would it not have made sense to publish the supporting financial analysis at the same time as this obviously controversial and difficult decision?

Lord Henley: My Lords, as I think I made clear to my noble friend Lady Finn, we are going to publish as much as possible of the financial detail to make it clear just how strong the case is.

Lord Thomas of Gresford (LD): I thought the strike price was 8.9p per kilowatt hour, as opposed to Hinkley's 9.3p or 9.4p per kilowatt hour. Am I wrong in that? That is what my study of the proposals said.

The Minister refers to the production of energy as being intermittent. As I understood the scheme, the tide coming in moved the turbines in one direction, so there was electricity generated and, as the lagoon emptied, the emptying caused the turbines to go the other way. What is intermittent about that?

There is more to it than that. It is the lack of vision in this Government that is so distressing. "The Life Scientific" last week mentioned the fact that in Wrexham, where I come from, back in the mid-18th century, John Wilkinson invented precision engineering by boring cylinders which Watt took over. That led to steam engines and the pumping of mines, so that coal could be produced, and eventually to locomotives. As was said last week, it was the start of the Industrial Revolution in Wrexham. Of course, Wilkinson went to other places—he went to Swansea, among other places. He had vision and could see the future. This Government simply cannot grasp that, and it is highly disappointing that this decision has been made.

Lord Henley: My Lords, I do not think that I can take the noble Lord much further in his accusations of lack of vision. I think that he would be one of the first to say that it would show a lack of straightforward common sense and financial honesty to go ahead with a scheme that was going to cost quite so much, and quite so much to the Welsh consumer and Welsh businesses in terms of their costs for electricity.

Baroness Neville-Rolfe (Con): My Lords, I declare an interest as the Energy Minister at the time when the Hendry report was under way. The truth is that this is the most attractive of projects. However, sadly, it is dreadful value for money—so I agree reluctantly with the Government's conclusion. What progress are the Government making with nuclear renewal, not only at Hinkley Point C—which has been mentioned and which is creating jobs and apprenticeships and helping us to fill the decline in the nuclear baseload—but with the new nuclear fleet, notably in Wales and Cumbria?

Lord Henley: My Lords, my noble friend will be aware of the announcement that my right honourable friend made about Wylfa the other day and of the work that is being done in Anglesey on the prospect of having a nuclear power station there. She will also be aware that work has started at Hinkley. We therefore hope in due course—in about 2025, I think—to see further nuclear energy coming on as baseload to assist with our energy security. I also hope that in due course we will see more nuclear energy at Moorside in Cumbria, which my noble friend is well aware of. As a Cumbrian, I too am aware of it. As I said earlier, I hope that we will hear more about the prospects of other work in due course.

Digital Government (Disclosure of Information) Regulations 2018

Information Sharing Code of Practice: Code of Practice for public authorities disclosing information under Chapters 1, 3 and 4 (Public Service Delivery, Debt and Fraud) of Part 5 of the Digital Economy Act 2017

Research Code of Practice and Draft Accreditation Criteria

Data Sharing Code of Practice: Code of practice for civil registration officials disclosing information under section 19AA of the Registration Service Act 1953

Statistics Statement of Principles and Draft Code of Practice on changes to data systems

Motions to Approve

7.10 pm

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

That the draft Regulations and Codes of Practice laid before the House on 17 and 21 May be approved.

Relevant documents: 32nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the purpose of these draft regulations is to allow information sharing between specified bodies for specific purposes. They also seek to make an amendment to the Digital Economy Act 2017. In addition, six codes of practice and one statement of principles associated with Chapters 1 to 5 and 7 of Part 5 of the Digital Economy Act 2017 have been consolidated into four instruments, to be approved by a resolution of each House.

Turning first to the draft regulations, the public service delivery power supports the improvement or targeting of public services. The powers are designed to give public services the information needed to provide early intervention or, where possible, prevent the problems that reduce people's life chances. In order to exercise the public service delivery power, government must set specific purposes for data sharing via regulations. Those purposes must meet specific criteria defined in the primary legislation. These draft regulations seek to establish four specific objectives for data sharing under the public service delivery power to address "multiple disadvantages", including fuel poverty and water poverty, and to provide targeted assistance in retuning televisions following spectrum changes.

We have worked closely with colleagues across the UK Government and the devolved Administrations to ensure that these powers have a UK-wide reach. However, due to the absence of a functioning Assembly in Northern Ireland, the data-sharing powers in relation to fraud, debt and public service delivery have not been commenced to cover Northern Ireland at this time.

I am sure that noble Lords will agree that the Government have a clear duty to support the citizens we serve and to ensure that the most vulnerable in society get the help they need. The formulation of each of the public service delivery objectives has been guided by this principle. Data sharing is a vital and effective way of identifying individuals and households experiencing problems which reduce their life chances.

I shall set out some details of the objectives in the regulations. The first concerns multiple disadvantages. The regulations would allow for data sharing between specified public authorities to help identify individuals or households which face two or more disadvantages. By disadvantages, I mean factors which, in combination with each other, limit the life chances of individuals or households—for example, by affecting people's health or emotional well-being, or their social and economic chances. The objective was initially developed to support the troubled families programme, which supports the identification of families across England, but it is also intended to be available for similar programmes across the UK.

The second objective relates to television retuning. In order to meet the increasing demand for mobile data, the Government have agreed to fund up to £600 million so that the 700 megahertz band, which is currently used for digital terrestrial television, can be allocated for mobile broadband. As a result of the clearing of the band, approximately 150,000 households may need either to replace or realign their aerial to continue receiving all available channels. These powers will help identify those who are on certain benefits and require further support to ensure that they continue to receive digital terrestrial television services.

Thirdly, the fuel poverty objective will provide a gateway for specified public bodies to share information between themselves to help them identify households living in fuel poverty and ensure that those households get the support they need. It will also enable specified public bodies to flag those who are eligible to energy suppliers. The aim is to enable more vulnerable households and families to receive automatic rebates in the same way as over 1 million pensioners do through the warm home discount scheme. However, these rebates can take place only if the state can inform energy suppliers which of their customers should receive them.

The fourth objective concerns water poverty. Similarly, this would allow the sharing of information between public authorities to help identify those who might be living in water poverty and help ensure that they receive the support they need. The information could be shared by public authorities with water and sewerage companies to help them better target their support schemes, such as social tariffs, as allowed by powers in the Digital Economy Act.

7.15 pm

Secondly, I turn to the amendment to the Digital Economy Act 2017. The Act specifies the conditions for disclosure of information to energy suppliers. One condition is that information disclosed under these powers must be used by the recipient in connection with a specified support scheme. The amendment seeks to enable information to be shared to identify vulnerable customers at risk of fuel poverty for coverage by price protection—a safeguard tariff. Five million vulnerable households are already protected by a safeguard tariff and we are keen to ensure that the delivery of such protections is assisted by the ability of suppliers to match customer data with the data held by government, as appropriate.

Those are the details of the regulations. The codes of practice provide details to practitioners on how information-sharing powers under the Digital Economy Act 2017 must be operated. The four instruments which have been laid before Parliament are: the Information sharing code of practice; public service delivery, debt and fraud; the Civil Registration Data Sharing Code of Practice; the Research Code of Practice and Accreditation Criteria; and the Statistics Statement of Principles and Code of Practice on changes to data systems.

All public authorities and other participants using the information-sharing powers in Part 5 of the Digital Economy Act must have regard to the relevant code before any information is shared. Failure to have regard to the relevant code might result in a public authority or organisation losing the ability to disclose, receive and use information under the powers of the Digital Economy Act 2017. The codes also explain the criminal sanctions for unlawfully disclosing personal information under the Act.

We worked with other government departments, the devolved Administrations and the Information Commissioner's Office, as well as civil society groups with privacy interest, in developing the codes. All five instruments were subject to a six-week public consultation in the autumn of 2017 ahead of their being laid in May this year. They were also made available in draft form to parliamentarians to consider during the Committee stage of the Digital Economy Bill in November 2016. These efforts helped to ensure that the right balance was struck between supporting practitioners to ensure that they are able to make use of the powers, and building in safeguards to protect individuals' privacy and prevent the unlawful disclosure of data. I commend these regulations and codes of practice to the House, and I beg to move.

Lord Clement-Jones (LD): My Lords, I start with an apology. Because of the way in which these items of business have been scheduled—or perhaps I should say not scheduled—I might have to leave before I hear the Minister's response. He is aware of that and I am very grateful for his indulgence in that respect, which will make me feel even guiltier when he hears what I have to say.

I am indebted to medConfidential for many of the points I shall make and to the noble Lord, Lord Freyberg, who takes a keen interest in these matters but cannot be present today.

The essence of what I have to say is that these regulations and codes should be withdrawn. In summary, earlier this month the Secondary Legislation Scrutiny Committee published a report on these draft regulations made under Part 5 of Chapter 1 of the Digital Economy Act, as the Minister explained. The DCMS offered assurances that the codes of practice were consistent with each other and drafted to be compliant with the new Data Protection Act 2018 and the latest standards of best practice. However, subsequently it replaced the standards with a new set under a different name—the data ethics framework—so the codes as laid do not reflect current DCMS guidance. In our view, this invalidates the whole of our debate.

I will go through the details. The Secondary Legislation Scrutiny Committee drew the digital government regulations to the special attention of the House. The DCMS told the committee that the codes were to

"the latest standards of best practice for information sharing, including the 'Data Science Ethical Framework'".

That is at paragraph 9 of the committee's report. As the SLSC says:

"In their response, DCMS have also offered assurances that these codes of practice are consistent with each other and have been drafted to be compliant with the new Data Protection Act 2018 and the latest standards of best practice for information sharing, including the 'Data Science Ethical Framework'".

The committee's report was finalised on a Tuesday and printed the following Thursday. On the Wednesday, the DCMS replaced the "latest" standards with a new set under a different name, the data ethics framework. Quite apart from the concerns raised by the committee, when the DCMS gave its response to the committee it surely must have known that a new framework was due the following day to replace the one to which it referred, and that its assurances would therefore be untrue even before they were printed.

The current codes reference the *Data Science Ethical Framework*, which predates the Data Protection Act and the GDPR. By that fact alone, these DCMS codes cannot be approved. They are, by definition, out of date following legislation on which the DCMS and the Minister himself led.

As the Minister described, a number of groups were consulted on the draft codes in the middle of last year, and while there is consensus from all sides that the codes are improved as a result of that constructive engagement, those consultations were before the Government surprised everyone with the proposal for a "framework for data processing by government" in the Data Protection Act—before the guidance changes due to the GDPR had fully begun, before the Government announced that the *Data Science Ethical Framework* was in need of replacement, and certainly before the DCMS launched the replacement with a new name last week. The department assured Parliament that,

"these codes of practice are consistent with each other",

but it cannot assert they will be compliant with other codes, as yet unlaid and unwritten by the Information Commissioner. What the Information Commissioner does should be up to the Information Commissioner. She should not have her hands tied by her sponsor department.

It is particularly important that these codes and the regulations are withdrawn given that the first issuance of the codes is under the affirmative procedure for approval of the House and future updates will be under the negative procedure.

I have a few other questions. Where is the framework for data processing by government included at the last minute by Ministers in Committee on the Data Protection Bill? There is still no clarity as to what the Government plan to do with it, only that it is not the *Data Science Ethical Framework* nor the data ethics framework. It is, however, yet another government data framework that must be taken into account. The passage of the Data Protection Act 2018 necessitates updates to many ICO codes. Late in the day, the DCMS chose to introduce its new framework for data processing by government, which surely must be the governing instrument for these codes, but, as I said earlier, it has provided no clarity on how this will operate.

The department seems to be offering nothing other than assurances of compliance when one looks through the codes. It talks of consultation with the ICO. Has the ICO confirmed publicly that these codes are compliant with the GDPR, the new Data Protection Act and the ICO guidance?

According to recent announcements from University College London Hospitals NHS Foundation Trust, it is conducting artificial intelligence trials internally for issues of direct benefit to it. This shows not only that the NHS is beginning to understand the power of data and digital tools, but that this can be done in-house for public benefit and that there are viable alternatives to handing data to and sharing data with multinational companies. What are the Government doing more broadly across the NHS to ensure that there is full recognition across the NHS?

The Digital Economy Act affords the Secretary of State considerable powers to make use of publicly controlled data, which is of considerable concern in some quarters. The key concern is the scope for different departments to share and then link datasets, such as sharing health data from the Department of Health and Social Care with the Home Office to identify illegal immigrants, as stated in recent headlines. What is the scope and/or limitation for the Secretary of State to share publicly controlled data with private entities? Is this likely to inform the introduction of so-called "data trusts"?

Then, of course, there is the question of whether any of the codes is fit for the future in terms of technology. In particular, what are the duties of transparency and explainability where datasets are used to construct artificial intelligence solutions, algorithms and the like for government purposes? What consultation was engaged in this respect? There appears to be no reference in any of the codes to this. Should we not wait for the data ethics and innovation centre to give its guidance on these matters involving the Government and their deployment of artificial intelligence?

In the light of the above, it is clear that neither these regulations nor the codes are fit for purpose. Will the Government withdraw them before placing replacement codes before the House? Will the Minister confirm that the codes will be compliant with any yet-to-be-written Information Commissioner codes? Will they be confirmed as such by the Information Commissioner? Sadly, I will not hear the Minister's reply but I very much hope that it is a full one.

Lord Griffiths of Burry Port (Lab): My Lords, far be it from me to get the Minister off that hook. It is always humbling to be in the presence of those who have seen the heat of the day and borne the burdens of bringing some complicated pieces of legislation on to our statute book. Perhaps we can all breathe a sigh of relief as we notice the noble Lord, Lord Clement-Jones, depart from his place.

I will restrict my remarks, since I was not in possession of the briefing that the noble Lord had, to the observations I made on the simple basis of reading these papers. It was a jolly weekend and some good bedtime reading—150 pages on a very complicated matter—but as far as the regulations themselves are concerned, it seemed mildly reassuring that multiple disadvantages, such as television retuning, fuel poverty and water poverty, were all to be held in view with a view to ensuring that people who might suffer in these areas had their suffering minimised as far as possible. One million vulnerable energy consumers might qualify for help. From this side of the House, we cannot particularly grumble at that.

The thing that worried me was that, since these are the first tinkerings with or things that ensue from last year's Digital Economy Act, it is incumbent on us to ensure we monitor very carefully the direction of travel as the Act lives its life and is implemented. For that reason, I find myself again and again wondering whether—while, yes, three years down the line it all has to be embedded and to work itself out—we should not promise ourselves a bit more micromanagement than that as things go along.

I liked the way that liaison with devolved bodies—to ensure that a UK-wide measure is implemented in Wales and Scotland in a way consistent with legal provision—was set out because, with another hat on, when we were arguing the devolution clauses in the EU withdrawal Bill we talked all the time about frameworks within which UK-wide pieces of action would have to be worked out in consultation with, and with consent from, the various interested parties. Here is a lived example, I thought, of how that might work.

I worried about how on earth we would keep together pieces of action that would see nine departments of state share information across their boundaries, as well as the Revenue and 32 local and regional bodies, as we considered how best legitimately to allow these bodies to share information. What kind of computer system do we have in place? We have had such a string of unfortunate experiences of supportive technology for mountainous pieces of government activity going wrong that I just look at this and am glad that it is not me operating it.

7.30 pm

Transparency is spoken of again and again from the point of view of citizens, so that they can,

"easily understand what … is being shared and why".

[Lord Griffiths of Burry Port]

Let it be said that such a noble objective is to be welcomed. The document further states that we must,

"help make the digital delivery of government services more efficient and effective"—

more efficient, effective, easily understood, transparent and all the rest of it.

In a Question earlier today, we talked about just this whole business of Explanatory Notes being understandable—it is what it says on the tin: "explanatory" should mean explanatory; it should explain things. In this area of digital technology and the sharing of information, data and so on, we can see just how things might go awry, so we need to keep a lid on that one, too.

Reference is made to "robust safeguards", "secure" transfer, "information-sharing pilots" and so on. All the safeguards are mentioned. I do not have the same reservations as the noble Lord, Lord Clement-Jones; I did not base my scrutiny of these documents on the same evidence as him. On that basis, and with those precautionary words, the regulation passed my scrutiny.

Then I came to the codes. It is always lovely to have the noble Lord, Lord Clement-Jones, here because he will do what I cannot—and it is just nice to know that he is there. We have four codes of practice. I set myself the task of looking at them from two points of view. Once upon a time, I used to mark undergraduate essays and held as two important criteria the structure of the essay and the content. On all those grounds, apart from an exception that I shall talk about in a moment, these codes—since they are aimed at their users—seem admirably succinct and comprehensible.

I also looked at them from the point of view of someone who for 20 years before coming into this position ran what I can only call a small business—£1 million turnover, 10 to 12 staff and 100 volunteers. It was a small business; it was a church. I think of how I started that 20-year period, with a desk reasonably clear and a diary reasonably empty to be able to address the pastoral needs of a group of people, to represent them in the community at large and to go about doing good. Twenty years later, my desk was heaving with regulatory material from one direction or another and, frankly, I was glad to get out at that point. It was astonishing. We had to outsource the work of a compliance officer, because we could not afford to employ one, just to keep up to date with all the things that we were expected to do. So we should bear in mind that some of these things will ask an awful lot of people whose desks are already full of regulatory material from this direction, that direction and the other direction. I do not see any way out of it, but it is worth saying.

I like the codes; they are clear. The explanatory document states that public authorities must follow their code when,

"making changes to their data systems",

and that the code imposes,

"a duty on data suppliers to consult the UKSA before making changes to the data they collect".

So they have to anticipate changes, seek the permission of the necessary body and then implement their plans. It is again an area where I see things happening the wrong way round.

Noble Lords will be glad to hear that I am coming to the end of my remarks. On the transparency and comprehensibility criterion, there is one wonderful consideration. Paragraph 9 in the draft information sharing codes states:

"While we consider the terms 'information' and 'data' to have the same meaning, 'personal information' in the Digital Economy Act 2017 has a slightly different meaning to 'personal data' in the data protection legislation. In this Code, personal information is information which relates to and identifies a particular person or body corporate (but which does not relate to the internal administrative arrangements of a person who may disclose or receive information under the Digital Economy Act 2017)".

I then miss out a bit. It continues:

"You need to apply both definitions when you use these powers because you must both observe the requirements for 'personal information' under the Digital Economy Act 2017 and make sure that you have also complied with the requirements for 'personal data' under the data protection legislation".

I am glad I do not have to implement that statement. If they have not worked out a way of communicating to us a uniform instruction that takes all those ambiguities into account, I cannot see how they can expect Tom, Dick and Harry around the place to do what they have been unable to do themselves.

There we are. That is enough of a Welsh rant from me; I did not even get in on the Swansea lagoon, which I thought was a load of rubbish as well—I would have liked that one, too. Conscious that the Minister—this man across the Dispatch Box from me is sublimely self-assured—is now impaled on the hook left for him by the departed noble Lord, Lord Clement-Jones, I am happy to register my observations for what they are worth, but in the name of clarity, consistency and monitoring, I urge that those points be taken into consideration.

Lord Ashton of Hyde: My Lords, I am grateful to one of the two speakers for remaining and for the points that both have made. If the noble Lord, Lord Griffiths, thinks that was a rant, compared to the noble Lord, Lord Clement-Jones, he is an amateur; I thought he was very reasonable and measured in what he said. I shall go through his points as quickly as I can.

The noble Lord, Lord Griffiths, was correct to point out that we need to help where we can. The measure is to enable public authorities to share information. A key criterion for the Digital Economy Act was that it had to be for the benefit of individuals and households. The noble Lord, Lord Clement-Jones, suggested that, because things were in the wrong order—I will address some of his points shortly—we should withdraw the codes, wait for the Information Commissioner to issue her code and lay the codes again in six to nine months. That will mean that all the good work that is done, which the noble Lord, Lord Griffiths, identified, in using public information to help individual households that are vulnerable or suffering will effectively be put off. For example, on the fuel poverty measure, that would be another winter when we could not use the information to help the public.

On some of the issues raised by the noble Lord about the information shared, I remind him that the information is permissive: it does not have to be shared; it just allows public authorities to do that. They have very clear outlines of what they are able to do; they must have information sharing agreements. The measure merely allows public authorities to do it; there is no compulsion on any of them. It must also be in accordance with the Digital Economy Act and the Data Protection Act. That will give individuals the right—and mean that they can trust—that their information will not be misused, because it is subject also to the GDPR.

In talking about the difference between the Digital Economy Act and the Data Protection Act the noble Lord was a bit confused about paragraph 9. I was surprised—I thought it seemed pretty clear, but I accept that it could be made simpler. What it is really getting at is that the Digital Economy Act referred not just to living people, as the Data Protection Act does, but also includes bodies corporate and distinguishes between the information in those. So we are saying that there is a distinction, and they therefore need to apply both, but when it comes to the information referred to, and referring to individual living people, the Data Protection Act will apply and so will the General Data Protection Regulation. I will send a letter to the noble Lord outlining that paragraph to see if we can explain it. I doubt we will be able to do it in words of one syllable but we will try to make it a bit clearer for him and I will put a copy in the Library. I accept that it is not immediately obvious to a normal person.

I am glad that the noble Lord, in contrast, said that the codes were "clear, succinct and admirable". I point out, however, that these are not for small businesses but for public authorities. The only time that they would involve a private business is when the private business has been contracted by a public authority to deliver something.

Lord Griffiths of Burry Port: I am grateful to the noble Lord for that clarification—of course, I should have been clear about that myself—but in my small business I did have registration responsibilities, so under one of the codes I would have had to bear some of these things in mind; so there was just a hint of relevance about what I said.

Lord Ashton of Hyde: I am grateful for that reminder.

There has been an awful lot of consultation around this. In many ways, this is a model: it has taken about two years of open, public policy-making. The codes were in place in draft while the Act went through Parliament, so parliamentarians of both Houses were able to discuss the codes. They have been amended as a result of that and made clearer, and we have also put in some increased transparency and some review mechanisms. They were consulted on again after the Act was passed: we had a formal consultation again on the codes that are with us today. That included organisations that might have thought to have worried about it, such as privacy groups, so a lot of stakeholders were involved in that.

Coming eventually to the noble Lord, Lord Clement-Jones, his speech was based on a briefing by the only organisation, I think, which had any worries about this. The overwhelming majority of stakeholders that were involved in the consultation were very supportive of these codes.

The noble Lord asked about the statistical methodology. I cannot remember exactly what it was, but I will write to the noble Lord.

The noble Lord, Lord Griffiths, also asked how we will keep track of all this. Of course, there will be a register in place, open and fully searchable by the public. The Information Commissioner has a power of audit, which will be used to keep track of all the data that is shared, and the audit logs will be kept for all data shared under the powers.

The noble Lord talked about transparency: how are we going to monitor and track the impact of this data sharing? Review boards will be established to oversee any non-devolved and England-only information sharing pilots that are set up, and there will also be a review board to advise Ministers and make recommendations on the establishment of new objectives, if there are any. The membership of those review boards will come from across the various data holding departments, as well as the ICO and representatives of civil society. Lastly, the ICO has said that she will carry out an independent review of all the Part 5 powers in two to three years.

7.45 pm

Coming to the noble Lord, Lord Clement-Jones, the organisation I referred to that his speech came from is an organisation concerned with healthcare data. I remind noble Lords that, of course, nothing in these regulations today has anything to do with healthcare data: it was explicitly excluded from consideration in the Digital Economy Act. Nevertheless, it has used its worry about this to suggest that we should delay the implementation of these codes. As I said right at the beginning, the reason we do not want to wait, which the noble Lord, Lord Griffiths, mentioned, is that we want to use these powers to help people. I mentioned that we had consulted on them.

The noble Lord had a specific question on how the codes of practice can be compliant with the latest standard of best practice for information sharing under the *Data Science Ethical Framework* when we published a new set of data ethical standards under the new name *Data Ethics Framework* on 13 June. The codes' requirement that users refer to the *Data Ethics Framework* is not affected by the Government issuing a revision to that framework. We always said that that framework would be changed, and it really is misconceived to say that the drafts should be withdrawn. The same team in DCMS has led the appropriation of the *Data Ethics Framework* and the co-ordination and drafting of the codes' practice, and therefore they are drafted to be consistent with the best practice set out in the *Data Ethics Framework*. So when the Secondary Legislation Scrutiny Committee asked whether the codes are consistent with best practice, yes, they are. The new best practice did indeed come a month after the codes were laid, a day or two after the committee's report, but they absolutely were consistent and they still are.

[Lord Ashton of Hyde]

To be clear, they were designed to be regularly updated. It is a complete red herring that the name has been changed. The second framework, published on 13 June, was borne in mind when these codes were developed. It builds on the first version, which was widely used. The codes of practice provide details to practitioners on how the data-sharing powers under the Digital Economy Act 2017 must be operated and, by signposting the *Data Ethics Framework* in the codes, the intention is to augment their impact and help stimulate innovative and responsible use of data.

The other question is whether the legislation requires that these codes of practice must be consistent with the ICO's *Data Sharing Code of Practice*. It is true that the ICO has not yet published its new code under the Data Protection Act. The codes are consistent, in the same way as I said about the other one: the same people are dealing with it. We have liaised with the Information Commissioner the whole way along and there is no significance in the fact that the code has not been published yet: when it is published, if by some chance anything in the codes were rendered inconsistent, there is a transitional provision in the Data Protection Act which renders ineffective any part of the code that has thereby become inconsistent. That was deliberately put into the Data Protection Act 2018. We are saying that information sharing under the Digital Economy Act 2017 can lawfully take place before the new ICO code is issued and that during any such period, there will be no ICO code for that Act's codes to be consistent with. However, in practice those codes have been prepared in collaboration with the ICO, so I can confirm to the noble Lord, Lord Clement-Jones, that that is the case.

Once the ICO is at an advanced stage of developing its new code, we will work with it again to review whether there are any inconsistencies. We would work towards revising our codes if necessary, but we have been working closely with that office, as I said, on the development of codes. As a result, we do not expect to see any significant inconsistencies with its new code when it is prepared.

I may not have been completely clear: the transitional arrangements in the Data Protection Act 2018 ensure that, when the new ICO code is issued, the Digital Economy Act codes will be consistent with it both in the short and the long term. It does this by disapplying any provisions in the Digital Economy Act 2017 codes that are inconsistent with the new ICO codes. We can then make sure that they are consistent, if that were necessary, but the ICO has said that it was pleased to see that the codes of practice referenced new data protection legislation and are consistent with its guidance.

The noble Lord, Lord Clement-Jones, asked whether we will therefore withdraw the codes. For the reasons I have set out, we want to help people who are in vulnerable situations. Subject to your Lordships' agreement and that of the other place, we do not intend to withdraw the codes.

Motions agreed.

Automatic Workplace Pension Enrolment

Question for Short Debate

7.52 pm

Asked by ***Lord McKenzie of Luton***

To ask Her Majesty's Government what steps they intend to take to address the issues arising from the 2017 review of automatic workplace pension enrolment; and what is the proposed timetable.

Lord McKenzie of Luton (Lab): My Lords, I welcome the opportunity to open this short debate about the progress of auto-enrolment and its future development, particularly in light of the 2017 review, sub-titled *Maintaining the Momentum*. Our starting point must be to acknowledge the undoubted success of this policy, which has enabled some 9 million individuals to have been automatically enrolled into a workplace scheme by their employer. In topical parlance, perhaps, it has been a game-changer.

As we have debated before, this success has been built on a political consensus, thorough research of the data, stakeholder engagement and a robust analysis of the state of pension provision in the UK. This was underpinned, of course, by the intellectual rigour of the Pensions Commission. The commission's work focused on the consequences of rising life expectancy, a highly unequal distribution of pensioner incomes and the dispersion of private pension provision, along with a state system with gaps in provision for those with interrupted working lives and caring responsibilities, especially of course women. That was no basis for a sustainable pension system in which people could have confidence to save. The settlement proposed that the foundation of our pension system should be reform of the state pension to make it easier to understand and less means tested, and an earnings-related private pension which moves on from voluntary provision but stops short of full compulsion. It acknowledged the challenges of funding such a system and the logic of raising the state pension age—as it put it, the "unavoidable long-term trade-off" between public expenditure and state pension age—notwithstanding the need for fair notice of changes.

Hence we have come to a national pension saving scheme for those not otherwise covered by adequate pension arrangements. The participation is not mandatory but the obligation of employers to enrol employees and use the power of inertia was anticipated to be a significant nudge; so it has proved. There are of course mandatory minimum contribution levels for employers and employees. Sitting alongside this is a low-cost defined contribution scheme with a universal service obligation, NEST. Other providers have also engaged; specifically, we have seen the growth of master trusts and the consequent need for regulation.

With total contributions of 8% of earnings above the LEL threshold, including tax relief, the commission estimated that a median earner would eventually secure a pension at retirement of about 15% of median earnings, on top of an estimated 30% from the state system. For lower earners, the replacement rate would be higher because of the proportionally higher amount coming from the state pension. There was an assumption

that further private saving would bridge the gap to support higher individual aspirations but this has not happened.

The Government's review can rightly claim that auto-enrolment is transforming saving habits. This year, the rollout of automatic enrolment to employers will be completed. Minimum contribution rates increased to 5% from April this year and will increase to 8% in 2019. It remains to be seen what the effect of any of this is on opt-out rates and, perhaps more importantly, the rate of attrition where individuals subsequently withdraw from the scheme. However, workplace pension participation has increased from 55% to 78% in the four years to 2016. For the private sector, participation among eligible employees has risen to 73%. Annual contributions into workplace pensions amounted to £87 billion in 2016. So far, opt-out rates have apparently remained lower than anticipated, at approximately 9%, but rates of attrition have been twice this. Perhaps the Minister would confirm that.

We consider that automatic enrolment is becoming the foundation of workplace pensions in the UK: an important component of providing millions of workers with a reasonable standard of living in retirement. But as the review and other studies have identified, challenges remain. Most significantly there is the level of contributions, which, as the review itself identifies, currently presents a significant risk that the expectations of a substantial proportion of the working-age population will not be adequately supported in retirement.

There is also a great deal of evidence that the success of auto-enrolment is less prevalent for such groups as part-time workers, women and those from ethnic minorities. This is particularly a consequence of the earnings trigger. The TUC's research found that 4.6 million employees earn less than the £10,000 trigger, three-quarters of whom are women. The trigger has a particularly unfair current impact on some 100,000-plus workers who hold multiple jobs, which when combined would take them over the £10,000 threshold. The TUC points out that in many sectors, particularly among employers new to pension provision, the minimum contribution rates have been established as the norm, but it is understood that there is little evidence of levelling down by existing pension providers. Again, perhaps the Minister would confirm that.

The Pensions Policy Institute estimates that two-thirds of those enrolled in pensions in 2030 will be on minimum contributions. The 2017 review states that using the savings adequacy measures introduced by the Pensions Commission, 12 million individuals are undersaving for their retirement—12 million individuals who comprise 38% of the working-age population. The review proposes a number of measures with which we agree and which should help to increase savings. Lowering the age from 22, which was originally based on the national minimum wage criteria, to 18 is one. NOW: Pensions data shows that younger ages are less likely to opt out so, by inference, are keener on pensions. Perhaps the Minister can say whether this is generally the position.

The proposal to abolish the lower contribution level for a band of earnings so that contributions become payable from the first £1 of earnings would simplify things, increase the amounts brought into pensions savings and improve incentives for those with multiple jobs to opt in. It would also enable the entitled workers definition to be scrapped.

The level of the earnings trigger is the most contentious issue. The review records no clear consensus. Keeping it where it is at £10,000 amounts to a real-terms decrease in its value, which for the current year would bring another 100,000 people, 72,000 of whom would be women, within the scope of automatic enrolment. It is the trigger that ultimately determines who will be auto-enrolled. The pays-to-save analysis is complicated, but is perhaps made less so by changes to the state pension. It is also to be regretted that the tax anomaly—the different tax outcomes of net pay and relief at source arrangements—has not been resolved.

Setting the earnings trigger clearly involves judgments about a range of issues—affordability, opt-outs, provision for pensions—and the review excuses itself from a longer-term view on the basis of not wanting to pre-empt further threshold reviews. However, the Government cannot look aside for ever from the fundamental point about the levels of undersaving and the risk of poverty in retirement at current contribution levels.

Another conundrum is the 4.8 million self-employed and how they can be brought into auto-enrolment. As the review sets out, this is a group for whom pension saving is declining, notwithstanding the range of products available, including access to NEST and lifetime ISAs. This is at a time when self-employment is increasing, fuelled by the gig economy. The review suggests that many of them should already be included in auto-enrolment via agency worker and other provisions. There are also those inappropriately classified as self-employed—the bogus self-employed. This is a matter for enforcement by the regulator and HMRC, but for others the review proposes the development of nudges and prompts including through Making Tax Digital. Can the Minister say something about progress on this, especially in the light of HMRC announcements about the slowing up of Making Tax Digital to cope with the consequences of Brexit?

The third strategic problem identified by the review is that although individuals are saving more than ever before, they are not looking to take greater responsibility to plan and save more for their retirement. Policy looks to inertia to capture savings while expecting positive and proactive engagement to save more and make decisions about savings, particularly the decumulation options. There is no longer just the obligation to annuitise.

The overall pensions landscape has changed considerably since auto-enrolment was conceived. Much of this has to do with pensioner protection: advice and guidance, some mandatory; a charge cap on default funds; the prospect of regulation of master trusts; the prohibition on cold calling; and a pension dashboard. This should be conducive to an environment of engagement, but we know there is some way to go to address the general low level of financial education in the UK, which undermines effective engagement.

Despite the success of auto-enrolment, there is still much to do to address undersaving. We have no doubt that automatic enrolment should remain the bedrock through which a workplace pension can be provided.

[Lord McKenzie of Luton]
We accept the need to maintain the consensus for the proposed changes and that this should involve employers, savers and the pensions industry. However, we question why the government timeline for making positive progress seems set at the mid-2020s. Those missing out now deserve a more expeditious approach. I look forward to the Minister's comments.

8.04 pm

Baroness Primarolo (Lab): My Lords, I congratulate my noble friend Lord McKenzie on initiating this debate. I echo the very positive points he made about auto-enrolment: it is a good thing and has enabled millions of people to be drawn into workplace pension systems for the first time. The government review published last year concluded that, regrettably, of the 10 million people enrolled for the first time by 2018, only 3.6 million were women. We have the opportunity now to reflect on the introduction of auto-enrolment and the changing nature of the labour market and government policy, and to find ways of ensuring that we continue to draw more workers into auto-enrolment to enable them to save for their retirement.

The government review also identified that 900,000 of the 1.6 million individuals who are under-saving and earn less than £25,000 a year are women. This is on top of the dramatic changes to the state pension for women, the changes to women's entitlement to benefit from contributions made through national insurance by their husbands, and the fact that women often have multiple part-time jobs to fit around caring responsibilities, be that childcare or care for a relative. They then find themselves unable to be auto-enrolled because they do not have "a job" that gets them over the £10,000 trigger. It would be a very poor outcome for the introduction of a good scheme in theory if, in 10, 20 or 30 years' time, we found that women in many sectors of our society were still totally excluded from an ability to provide for themselves in their retirement through a contribution in this way.

According to the Annual Survey of Hours and Earnings—ASHE—8.8 million employees are not currently saving into a pension scheme. This headline figure is worrying in itself but it disguises a greater inequality in the UK workforce. In some occupations, up to 85% of the lowest paid are not in a pension scheme and are missing out on the employer's contribution that better-paid workers receive. Some industries, such as agriculture and the wholesale and retail sectors, lag far behind other areas. The TUC published an analysis based on the latest ASHE data, which shows that among highly paid professionals earning more than £600 a week, nearly nine out of 10 are saving into a pension. But at the other end of the spectrum, nearly 86% of those in, for example, sales or customer service jobs who are paid far less a week are not members of a scheme. Four in 10 employees undertaking care, leisure or other service work are not entitled to enrol in a pension scheme, including nearly three-quarters of the lowest paid.

It therefore appears that the current pension arrangements are in danger—I put it no higher at this point—of hardwiring inequality between the lowest-paid and the better-paid occupations into the auto-enrolment pension system. As my noble friend said, those who earn under £10,000 from one employment do not have an automatic right to enrol in a workplace pension. The lack of pension provision means that the pay gap is wider than at first appears, with low-paid workers missing out from the employers' pension contribution. It also suggests that whatever the gap in pay workers experience in their working lives could be amplified into retirement.

Many under-pensioned sectors typically employ large numbers of women. Thus, the rules governing automatic enrolment at present mean that women are less likely than men to come into the workplace pension system. A series of points makes this difficult for women, and my noble friend touched on the first one: contribution rates. The structure hinders contribution, in my view, so the legal minimum contribution of 1% for each employer—rising, I know, by 2019 to a total contribution from all of 8%—means that those who come in at the lowest point will not accrue enough for their retirement to give them a basic income.

When this is compounded by applying contributions to a band of earnings rather than based on a full salary, for someone on £10,000 a year, only £4,124 is pensionable, so 8% of qualifying earnings actually means that only 3.3% of their total salary is being contributed. When we put into that complicated mix insecure work, the growth of self-employment, where employers are contracting out and wanting to employ people on a more flexible basis, we can see that the contribution rate for employers is simply not high enough at present.

Then we have the question of the trigger of £10,000. As I have already touched on, for many women in low-paid, part-time work, juggling care responsibilities and a number of jobs, that £10,000 is simply not a viable measure for them. Again, the research conducted by the TUC, published in 2016, found that 106,000 workers—70% women—held multiple jobs but could not enter the trigger at £10,000. Cutting or abolishing the earnings trigger would help low-paid women to come into workplace pension schemes.

Why do we not use the national insurance contribution level, which I think is referred to in the report's summary of conclusions? Using that would bring about 1.5 million more people into workplace savings, of whom 73% would be women.

A case can be made that those with wages below the trigger can opt in to a workplace pension anyway, although we know that pensions are often complex. Importantly, however, individuals who are on low incomes rarely feel that they are, if you like, flush for cash and, not unreasonably, when budgets are tight, they favour the short term over the long term. We know this from experience with the married woman's national insurance contribution rate, a much lower rate with less benefits for that woman. Many women opted for that to help the household budget, with the consequences that we now find for them with the development of policy in pensions, excluding them from a decent pension. With the trigger, as my noble friend said, linked to the tax threshold, which is now much higher than originally envisaged as a result of coalition Government action, this situation can only get worse.

The Government now need to go further and build on the success of auto-enrolment and what they say in their review. They need to ensure that employers make decent contributions to a pension scheme for all workers from the first pound earned, that women workers and low-paid workers get the same pension benefits as their colleagues. They need to cast an eye over their review and undertake a gender analysis on take-up in this area. I think that they will see that there will be vastly different work practices in different sectors, and that that directly influences the ability of those workers to enter the workplace pension provision.

Increasing employer contribution rates, reducing the trigger, looking at every pound earned counting, allowing people to use more than one job to contribute to their pension and dealing with the vastly increasing economic precariousness for the self-employed—that is a good starting point for the Government to get further accolades on building a proper pension system. But that will not be done without a timetable, and it will not be done without clear identification by the Government of what they hope and intend to do next. I hope that when the Minister replies to this debate, she will give noble Lords some comfort that the Government intend not to sit on their laurels but to energetically, urgently and with determination build on this scheme to make an even better one for women workers in this country.

8.18 pm

Baroness Drake (Lab): My Lords, when automatic, direct enrolment was introduced there were real anxieties about capacity, non-compliance, and opt-out rates. Six years on, I recognise the good work that the DWP and the regulator have done. Indeed, the regulator has not been reluctant to use its formal powers. In 2016-17, it made more than 50,000 interventions, including nearly 34,000 compliance notices.

To maintain that confidence, however, we need to see the analysis of the 700,000-plus small and micro-employers whose staging ended in February 2018. It will be some time before the full impact of the phased increases in the statutory contribution rate is known. I note that the Government have identified around 1 million individuals working in atypical ways in less standard forms of employment, and they are liaising with the regulator to ensure sufficient clarity so that automatic enrolment operates effectively. Will the Minister elaborate on that problem, and on what greater clarity may be needed?

It is welcome that the Government decided not to exempt certain employers from auto-enrolment. The proposal to lower the age criteria from 22 to 18 would bring a further 900,000 young people into pension saving, which is welcome. So too, is the proposal that pension contributions would be calculated from the first pound earned, thereby increasing the contributions going into pensions. It is estimated that these proposals would bring an extra £3.8 billion in pension saving annually, and significantly increase the pension pot of lower and median earners.

The Government assert in their review report:

"We want to help lower earners build their resilience for retirement; to support individuals, predominantly women, in multiple part-time jobs".

But, as my noble friend Lady Primarolo has so clearly articulated, too many women are still excluded from the targeted group of 11 million intended to benefit from auto-enrolment, and 63% of that target group are still men.

Women suffer a caring penalty in pension saving. They are more likely to have single or multiple part-time jobs that pay below the £10,000 earnings trigger. The employment pattern of women reveals periods when they are typically caring for young children, grandchildren or elderly relatives and their paid work reduces. They are penalised by exclusion from automatic enrolment. The proposal that pension contributions will increase—calculated from the first pound earned, so increasing pension contributions—will make the caring penalty even greater, because the loss of contributions for women becomes greater too.

The Government argue that a change to the contribution rules would improve the incentives for those in multiple jobs that each pay at or below £10,000 to opt in to their workplace scheme. Women can choose to opt in, but automatic enrolment is rooted in behaviour assumptions that most men and women will not opt in. It is perverse to assume that opting in will effectively address the pension penalty for those earning £10,000 or less in any one job. Pension freedom of choice has changed the rules of the game. People are no longer obliged to secure a replacement income. Their savings provide a pot to spend as they wish. I see no reason, other than a regressive one, why low-paid women and men should not be auto-enrolled, so that they too can build a savings pot to give them greater financial resilience when they retire.

It was disappointing not to see some new thinking about tackling the caring penalty in pension savings coming out of the review—for example, a state credit of contributions to private pension savings during defined periods of caring. The Government's ambition is to implement their proposed changes in the mid-2020s—a long way off. They want to develop detailed plans for consultation but does that need to take seven years? The Government recognise,

"that these changes present significant additional costs, in particular for employers and the Exchequer and significant changes for individuals".

They say that,

"we will seek to better understand the full impacts for all stakeholders as part of the consultation process and will explore cost mitigations and funding options. We plan to do a full impact assessment of the increased costs for businesses".

There is a lot of conditionality in those sentences: whether the changes to the automatic enrolment rules proposed will be implemented at all, and the trade-offs to be made.

My noble friend Lord McKenzie's question is most helpful in seeking more certainty. I agree that the immediate priority is to secure the implementation of the phased increases in the statutory contributions without significant increases in opt-out rates. However, the Government intend to carry out further work on the adequacy of retirement income, using the evidence gained to review the level of contributions. I hope they will subject their findings and considerations to the most robust scrutiny and transparency. In recent times,

[Baroness Drake]
some pension policy decisions have not been preceded by detailed analysis or assessment; long-term impacts have not been fully considered. The coherence of policies on long-term savings and funding social care is unclear.

The boundary between statutory contributions and voluntary additional saving is important. The balance in the allocation of future increases in the statutory contribution between the employer and the worker is integral to ensuring persistency and improving levels of saving. The drivers of higher voluntary contributions are not equally distributed across the labour market. The priority which employers give to pensions varies significantly. Some mechanisms for raising contributions may work with higher paid workers but will not be effective with moderate or less secure ones.

The self-employed are now 15% of the workforce and a large proportion of them have significant and worsening gaps in pension savings. A focus on the self-employed, who would benefit from a nudge into saving, is much needed. The Government have announced an intention to legislate before the end of this Parliament, but it would be helpful if the Minister clarified whether targeted interventions will actually take place in 2018 and when the department expects to publish its evaluation. The position of the self-employed is getting worse as each year passes.

Finally, the review found that an,

"extensive review of the evidence-base tells us that actions aimed at improving engagement will not in themselves materially change savings behaviour ".

None the less, the Government believe that engagement can reinforce savings behaviour.

The problem is that public policy is now predicated on splitting pension saving into a savings phase and a draw-down phase. At the savings phase, policy recognises the power of inertia in the face of complexity and behavioural biases which inhibit optimal decision-making. Regulated defaults, auto-enrolment and investment funds are applied. At the drawing-down phase, policy assumes behaviours to be dramatically different, with the same individuals fully engaged and bearing the responsibility for making optimal choices. This inconsistency is simply not rational. There needs to be consistency during both phases, with good communications sitting alongside a system of supportive default products and processes, particularly in the light of emerging market failures. That would not contradict individual choice, but it would support securing a stable income in retirement.

8.27 pm

Lord Kirkwood of Kirkhope (LD): My Lords, it is a tremendous pleasure, as always, to follow the noble Baroness, Lady Drake. Years ago, as one of the original pensions commissioners, she set the agenda for the United Kingdom and that has been pursued on an all-party basis ever since. I agree with most of the analysis of the noble Lord, Lord McKenzie, so that consensus is still clinging on by its fingertips. I hope that the Minister will reflect carefully on the three intelligent and penetrating speeches that we have had so far. I agree and concur with a lot of the analysis and many of the conclusions.

Like the noble Baroness, Lady Drake, I was slightly disappointed that the pensions review published at the back end of last year did not have a bit more new thinking. I also reflect some of the disappointment felt by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Primarolo, about the lack of urgency about what happens next. So far as I am aware, next to nothing has taken place since December 2017. One would like to think that the urgency of the issue and the changes we are seeing in our labour market—never mind the pensions environment—would have encouraged our new Pensions Minister, who is an able young politician. I was expecting him to blaze a trail using the pensions policy, even if it was by throwing out new ideas, starting new consultations and getting new lines of inquiry started. There has been a deafening silence since December 2017, which is unfortunate.

We need to concentrate on some of the issues that the pensions review raised. I agree with the noble Lord, Lord McKenzie, on underprovision, the trigger level and the overall landscape, but in particular we should focus on the unemployed. The noble Baroness, Lady Primarolo, concentrated on the excellent TUC evidence on women and the gender issues that hide behind some of this important policy creation. They are all very important.

I was glad to see that the chosen subject for this evening directly references the proposed timetable. To aim to get things in place and properly changed by the mid-2020s is far too unambitious. Of course we need to be careful about planning changes in good time. Planning needs to be done and we need to be careful and study how the increased contributions in 2018-19 will affect the success of the policy, because it has been successful so far. But there is a difference between 2019 and 2025, and consultations can be carried out in six weeks. There is a yearning that the Government will be *Maintaining the Momentum*—a wonderful title—as that cannot easily be done by anyone else.

A number of things are available to the Government to introduce the nudges, the policy developments and the progress that needs to be made through the new single financial guidance body. Financial guidance is an integral part of developing auto-enrolment, because financial education is still deficient and people still do not realise the consequences of undersaving. The progress we should be making on the pensions dashboard is important; perhaps the Minister could say something about the progress that has been made on that. Some issues are emerging, such as some of the split small pension pots for low-income households, which is slightly concerning.

A lot of work needs to be done, but more than anything else we want to see more commitment to making progress faster. It is not about being precipitate but about moving faster and getting some plans that we can all look at and intelligently cross-examine. None of that seems to be happening at the moment. If the Minister is determined to hold on to the all-party consensus—I know that she is—she will need to address some of these things with some urgency and satisfy us that everything that can be done is being done. This is an absolutely crucial part of future public policy for the United Kingdom. I know that she cares about it

and that the new Minister cares about it as well. I just wish that we had some more tangible demonstration that the Government are thinking about it and coming forward with the kind of ideas that we all look forward to studying in the immediate future.

8.33 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, I thank the noble Lord, Lord McKenzie, for securing this debate, and thank all those who contributed to this evening's discussion of this important issue.

The Government are proud of the progress of the automatic enrolment reforms, with over 9.7 million people enrolled into a workplace pension since the reforms began in 2012. In the last 12 months alone, hundreds of thousands of everyday employers have begun to offer a pension to their staff for the first time, helping their employees build up dedicated savings for a more secure retirement. I am especially pleased that all this good work has been achieved due to the commitment, support and collaboration between government, employers, the pensions industry and many other delivery partners. I should add that we welcome the cross-party support that has been evident throughout the delivery process. Given the scale of the technical challenges, the hundreds of hours of freely given time to help inform the most practical policy solutions and the sheer good will are a tribute to all those who have played their valuable part in successfully getting nearly 1.3 million employers to provide workplace pensions.

This year has seen the successful conclusion of the planned rollout of automatic enrolment duties to employers that existed prior to October 2017, known as the employer staging profile, which started with the largest employers in October 2012 and, following two extensions to help SMEs better prepare, saw the last cohort of existing micro-employers—those with only one or two staff—complete their declarations of compliance this spring. We are now delivering automatic enrolment as business as usual, with an estimated 180,000 to 210,000 new employers each year needing to comply with their automatic enrolment duties. We have also seen the first of two planned increases in contribution levels for automatic enrolment in April this year, with the latter increase following in April 2019.

I do not take lightly the challenge for employers in funding their share of these increases, and we are carefully monitoring the impact of this first upward shift in contributions for employers and their workers. I should stress, however, that these increases are essential to move savings rates up and will deliver more security in retirement. It is also important to note that many employers have chosen to pay contributions above the planned statutory increases, so faced no additional costs in April. It is important to add that, as automatic enrolment has been rolled out, the Pensions Regulator has been responsive to the need to help employers understand what they need to do. That included launching a simplified and much shorter step-by-step guide on its website, which has been adapted to the needs of small and micro-employers, which have less familiarity with pensions matters.

I turn now to the December 2017 review of automatic enrolment, *Maintaining the Momentum*, which sets out a clear direction for the future of workplace pension saving, and to which all noble Lords who have taken part in the debate have referred. Our ambition is bold and clearly builds on the success of automatic enrolment to date, with a comprehensive and balanced package of proposals which, crucially, recognises that costs will be shared between families and businesses and that they will need time to plan for change. Importantly, we are confirming that automatic enrolment should continue to be available to all eligible workers regardless of who their employer is. These reforms are focused on ensuring that retirement saving continues to be available to the widest possible number of workers in the UK.

We believe that the retirement saving habit needs to be established at the start of a working life. That is why we are going to make saving the norm for young people by lowering the age for automatic enrolment from 22 to 18, to bring an extra 900,000 people into workplace pensions. I can confirm for the noble Lord, Lord McKenzie, that research has shown that 18 year-olds are very keen for automatic enrolment to start—they care about their future and their retirement, which is very welcome.

We want to broaden and deepen the benefits of automatic enrolment, particularly for those with low earnings and multiple jobs, to which all noble Lords have referred. We want to help them to save more for retirement by removing the lower earnings limit so that their contributions are calculated from the first pound of earnings.

We intend to deliver on our manifesto commitment to use the principles and learning from automatic enrolment to improve retirement provision for the self-employed. We recognise the diversity of the 4.8 million people who classify themselves as self-employed, and the review highlighted—supported by the available evidence—that no single or straightforward saving intervention has been shown to bring self-employed people into pension saving. We are therefore moving quickly to find out what might actually work by testing targeted interventions aimed at the self-employed to identify the most effective options to increase pension saving among this group. In addition, as we set out in the 2017 review, many of those working in atypical or non-standard forms of employment potentially already come within the automatic enrolment framework and will be able to save into a workplace pension. We are working with the Pensions Regulator to ensure sufficient clarity for them and those who engage them, so that the automatic enrolment compliance regime continues to operate effectively.

In addition, the Government have responded to Matthew Taylor's review of modern working practices and have been consulting on employment status with the aim of making it clearer and more certain for both individuals and business what their status is. The consultation has now closed. The Government are currently considering the submissions received and will respond in due course. We will ensure that any changes are also considered with care in relation to

[Baroness Buscombe]
automatic enrolment so that there is sufficient coherence and certainty about the enforcement of automatic enrolment duties.

Noble Lords have raised several important points. I respect all their concerns and will do my best to address as many of those as possible this evening. The noble Lord, Lord McKenzie, raised the question of attrition. I can confirm that employers estimated that 16% of employees who had been automatically enrolled in the last financial year had ceased active membership. However, there is hope that a certain amount of those who ceased membership when they left one employer will start again with a new employer.

Other noble Lords, including the noble Lord, Lord McKenzie, asked about the earnings trigger. They suggested that too many of those on low incomes were still excluded from AE because of the earnings trigger, which determines who is eligible to be automatically enrolled by their employer into a pension. Freezing the trigger at £10,000 continues to strike a balance so that those who can most afford to save are automatically enrolled into a workplace pension. We fear that lowering the trigger could result in diverting income away from the day-to-day needs of the lowest earners, and that risks impacting significantly on their living standards. For those low earners who are in a position to contribute, the option remains to opt into automatic enrolment.

Considerable reference was made to women, particularly by the noble Baronesses, Lady Primarolo and Lady Drake. The question is, of course, whether automatic enrolment is helping women in work to save. There have been large increases in pension saving for women since the introduction of automatic enrolment. The private sector has seen the largest increases in participation in workplace pensions. In 2012, 65% of women employed full-time in the private sector did not have a workplace pension. By 2017 this had fallen to 24%.

The question also relates to multiple job holders—women who are juggling different jobs and caring duties—what are we doing about that and whether we should remove the lower earnings trigger. The proposal to remove the lower earnings limit and the entitled worker status in legislation will ensure that multiple job holders who are eligible for automatic enrolment, or who choose to opt in, will qualify for employer contributions in all jobs and will be able to pay their own contributions from the first pound of earnings. This will give multiple job holders the opportunity to build the same retirement savings as individuals who have only one job.

Over the coming year, we will work to build a renewed consensus to deliver the detail, design and implementation of our proposals. We recognise the importance of giving employers and savers sufficient time to plan for changes. There will be some people, particularly those on low incomes, for whom it makes little sense to divert income away from their working life, but for those low earners in a position to contribute, as I have said, the option remains to opt in. The earnings threshold is reviewed every year to ensure that it continues to strike the right balance between maximising the savings incentives for individuals and minimising costs for employers.

The Secretary of State has decided to freeze the earnings trigger this year at £10,000, which will bring an extra 100,000 people into automatic enrolment, of whom around 72% are women. It should also be noted that the IFS, in a 2016 report, found that automatic enrolment had also significantly increased workplace pension membership among those outside the eligible group, particularly those with incomes under the earnings threshold, whose membership has increased by 28 percentage points.

To answer a question asked by the noble Lord, Lord McKenzie, the analysis underpinning the automatic enrolment earnings threshold review suggests that freezing the trigger has no adverse effect on the proportion of black and minority ethnic individuals in the group eligible for automatic enrolment. Of the 100,000 people estimated to be newly saving as a result of freezing the trigger, 23,000 are black and minority ethnic individuals.

The noble Baroness, Lady Drake, asked about carers and how they are supported. The 2017 AE review concluded that there should be no change to the way that carers are currently treated through AE. Those who provide informal care are not subject to automatic enrolment as they have no employer to enrol them. However, bringing in individuals not subject to a contract of employment would be a fundamental change to the framework of AE, which works through an employee-employer relationship. Individuals who provide informal care for 20 hours per week are entitled to apply for carer's credit, which helps to protect future entitlement to state pension. Alongside the wider work to address the challenges of social care for our ageing population, the Government are considering how to further support families and individuals who provide invaluable informal care.

I turn now to the net payment arrangements versus relief at source. Pensions tax relief is a matter for Her Majesty's Treasury. The Government recognise the different impacts on pension contributions for workers earning below the personal allowance, but to date it has not been possible to identify any straightforward or proportionate means to align the effects of the net pay and relief at source mechanisms more closely for this population. However, alongside further work on the AE changes outlined in the review, the Government will examine the processes for payment of pensions tax relief for individuals to explore the current difference in treatment to ensure that we can make the most of any new opportunities that emerge, balancing simplicity, fairness and practicality while engaging with stakeholders to seek their views. It is important that employers are free to choose a scheme that best suits the needs of their businesses and workers.

I was asked why we did not look at increasing the contribution rate as part of the 2017 review. As I have said, millions of people are now saving or saving more as the result of AE. As noble Lords may be aware, the first planned increase in contribution rates took place this year. As such, it is important that we understand the effects that the planned increases will have and to carry out further work on the adequacy of retirement incomes. We will look again in due course at the right overall level of saving and the balance between prompted and voluntary saving. It is important that this should

be evidence-based. We are testing targeted interventions to identify the most effective options to increase pension saving among self-employed people during 2018. We are harnessing the ideas and enthusiasm that exist in addition, as I have just said, to developing the evidence base as our work goes forward.

The noble Lord, Lord Kirkwood, referred to the pensions dashboard among many other issues. The Department for Work and Pensions is leading the development of the pensions dashboard. We have carried out a feasibility study, the main conclusions of which we will share in due course. How we achieve increased engagement is not straightforward and it will not be solved by the use of a single tool such as a pensions dashboard. We need to make people feel confident about managing their finances and able to make informed decisions. The noble Lord also referred to the single financial guidance body, which we believe and trust will be a huge support in that direction.

Finally, all noble Lords have commented that progress is too slow. I shall start with the noble Lord, Lord McKenzie, who asked why nothing is being done until the 2020s. The review sets a clear direction to build a more robust and inclusive savings culture, specifically supporting younger generations with the opportunity to save for a more secure retirement. Our review proposes a comprehensive and balanced package which recognises that the costs will be shared between individuals, families and businesses, and we will need time to plan for change. We are working to deliver detailed design and implementation. The support of employers and their advisers has been key to the success of AE and we want to make sure that we recognise their situation as well as that of savers. We want sufficient time to take those decisions with care.

Testing targeted interventions to identify the most effective options is critical. It is our ambition to implement changes to the AE enrolment framework in the mid-2020s, subject to learning from the contributions increases this year and in April 2019. There will be discussions with stakeholders around detailed design this year into next year, in order to find ways of making the changes affordable, and this will be followed by formal consultation with a view to introducing legislation in due course.

Noble Lords who know me know that I am always impatient for advancement in areas that will help everyone. I am looking in particular at one proposal made by the noble Lord, Lord Kirkwood. He knows that I am very keen on this, as is the Pensions Minister, my honourable friend in another place Guy Opperman. But we need to do this with care. We have to consult. We will work with stakeholders to build consensus on the shape and design, and that will help us to develop our detailed plans and an implementation timetable.

I hope that I have managed to answer most questions put by noble Lords, and again I thank the noble Lord, Lord McKenzie, for introducing this debate.

House adjourned at 8.50 pm.

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