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PARLIAMENTARY DEBATES
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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
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Tuesday 19 February 2019

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Brexit: Tourism

Question

2.37 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what steps they are taking to guarantee the adequate staffing of tourism and hospitality projects following the United Kingdom's withdrawal from the European Union.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Government have been clear that we want EU nationals who have built their lives here to remain and that EU nationals will continue to be able to work or study in the UK. We will continue to engage with the sector on the future immigration system, which will cater for a range of skill levels across sectors. The tourism sector deal is in negotiation, and it has a strong focus on future-proofing the sector.

Lord Roberts of Llandudno (LD): Is the Minister aware that KPMG forecasts that we will lose 1 million workers in the tourism industry over the next few years? In Llandudno—where I am from of course—there is great concern over tourism job losses. Not only that, but there is a threat to Welsh agriculture following our new status and the threat of a possible loss of 7,000 jobs at Airbus. In Parliament, I am told that over half of our catering staff are from outside the United Kingdom. Do the Government wish to be remembered for causing the worst recession in nearly a hundred years?

Lord Ashton of Hyde: No, my Lords. Tourism in Wales, to which the noble Lord referred, is a devolved competence and Visit Wales is in charge of that as part of the Welsh Government, but I am not going to rely on that. We have been engaging with the sector extensively over the last two years, and we are aware of the immigration priorities. The sector has submitted evidence to the Migration Advisory Committee on the shortage occupation list. In respect of specific levers to mitigate workplace shortages, we need to improve productivity, invest in skills and career development, and reduce high turnover. These are a key focus of the proposed tourism sector deal, which has now entered into formal negotiations; we hope to announce it shortly.

Lord Watts (Lab): My Lords, I understand that the review body has accepted the case for farm workers being given a special deal after Brexit. Who has this review group been talking to? Is it talking to tourism industry groups and musicians et cetera? It seems to me to have lost the ability to see what is going on in the economy.

Lord Ashton of Hyde: I do not know what review group the noble Lord is referring to, but I can assure him that, via the Tourism Industry Council, the tourism sector is engaging and the Home Office has said it will engage on the issue of seasonal workers. We need a provision, where if an industry is reliant on seasonal workers, like some agriculture is, the future immigration system is capable of handling that.

Lord Dobbs (Con): Would my noble friend like to bring a sense of balance to this discussion, and perhaps some common sense?

Noble Lords: Oh!

Lord Dobbs: Thank you. Like other Members of this noble House, has my noble friend noticed the latest employment figures from today? They show a record number of jobs in the UK economy, a fall—again—in unemployment and a record level of women in employment: the highest number of women employed in our economy in our history. Does he not think that that should be emphasised rather more than all the doom and gloom we keep getting?

Lord Ashton of Hyde: Of course, I agree with my noble friend that it should be emphasised. The issue this brings for certain sectors is whether they can compete in attracting the workforce. As far as the tourism industry is concerned, this sector deal will try to address that, because we need a higher-wage economy which will increase productivity. We need to use things such as automation and training to avoid the turnover that exists in the tourism industry. However, I certainly agree with my noble friend that the Government's record on employment is excellent.

Lord Hannay of Chiswick (CB): My Lords, would the Minister be prepared to say at the Dispatch Box that any university student who is offered a place by a British university, as registered under the Higher Education Act, and anybody employed as a researcher or an academic at those universities, will be able to come here without any question being raised about how much they are earning?

Lord Ashton of Hyde: I think it would be foolish of me to make Home Office policy at the Dispatch Box without having considered it very carefully, but I will look at what the noble Lord says and tell my noble friend from the Home Office about it.

Lord Wigley (PC): My Lords, the noble Lord, Lord Dobbs, referred to high employment. That is the very problem: hotels and restaurants in the tourist industry, in Wales and elsewhere, are unable to find labour. Some of the workers who had come from continental Europe are going back, partly because of the value of the pound and partly because of uncertainty. In these circumstances, there needs to be a positive programme to ensure the availability of labour; otherwise, industries such as tourism, which are vital to Snowdonia and elsewhere, will crumble.

Lord Ashton of Hyde: I am sure that Visit Wales is addressing the problems for the tourist industry in Wales. As I said, the tourism sector deal is trying to raise career prospects in the tourism industry by increasing skills, reducing turnover and enabling technology such as automation to help. From 2021, the new immigration system will address some of those points, and the Home Office has clearly said that it will engage over the next few months—that is the point of a White Paper.

Baroness Doocey (LD): The Government have introduced a seasonal agricultural workers scheme to address that sector's reliance on migrant labour to do seasonal work. This is very much to be welcomed. Could the Minister explain when the Government plan to do the same for the tourism industry, which faces exactly the same problems and brings into the UK economy £127 billion a year?

Lord Ashton of Hyde: The noble Baroness is correct: it represents 4% of the UK's GVA, so it is an important sector, as I mentioned. I completely understand the issue. The only specific exception that the immigration White Paper has talked about so far is for seasonal workers in agriculture. There is a case to look at other industries, such as tourism, and that is why the Home Office has said it will engage. We at DCMS will certainly liaise and engage with the tourism sector—there is a meeting of the Tourism Industry Council next month.

Baroness Crawley (Lab): My Lords, do the Government know exactly how many workers have been lost to the hospitality and tourism industry in the last couple of years, even before Brexit happens? What are the Government doing to assist those companies that feel they might close down?

Lord Ashton of Hyde: The issue is rather the other way: the tourism industry has increased dramatically. The number of visitors has increased. I am not aware that the number of jobs has fallen; I think it is the reverse. There is a shortage of labour that has been filled from the EU. That is why, in the next two years, we will encourage and welcome EU workers. That is why we have said that, until the new immigration system comes in, those who are here already are very welcome to stay and work.

Libraries: Closures

Question

2.46 pm

Asked by ***Baroness Pinnock***

To ask Her Majesty's Government what assessment they have made of the impact of the closure of local libraries in England since 2015.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, while the Department for Digital, Culture, Media and Sport does not record details of public library closures for councils in England, it monitors changes to library service provision throughout England. If DCMS receives representations that changes agreed by a council might mean that that council is failing to meet its statutory duty to provide a comprehensive and efficient library service, it carefully considers the evidence before deciding whether a local inquiry is needed.

Baroness Pinnock (LD): I thank the Minister for his reply. He will know that the Government set up the Libraries Taskforce, which produced an action plan in 2016. I thought it was quite an admirable report, which stated:

"Libraries change lives for the better".

It included reference to tackling social isolation and saving the NHS an estimated £30 million a year. Can the Minister tell the House how libraries can improve lives when in the last year alone £30 million less was spent on local libraries and a further 127 were closed?

Lord Ashton of Hyde: My Lords, I agree with the noble Baroness that libraries are important. We certainly think that good libraries are a valuable asset. They strengthen communities and become community hubs. We agree that we should make sure we monitor the role local authorities have in providing a comprehensive and efficient library service. It is not helpful just to look at straight numbers of openings and closings. Sometimes it is the right thing to close a library and to produce a better, more centralised library that is in partnership with other local community areas. We support the idea of it and monitor very carefully the statutory duty local authorities have.

Baroness Lister of Burtersett (Lab): My Lords, the *i* recently quoted a librarian who spends much of her time helping with universal credit claims. She said:

"People talk about cutting library services without really acknowledging we're doing a lot to prop up services that haven't been provided by the Jobcentre".

Will the Government now acknowledge and fund this vital work that libraries are doing to prop up the universal credit scheme?

Lord Ashton of Hyde: I take the noble Baroness's point. Libraries do more than just the traditional providing of books. The role of libraries has changed because the nature of society has changed with the internet. That is why we funded libraries to have access to the internet so that people who do not have it can get it, and over 99% have. I agree that in some cases libraries fulfil roles that other public services used to do. That is why, as I said, we monitor local authority provision, but we have to remember that this is a devolved responsibility. Local authorities have a duty to provide a comprehensive and efficient library service.

Baroness McIntosh of Pickering (Con): Will my noble friend pay tribute to the scores of volunteers in North Yorkshire who have enabled a series of isolated rural libraries to remain open, and to North Yorkshire

County Council for providing the facilities? I am learning the joys of e-books, another facility that rural areas are benefiting from.

Lord Ashton of Hyde: I agree with my noble friend. Community libraries and volunteers are both very important. There is no doubt that a number of libraries have closed and the library service is under pressure, as are a lot of other local authority services. The percentage of local government expenditure spent on libraries has in fact remained pretty constant, showing that many local authorities value the services of libraries and continue to make difficult choices to preserve their numbers. One of the ways they are doing so is by getting partnerships with other organisations, in which volunteers play a very important role.

Lord Tope (LD): My Lords—

The Earl of Clancarty (CB): My Lords, libraries are not the only public cultural assets suffering from the Government's continuing cuts to local councils. Is the Minister aware of the intended sale next month by Hertfordshire County Council of 428 artworks, including work by Barbara Hepworth, Julian Trevelyan and other well-known British artists, despite a petition signed by local people to stop the sale? What is the department's response to this sad and still avoidable selling off of publicly owned work?

Lord Ashton of Hyde: I was not aware of that, but I will ensure that the Minister for Arts, Heritage and Tourism is made aware, if he is not already. It is sad when local authorities sell public artworks, but I accept that they have difficult decisions to make, and that is what local authorities are for. The important thing is that decisions that affect local communities should be taken locally.

Lord Griffiths of Burry Port (Lab): My Lords, this is a question in which all Members of this House can take a personal interest. Each of us could give testimony on what libraries have meant to us. When they were small, our children relied on them often, and even in the age of social media, it is the same thing all over again with our grandchildren. When local authorities have had to cut their budgets by 60% in recent times, closing libraries offers an easy way of saving money, but simply to say that the Government have outsourced responsibilities to local authorities is not good enough to address this question.

Even if the DCMS has not conducted its own impact assessment, the unions have, and without repeating the statistics, it is a horrendous picture of dissatisfaction from those working in libraries at the service they are obliged to offer the public with fewer and fewer resources. Do the Government not feel it appropriate to put this further up the priority list and address this question with urgency, for the good of us all, and our families?

Lord Ashton of Hyde: It is very easy to blame the Government when devolved decisions are not to the liking of people living elsewhere, such as noble Lords. I accept that when difficult decisions have to be made, they cause issues. We support local libraries by providing things such as wi-fi. Through Arts Council England we provide the Libraries Opportunities for Everyone Innovation Fund, the private finance initiative and the Libraries Taskforce; all are examples of DCMS centrally supporting the library service. I accept that local authorities have had to make difficult decisions. Libraries actually have been retained and it is worth bearing in mind that many local authorities have refurbished or opened new libraries. Therefore, it is a question of priorities and what a local authority thinks is important for its area.

Housing: Private Rented Sector

Question

2.55 pm

Asked by ***Baroness Grender***

To ask Her Majesty's Government what assessment they have made of the number of older people living in the private rented sector.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government's primary assessment of the private rented sector is through the annual English Housing Survey. This allows us to make a robust statistical estimate of the age of households in the private rented sector. Taking older people to mean those aged 65 or above, the latest survey estimates that there are 380,000 households where the household reference person is 65 years or older.

Baroness Grender (LD): My Lords, higher costs for older private tenants—40% of income compared to just 14% for owner-occupiers—insecurity, with evictions now the main reason for older renters leaving, and projections that by 2040 one-third of people over 60 will be privately renting are a toxic combination. Does the Minister agree that ending the current Section 21 and having a permanent right to stay, as in Scotland, should be an urgent priority before this becomes a crisis?

Lord Bourne of Aberystwyth: My Lords, it is important to keep this in perspective. That 380,000 represents 6% of the private rented sector. That figure has undeniably gone up, although it has gone down from last year, so I hasten to add that the pattern is not uniform. Many people choose to rent; it is not wise to assume that all these people renting do not want to do so. There are challenges, some of which are met by the Prevention of Eviction Act, as the noble Baroness will know, and others by the Fitness for Habitation Act which we recently passed. So I do not share her analysis.

Lord Kennedy of Southwark (Lab Co-op): My Lords, does the Minister accept that the number of older people in private rented accommodation is rising and

[Lord Kennedy of Southwark]
that that trend is likely to continue? If he does, will he tell the House what he is doing to address the resulting policy challenges?

Lord Bourne of Aberystwyth: My Lords, as I said, we cannot assume that this is uniform. According to our figures, last year there were some 40,000 fewer such people, although that is not necessarily statistically significant. I do not think we can draw conclusions. The figure has been on an upward trend for the last 10 years but there was more than a blip last year. As I have indicated, the private rented sector in general undoubtedly presents challenges. We know that 25% of it is unfit for habitation, although that is better than a decade ago when the figure was 45%. We are seeking to meet those challenges, which apply across the board, not just to older people.

Lord Naseby (Con): My Lords, was this not an inevitable consequence of the Blair and Brown period, when there was an all-time low in new council housing builds? So those 13 long years not take quite a time to turn round? Are not local authorities now being encouraged again to take part in building council houses for all ages?

Lord Bourne of Aberystwyth: My Lords, my noble friend will be aware that the borrowing cap for local authorities has been raised, which undoubtedly boosts the possibility of housing by local authorities, as he indicated. As I said, there are challenges out there, but I would caution against assuming that all older people do not want to rent and that all of them are unhappy with their rental. That is not the case.

Lord Shipley (LD): My Lords, the Minister will be aware that the Government pay out some £21 billion a year in housing benefit. Does he agree that this huge sum is the consequence of high rents caused, in turn, by a shortage in the supply of homes to rent? Would it not be better to invest in social housing, using future savings on the housing benefit bill to help fund building more homes for social rent?

Lord Bourne of Aberystwyth: My Lords, I agree with the noble Lord that there is a problem with supply. As he well knows, that problem existed in the coalition years as well and we are seeking to address it. Last year was the best one for new homes for over a decade. I agree that we need more social housing. That is the principal reason why the borrowing cap for local authorities was lifted.

Baroness Jenkin of Kennington (Con): My Lords, my noble friend will be aware of the Government's rent a room scheme, which has the dual benefit of providing up to £7,500 for the home owner and releasing furnished accommodation for the rental sector. However, this scheme is not well known. Will my noble friend tell us what more the Government might consider doing to promote it?

Lord Bourne of Aberystwyth: My noble friend is right: it is a good scheme that perhaps has not had the take-up we hoped for, and it might benefit from added publicity. I will take that message back because it is a good scheme and we are trying to do many things to get the housing problem under control. That is just one more, and it comes at a low cost.

Lord Beecham (Lab): What assessment have the Government made of the number of older people living in social housing while paying the bedroom tax, or who, because of rent increases, have moved into the private rented sector?

Lord Bourne of Aberystwyth: My Lords, I would be interested to know if the noble Lord has evidence of that happening. In short, we have not made that connection but if he has evidence, I would be very keen to see it and we can take it forward and share the results with the whole House.

Brexit: Northern Ireland Backstop

Question

3 pm

Asked by ***Lord Empey***

To ask Her Majesty's Government what proposals they are currently putting forward to the European Union to replace the backstop in the European Union Withdrawal Agreement; and what is the estimated impact of each such proposal on the annual value of goods crossing from Northern Ireland to the Republic of Ireland.

Baroness Goldie (Con): My Lords, the Prime Minister has set out three ways in which legally binding changes to the backstop could be achieved. First, the backstop could be replaced with alternative arrangements to avoid a hard border between Northern Ireland and Ireland. Secondly, there could be a legally binding time limit to the existing backstop, or thirdly, there could be a legally binding unilateral exit clause to that backstop.

Lord Empey (UUP): My Lords, obviously this is an important week as there is a big delegation of Government Ministers in Brussels. It would be helpful if the noble Baroness could tell the House why we are not looking at an alternative which involves using the Belfast Good Friday agreement, the institutions set up by it and the treaties under which it has formed, as part of a solution rather than as part of the problem. I fear that we will end up with a proposal coming back with a codicil or something that is ultimately of little value, and in that case we run into severe difficulties at the end of next month. Is the department prepared to look seriously at a meaningful alternative, rather than tinkering with questionable legal niceties?

Baroness Goldie: The noble Lord raises a very important point. First of all, the Government are utterly committed to supporting the Belfast agreement

and all that that stands for. The Government have set out a range of commitments to Northern Ireland, including a strong role for what we all hope will be a restored Northern Ireland Assembly and Northern Ireland Executive. This will mean that the devolved institutions in Northern Ireland will have a strong role, both in any decision to bring the backstop into effect and in its operation if it does come into effect. I repeat that we are committed to upholding the Belfast agreement and will do everything in our power to avoid a hard border between Northern Ireland and Ireland.

Lord Wallace of Saltaire (LD): My Lords, the noble Baroness repeats a phrase that the Prime Minister used last week, of looking for a,

"legally binding unilateral exit clause".—[*Official Report*, Commons, 12/2/19; col. 731.]

I saw in a brief this morning an alternative phrase—it seemed nonsensical—which is "a joint interpretative document". Since I understand that any legally binding agreement has to be legally binding on both sides, a unilateral clause—which is not, therefore, legally binding on both sides—seems incompatible with something that is legally binding. Can the noble Baroness explain this paradox?

Baroness Goldie: I do not want to be drawn into a labyrinthine analysis of legal niceties. What I can see is that in general law of contract and of agreement between separate legal entities, it is possible to lay out a future pattern to which both parties agree. If one of these future patterns were that the UK should have a unilateral right to withdraw, that could be incorporated within a binding agreement, as I understand the position. I am not an international lawyer—Glasgow conveyancing was about as far about as it got—but that is my broad understanding of the general position.

Lord Forsyth of Drumlean (Con): My Lords, when the Government and the House of Commons voted for the Motion calling for the replacement of the backstop, what was the Government's understanding of the meaning of "replace"?

Baroness Goldie: As I have already indicated to the noble Lord, Lord Empey, the Government were very clear from the vote about what the House of Commons found worrying and troublesome about the backstop as currently structured. As I said in my Answer to him, there are three possible options to resolve that dilemma.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, will the Minister assure the House that any proposal put to the EU for replacing the backstop will protect the constitutional position of Northern Ireland within the United Kingdom and the integrity of the United Kingdom and ensure that there are no barriers, economic or otherwise, between Northern Ireland and the rest of the United Kingdom?

Baroness Goldie: The Government have been very clear about two things. One is that we respect the integrity of the United Kingdom: we have been very clear that we do not want any form of hard border. The backstop would effectively provide a customs union of which the UK would be part, and that would protect Northern Ireland and the Republic's activities as well. We are in these negotiations, and I repeat the Government's commitment to avoid a hard border and to support the Belfast agreement.

Baroness Chakrabarti (Lab): My Lords, I would not dream of tempting the Minister into the labyrinth. However, because of the importance of these matters and the anxiety that continuing uncertainty about the backstop is causing to so many people, even beyond this House, will she clarify whether it is still the Government's policy to ensure a legally binding change to the withdrawal agreement over the backstop—not just an exchange of letters or assurances but a legally binding change to the backstop? As we are told that my opposite, the Attorney-General, is closely involved in negotiations and will soon set out his legal tests to ensure that the backstop cannot be used to trap the UK, will she please tell us a little more?

Baroness Goldie: I fear that my answer is bound to disappoint the noble Baroness: I apologise in advance for that. Let me say by way of introduction that the Prime Minister has been very clear that she is investigating a negotiation in which we can achieve legally binding changes to the backstop. That is the Government's position. Where do we go from there? We are in negotiations. The Attorney-General and the Cabinet Secretary were meeting the EU last night and the Prime Minister is to meet President Juncker tomorrow evening. These discussions are at a vital stage and we shall have to await their outcome. I understand that the Attorney-General will propose in due course to make a statement about the progress that has been made, and I cannot pre-empt that.

Organ Donation (Deemed Consent) Bill

Report

3.07 pm

Report received.

Honda in Swindon

Statement

3.08 pm

Baroness Vere of Norbiton (Con): My Lords, with the leave of the House I will repeat a Statement made in the other place by my right honourable friend Greg Clark, the Secretary of State for Business, Energy and Industrial Strategy. The Statement is as follows:

"Mr Speaker, with your permission I would like to make a Statement about Honda. This morning, Honda announced that future models of its Civic car, which are currently made in Swindon will, after 2021, be made in Japan. The Civic is the only vehicle that is made by Honda in Swindon, so the result of that decision is that the company's manufacturing plant will close in 2021. I am not going to understate what a bitter blow this is to the 3,500 skilled and dedicated

[Baroness Vere of Norbiton]
workers at Honda in Swindon and their families, to the many more people and businesses who supply the plant, to the town of Swindon, which has been proud to be home, for 34 years, to one of the best car factories in the world, and to the whole British economy. Honda has given the reason for its decision as accelerating the move to electric propulsion and choosing to consolidate investment in its facilities in Japan.

Following the entry into force of the EU-Japan free trade agreement earlier this month, tariffs for cars exported from Japan to the EU will drop from 10% currently to zero by 1 January 2026. Honda will then export from Japan, rather than Britain, to Europe and the rest of the world. The company has stated that Bracknell will be retained as its European headquarters, that it will continue to base its Formula 1 operation in Britain and that its research and development centre into electrification and connected and autonomous technologies will continue at Swindon.

Honda has announced an immediate consultation with the trade unions and suppliers on this plan. I have spoken with the trade unions, local Members of Parliament, the leader of Swindon Borough Council and the chair of the local enterprise partnership. Shortly, I will chair, in Swindon, the first meeting of a task force comprising these people and others to do everything we can to ensure that the much-valued workforce of Honda in Swindon find new opportunities which can make use of their skills and experience. We will work with the local community to ensure that Swindon's justified reputation as being a place of industrial excellence in manufacturing, technology and services is maintained and expanded.

In our automotive sector, we will work in close partnership with an industry that is going through a period of technological change and adjustment throughout the world greater than at any time in its history—a period of change that is disruptive and even painful for many, but in which Britain's industry can emerge as a global leader if we back innovation in new sources of power and navigation: one of the four grand challenges of our industrial strategy and the focus of the automotive sector deal.

I and many other colleagues in this House of all parties have worked hard over the past three years to make the case for investment in Britain to investors in this country and around the world, despite the uncertainty that Brexit has put into the assessments of investors in Japan and around the world. We have secured investments during this time from Nissan, Toyota, Geely, BMW, PSA, Aston Martin, Williams and many smaller firms. We have an international reputation for being a place to do business, with skilled, motivated staff, access to innovation—especially in automotive, which is the best on the planet—and a determination to make those strengths even greater during the years ahead.

This is a devastating decision that has been made today: one that requires us to do whatever and all that it takes to ensure that in the years to come, Honda will once again, building on its continued presence here, recognise Britain as the best place to do business and to build some of the best vehicles in the world".

My Lords, that concludes the Statement.

3.12 pm

Lord Grantchester (Lab): My Lords, I thank the Minister for repeating in your Lordships' House the Statement concerning Honda. It is a serious situation and I am deeply sorry for the loss of jobs this will bring to the economy, industry and people in and around Swindon.

The Statement talks about individual company circumstances, the industry's business cycle and technological change. In the Government's myopia over the EU and Brexit, interpretations of its relative effect in this case will once again be played out across the analysis. But the Government cannot keep finding and hiding behind individual business circumstances to deflect their accountability. After all, there now appears mounting evidence. Today, Honda in Swindon. Yesterday, Nissan in Sunderland. The day before, Hitachi in Anglesey. The day before that, Toshiba in Cumbria.

This is against the backcloth of continuing fallout on the high street, with December's Christmas trading the worst in a decade. Twenty-three thousand shops have closed, losing 175,000 jobs, with HMV, House of Fraser and Poundworld recent casualties. Even in the Government's own public services around the country, the Carillion and east-coast rail franchises have also fallen apart.

This portrays more than individual misfortunes. The Government are responsible for setting the right economic environment—a conducive economic climate for business risk-takers to thrive in. The Government's false hopes in creating industrial sector deals do not appear to have deep foundations. Many appear to fall over as soon as they are initiated. We are seeing empty shops, empty industrial sites and empty promises.

Brexit and its effects cannot be disentangled as the Government seek to agree new international trade deals as the litmus test of Britain's new status. In contrast, the EU has just concluded a wide continental trade deal with Japan after seven years of negotiation. It will not have escaped the House's notice that the four names already mentioned as examples of company withdrawals from all around the country, from the north and north-west to the south-east, are all Japanese companies with long-term investments and horizons.

The long-term commitment given by a previous Prime Minister, Margaret Thatcher, to the people of Japan that the UK would be a borderless conduit into the European market will be understood to have been broken. Just when delicacy was required, the Japanese felt insulted by the approach of the Secretary of State for International Trade, with accusations of foot-dragging. As evidenced by the Trade Bill currently passing through your Lordships' House, trading partners do not simply accept a cut-and-paste transfer of the terms of EU agreements. As 29 March draws ever nearer, the certainty of failure is increasing. Business is raising its voice in dismay. Last week, Airbus spoke out on the catastrophe that a no-deal outcome would pose for it, even as the collapse of Flybmi was being felt in regional economies.

Returning to the Statement and the threat to mass-market car manufacturing in the UK, where 200,000 jobs are at risk, there does not appear to have been any close dialogue between the Government and Honda

concerning plans and how any necessary change could be facilitated. The Statement says very little. Indeed, there appear to be lots of dots in the text. When will the Government join up the dots, change their policy direction and take no deal off the table? Was it wise for the Government to withdraw grants to support the purchase of electric cars? Will the Government undertake a thorough impact assessment of the effects of cutbacks in the automotive sector in the West Midlands, Sunderland and Swindon on their local economies? Will the Government act on that report with supporting measures? Today's news is devastating for the people of Swindon, who found out about the situation only through social media. Unfortunately, the Government are today failing their citizens.

Lord Fox (LD): My Lords, as set out by the noble Lord, Lord Grantchester, last time it was Nissan, this time it is Honda. I wonder how many more such cases we will have to discuss before much longer. The Minister gave a spirited rendition of her department's attempts to whistle in the dark. This is a blow. Before I go on, I refer your Lordships to my interests in the register.

It is clear that Honda's Swindon plant has had challenging economics for some years. Last year's output of 160,000 vehicles was sub-scale, yet Honda avoided closure and kept Swindon open—so why close it now? I am afraid that I do not believe in coincidences. It is no good the Minister saying that the company ruled out Brexit as a cause. Brexit promises to raise costs for parts and reduce access to the EU, which is fatal for an already marginal plant. Honda knows what it is doing, but it is a polite Japanese company that likes to keep out of politics. It also hates to close factories and sack people. The current chaos in this country gave it licence to act.

Beyond the absolute disaster this poses to Honda workers, and many more in the supply chain, this brings into question the Government's industrial strategy. As Ian Howells, senior vice-president for Honda in Europe, said:

"We have to move very swiftly to electrification of our vehicles".

Mr Howells also said that the company had to "look very closely" at where to put its investment. He explained that it has to be in a marketplace of the size that Honda requires to make the investment worth while; he emphasised scale. The conclusion that comes out of today's announcement is that this does not include the United Kingdom.

That throws up at least three questions. First, given Mr Howells' assessment that the UK market is sub-scale, how does Brexit create a more attractive market for investors? Making the addressable market smaller does not make good sense for future inward investment. Secondly, Dyson is going to Singapore, Nissan is stepping back and now there is this news from Honda. Where does this leave the industrial strategy? The Minister is right to emphasise the very fast pace of technological change, so where does this leave the electrification strategy in particular? Unless what the Government are attempting to do has volume car makers located in this country to deliver future vehicles, it will all come to naught, but volume car makers are departing this country. Clearly, Honda does not buy the Government's plans, so what does the Minister know that makes her think that she knows better than Honda? Thirdly, Ford has warned the Government, and JLR clearly has issues. To date, Toyota is silent about Burnaston, but that plant is eerily similar to the Honda situation. Perhaps the Minister can tell us what conversations are going on with Toyota.

These are multidimensional problems and I concede that our Minister is not in control of all of the issues out there, but the Government can do some things right now to calm industry nerves. In the Statement the Government have said that they will do whatever it takes. Well, they could rule out a no-deal exit now and they could look again at remaining inside the customs union and the single market because that is what the car industry wants to hear. Today's announcement is devastating for Swindon, but how many more advanced manufacturing businesses will have to close their doors before the Government finally get this message?

Baroness Vere of Norbiton: I thank the noble Lords, Lord Grantchester and Lord Fox, for their comments. Some were very measured indeed—for which many thanks—but others I felt were a little harsh. I hope to explain why.

Let us start with the B-word. Although the leadership of Honda in Japan, Europe and the UK have specifically ruled out Brexit as the cause of this announcement, it is worth considering the impact of Brexit on the wider automotive sector. Of course, it remains our top priority to leave the EU with a deal that is good for business and provides the certainty that it needs. Within the Government and the Conservative Party, we feel that we are coalescing around a pragmatic compromise to achieve this deal. Unfortunately, the Labour Party seems to be more split now than it was 12 months ago, but I implore the remaining pragmatists in the Labour Party to back a deal because it is important for the industrial success of our country in the future.

We are determined to ensure that the UK continues to be one of the most competitive locations in the world for automotive and other advanced manufacturing. We have put forward a precise and credible plan for the future relationship with the EU and we are looking forward to working with the EU to put it into place. I have already made it very clear that Honda has made a series of global decisions. This is not unprecedented; it is a revision of the global manufacturing operations of a very significant automotive organisation. The current model, the Civic, is at the end of its production life cycle so it makes sense for Honda to cease operations in Swindon.

Much has been made of investment and whether that is a good thing by the Government at the moment and whether it is continuing. The Government have announced significant investment in this area. The automotive sector deal was announced in January last year. As a part of that, the Government and industry have committed £1 billion over 10 years to support the Advanced Propulsion Centre. The centre does research and development and it commercialises the next generation of low-carbon technologies, as well as keeping the UK at the cutting edge of low-carbon automotive innovation. We are talking about electrification, which is incredibly important. I beg to differ with the noble Lord: just because we do not manufacture hundreds of thousands

[Baroness Vere of Norbiton]
of electric vehicles here, although I would very much like us to do so, we can achieve innovations by using this money. Already 44 projects have received £770 million to help them to leverage and get the intellectual property which we can then put into new types of engines and drivetrains that will make sure that these electric vehicles work. That is incredibly important. Also part of the automotive sector deal is £80 million for driving the electric revolution, focusing on power electronics and navigation. There is also the £400 million that the Chancellor announced in the Budget last year for charging infrastructure. That project is coming along well.

It is not just the Government choosing to invest in our country; businesses are choosing to come here. The noble Lord mentioned Toyota. Just last year, in February, Toyota announced that it would build the next generation of its hybrid Corolla model at the Burnaston factory in Derbyshire. The Secretary of State went to visit it, and it is now coming online. The new engines for this model will come from the company's Deeside factory in north Wales, which will also help secure 3,000 jobs at this site. Toyota is not alone. Aston Martin has announced that the St Athan facility will become the home of its electric vehicle range. In February 2018, Greg Clark opened YASA's new 100,000-unit electric motor production facility in Oxford. This goes back to what I said earlier to the noble Lord: it is not just about building the entire car nowadays but about building the components. If we have the ability to create these new engines, we must make sure that we use it.

Of course, we are in close dialogue with the car manufacturers; we were in close dialogue with Honda. I am sure noble Lords will understand that Honda's announcement was hugely market-sensitive but it leaked anyway. That was hugely disappointing, mostly for those families who found out what was going to happen at Honda from the media, which I feel is wrong. The Secretary of State is now in close contact with Honda—as indeed he always is, but now more specifically—on building this task force to make sure that we get the skills and experience that are there into other manufacturing facilities in future.

I felt that some of the comments made by the noble Lords, Lord Grantchester and Lord Fox, were a little harsh. I recognise that there are mixed fortunes in the economy at the moment but all noble Lords who have ever run a business know that it goes up and down. Some businesses are not viable any more; others come to fruition. We must note that employment is at a record high and wages are growing; those are both very good things. Over half of SMEs expect to grow next year, and GDP is growing at 1.4%. I do not believe that this picture is of the dismal nature painted by the noble Lords.

3.27 pm

Lord Borwick (Con): My Lords, I declare my interests on the register as a manufacturer of carbon fibre parts for the automotive industry. Does the Minister welcome the comments on "The World at One" today from His Excellency the Japanese ambassador, who said that—while the closure of the Honda factory is not about Brexit—Japan looks forward to an even more liberal and ambitious free trade agreement with the UK than the one it has signed with the EU?

Baroness Vere of Norbiton: I thank my noble friend for that question. I was not aware of those comments, nor his question, but I certainly thank him for it. Our approach is that we will continue to be a welcoming environment for Japanese companies. We have had a long and successful relationship with Japanese companies stretching back over decades, and if we are able to strike a good free trade agreement with Japan in future, that will be all to the good.

Lord Davies of Stamford (Lab): My Lords, I am afraid I thought that the complacency in the Statement and in the Minister's answers was really quite horrific. I remind the Minister that unemployment figures are lagging indicators. The leading indicators, such as inventories, look extremely sick. Is it not the case that the Government have been warned from this side of the House consistently over the past two years that the course they were pursuing was going to undermine the basis for manufacturing in this country? How many more of these "devastating" announcements—I use the same epithet that the Minister herself used—will we have to hear, and will the people of this country have to suffer, before the Government realise the error of their ways?

Baroness Vere of Norbiton: I beg to differ with the noble Lord: there was certainly no complacency on my part, and I am sorry if he felt that was the case. The Government are absolutely committed to getting a deal that supports all businesses and takes away uncertainty. We now know the steps we need to take to achieve that. I come back to the use of the word "complacency". It is certainly not the case. We will set up a task force for the staff in Swindon to look at how we can make sure they have successful future careers and we make use of their skills and experience. We have come very quickly to a stage where we have assembled all the key players: Unite the Union, the key trade union, is involved; local MPs and the local borough council are involved; the LEPs are involved. I am convinced that, if we can all work together, those 3,500 skilled and valued employees in Swindon will be very attractive to other employers.

Baroness Bloomfield of Hinton Waldrist (Con): Can my noble friend say whether Honda will continue with the development of its hydrogen fuel cell technology in the UK?

Baroness Vere of Norbiton: Unfortunately, I cannot, because I do not know anything about its hydrogen fuel cell technology. I will write to my noble friend.

Lord Watts (Lab): My Lords, can the Minister be clear on what Brexit deal she would like this side to support? Is it the Prime Minister's deal, which she did not vote for, or a mystical deal that does not exist?

Baroness Vere of Norbiton: Perhaps the one that will be brought to a vote in the near future.

Baroness Randerson (LD): My Lords, the best assistance the UK Government can give to our flagging car industry is to encourage sales of more electric vehicles. The Minister has outlined measures that the Government have taken to encourage production, but they have failed to do anything to encourage people to purchase such vehicles. Can the Minister explain when the Government will do something to encourage sales?

Baroness Vere of Norbiton: My Lords, the best way to encourage sales is to make sure that the cars represent value for money. One of the most difficult challenges in the electrification of cars is the battery, as I am sure all noble Lords know. That is why the Government committed £246 million to the Faraday battery challenge. This will make sure that the UK is at the forefront of developing and designing the batteries that we need for these cars. Eventually, the price of the car will come down as the batteries become more effective and their range improves. They will, therefore, become much more attractive to consumers as the cost per car falls.

Lord Cormack (Con): My Lords, the Secretary of State has repeatedly and bravely made it plain that for this country to leave the European Union without a deal would be a disaster. Would my noble friend thank the Secretary of State for his steadfastness in proclaiming this and suggest that he has a quiet talk with those members of our party who support the ERG and whose wish is to crash out without a deal?

Baroness Vere of Norbiton: I thank my noble friend for his comments. Nearly all noble Lords will agree that no deal would not be a good outcome for the automotive sector or the economy as a whole. The Government are working extremely hard to get a deal. In the meantime, we are doing what any responsible Government would do and putting in place the necessary legislation for no-deal exit.

Lord Lea of Crondall (Lab): My Lords, was it not Baroness Thatcher who said that, for Japan, one of the unique selling features of Britain was that it was in the European Union, part of the customs union and part of the single market, and therefore cars could be sold freely around the European Union? What part of that analysis is no longer true?

Baroness Vere of Norbiton: I am sure Margaret Thatcher's analysis was correct in her time. However, it is also the case that Britain remains a very strong place for inward investment. Indeed, I think it was Deloitte that earlier this year analysed 3,600 projects that have generated £140 billion of capital for our country—that has obviously come from all over the world. The UK is still an attractive place for inward investment, and we hope it will continue to be.

Lord Lilley (Con): It is always sad when people lose their jobs, whatever the reasons, but let us get some facts straight, including those studiously ignored by the Opposition Benches. First, Toyota is going ahead with producing the most popular model of car in the world in this country. That is good news ignored by Liberal and Labour Benches. Secondly, Honda is also closing down its factory in Turkey, which is within the customs union, showing that customs unions are not a magic solution to all our problems. Thirdly, it is worth putting on the record that Honda had the lowest value added in this country: 58% of the value of its Civic is imported from Japan, 26% is made in the UK and only 16% of its components are imported from the rest of Europe. Does that not show that you can run a just-in-time production line with the bulk of your components coming through customs procedures, as Honda has been doing?

Baroness Vere of Norbiton: My noble friend makes a number of interesting points. Certainly, the plant in Turkey is also being closed by Honda as it focuses its operating facilities in Japan and the US. Sadly, there will also be 1,100 job losses in Turkey. We have to make sure that if customs processes are in place, they are as frictionless as possible. Some interesting facts—I found them interesting anyway—are that the Honda plant has to have 2 million components delivered every single day in 350 lorries and that it has one hour's worth of components lineside. Noble Lords will therefore agree that making sure that lorries can get in and out of plants and across borders is important.

Lord Wigley (PC): My Lords, does the Minister accept that not only 3,500 direct jobs are affected but as many 30,000 jobs in supplier industries, as reported this morning? Given the extent of this disaster—while welcoming the Secretary of State having recognised that Brexit has had an effect on industrial investment—at what stage will the Government reconsider the whole unfortunate Brexit episode if this is to be the consequence?

Baroness Vere of Norbiton: The noble Lord mentioned the supply chain. Forgive me for not mentioning this earlier but one of the key strands of work for the task force will be to identify the supply chain. At the moment, we are not clear on exactly how many jobs are involved. I know that some companies are 100%-owned by Honda and there will inevitably be job losses there. For others, Honda represents one of their customers and we need to understand the impact on such companies and whether there are alternative sources of revenue and investment that they can make use of.

Lord Purvis of Tweed (LD): My Lords, the Department for International Trade's state-of-play document states that it will not be possible for there to be a continuity agreement on trade with Japan before 29 March. That means that if we leave without an agreement, we will not even be operating on certified WTO rules. In response to Honda's announcement today, the motor industry has asked the Government to categorically act now to rule out no deal to prevent the industry and others preparing for a catastrophic set of circumstances. Will the Government listen today to the motor industry and categorically rule out a no-deal Brexit so that the industry and others can focus on what is best for the industry and jobs in the country?

Baroness Vere of Norbiton: As the noble Lord will know, no deal is the legal default. It is not the Government's position that we would like no deal: we categorically do not want that to happen. However, to avoid no deal, one must have a deal. Therefore, as I said, I implore all the pragmatic and sensible people left in the Labour Party to support the Government's deal so that we can give industry the certainty it needs.

Lord Lansley (Con): My Lords, I draw attention to my entry in the register of interests as UK co-chair of the UK-Japan 21st Century Group. We tend to see everything through the prism of the Brexit debate but in this instance it is not correct. My noble friend is right to draw attention to the closure of the Honda Civic plant in Turkey because it illustrates that this is not a Brexit-related decision as such. However, there is a Europe issue: why should a Japanese manufacturer think that Europe will be the second largest market for electric vehicles in the future, but that it does not need to manufacture in Europe to serve that market? We have to address that issue, and the best answer to it is in the context of a free trade agreement with Japan, so that it can sell to us and we have the equal opportunity to sell to it. Will the Government listen carefully to what Prime Minister Abe has said about the importance of the withdrawal agreement and a transition period to enable us to enter into such an agreement with Japan?

Baroness Vere of Norbiton: Those are wise words from my noble friend Lord Lansley. The decision by Honda will clearly have been reached after some very detailed financial analysis of the cost benefit of manufacturing in various parts of the world. Our relationship with Japan will certainly be very important and constructing a good free trade agreement with it will, I am sure, be towards the top of the list of work that Liam Fox will have to do. I will pass my noble friend's comments on to the department and I am sure they will be well received.

Lord Campbell-Savours (Lab): My Lords, does the Minister accept that car manufacturers will build electric cars only in the event that charging infrastructure is in place? The Government have today announced £400 million, which is peanuts, for charging appliances—maybe it was preannounced but it was repeated today and the Minister referred to it. I estimate that to be about 20,000 charging units. How can we expect manufacturers to stay in a market where the Government do not back them up with the very infrastructure needed to ensure that sales of electrical cars make that worth doing in the United Kingdom?

Baroness Vere of Norbiton: I beg to differ with the noble Lord: £400 million is certainly not peanuts but a significant investment in the charging infrastructure in our country. We also have the plug-in car grant. Based on the many people I know who have electric cars, I think those drivers will have their own charging points at home and will not need to use charging points outside the home. As innovation in batteries continues and their range improves, I would expect that to be more the case.

Lord Brabazon of Tara (Con): My Lords, will my noble friend acknowledge that the future of diesel has been an issue in this, as it was with Nissan? Owners of diesel cars have been demonised in recent years, probably quite rightly, but I am told that a modern, brand new diesel car is just as clean as a slightly older petrol car. The problem is that there is a great deal of uncertainty in the industry, and particularly with the general public, about whether it is all right to buy a diesel car at the moment. This is causing problems for the industry. Can my noble friend assure me—I fear she will not be able to—on whether, if I bought a new diesel car today, there would be any restrictions, taxes or charges put on that car in the next five years that would affect its second-hand value? That is what is causing the problems in the diesel car market.

Baroness Vere of Norbiton: While I would love to give my noble friend that assurance, it is clearly not possible for me to do so from the Dispatch Box. The number of new diesel cars is declining at the moment, although it should be pointed out that the proportion of diesel cars that Honda was making in Swindon was only around 10%, which is not a huge proportion in the context of its total production. However, there has to be a balance and the move to electric cars is a good thing, once we can improve their range. We should focus our energies on making sure that electric vehicles are the sort of vehicles that consumers need.

Baroness Altmann (Con): My Lords, I completely support my noble friend's view that electric vehicles are important for the future of our industrial strategy. But can she explain why, this year, the company car electric vehicle tax has gone up from 13% to 16%? That will clearly put people off buying an electric vehicle. Furthermore, I implore her to go back to the department and echo the calls from around the House for the Government to take no deal off the table. It may be the legal default but there is a legal mechanism for withdrawing our notification to leave, by revoking Article 50 unilaterally.

Baroness Vere of Norbiton: My noble friend is right to say that the electric car tax increases from 13% to 16% but it will then drop from 2020, so the effect will be short-term. However, if I get any more information on that, I will certainly share it with her.

Lord Bridges of Headley (Con): My Lords, will my noble friend please clarify when Parliament will be told what tariffs will apply to Japanese imports in the event of no deal?

Baroness Vere of Norbiton: I thank my noble friend for that question. Unfortunately, I cannot tell Parliament what tariffs will apply or when they will be published. Noble Lords will be aware that a number of things will have to be put in place if no deal becomes imminent. Obviously, most of us hope that that will not be the case but certainly the level of any tariffs, if any, will be one of the important components.

Lord Brooke of Alverthorpe (Lab): My Lords, does the noble Baroness feel, and share, the sadness of the House at our impotence? Does she recognise that making an appeal to the Labour Party to help the Government deliver their policy is probably a waste of time? Does she recognise that she should listen to the noble Lord, Lord Lansley, take his message to the ERG and persuade its members that they are the people who can ensure that we find a solution to the problem the country currently faces?

Baroness Vere of Norbiton: My Lords, some members of the Labour Party already support the Prime Minister's deal, and I do not think it is out of the question that one or two more might see that it is the way forward for our country. As I have said, and say again, the Government's position is that we do not want a no-deal Brexit. I agree with the noble Lord that there are certain members of my own party who also need to look very carefully at the potential outcomes. They need to weigh up the options and decide accordingly.

Baroness Walmsley (LD): My Lords, I noticed that the Minister did not answer the point made by the noble Baroness, Lady Altmann, about the Government's options in relation to no deal. A few minutes earlier she fell into the trap, which many Ministers fall into, of stating something that is not correct: that the only alternative to no deal is a deal. That is not correct. We have the opportunity to unilaterally withdraw Article 50, to request an extension or to put the matter to the people of this country again. Why do the Government keep saying something that is incorrect? They put 29 March 2019 into the legislation and they can remove it but stubbornly refuse to do so.

Baroness Vere of Norbiton: I thank the noble Baroness for the exposition of Liberal Democrat policy.

Baroness Walmsley: It is a fact.

Baroness Vere of Norbiton: I was merely stating the Government's position. We believe that the option on the table is the best one for our country and therefore we would appreciate its support.

Healthcare (International Arrangements) Bill

Committee (1st Day)

3.48 pm

Relevant documents: 39th and 47th Reports from the Delegated Powers Committee, 18th Report from the Constitution Committee

Clause 1: Power to make healthcare payments

Amendment 1

Moved by ***Baroness Thornton***

1: Clause 1, page 1, line 3, leave out "outside the United Kingdom" and insert "in a European Economic Area country or Switzerland"

Baroness Thornton (Lab): My Lords, I start by welcoming the Minister to her first experience of the House of Lords in Committee. I hope that it will not be too painful an experience and I wish her well over the next two days in Committee.

In moving Amendment 1, I shall speak also to the other amendments in this group. These amendments deal with the powers and scope of this legislation. Amendment 1 reduces the scope of the Bill, enabling the Secretary of State to make healthcare agreements with the EEA, European Union and Switzerland only. Amendment 2 is a paving amendment limiting the scope of the Bill. Amendment 3 in the name of the noble Lord, Lord Marks, addresses the exercising of the power to make healthcare payments. Amendment 5 would prevent regulations being made unless they specify the process for settling disputes, including the names of responsible bodies and their jurisdiction and procedure.

Amendments 12, 13 and 14 are paving amendments limiting the scope of the Bill. Clause stand part and Amendment 44 are both in the names of the noble Lords, Lord Patel and Lord Kakkar, and the noble and learned Lord, Lord Judge. I say to the Minister that had these three distinguished noble Lords put down an amendment on a Bill that I had been dealing with, I would pay close attention to what they had to say; certainly, the rest of us will be doing so. Amendments 45, 46 and 47 are all paving amendments concerning the scope of the Bill; they include changing its title to reflect its new scope.

The amendments in my name and that of the noble Baroness, Lady Jolly, as well as that in the name of the noble Lord, Lord Marks, clause stand part and Amendment 44, are all expressions of concern to bring the scope of the Bill in line with the issue we face today, with increasing urgency: that is, the looming date of exit from the European Union and its implications for reciprocal healthcare. We need to discuss what the legislative framework should be to facilitate reciprocal healthcare in the circumstances of both Brexit with a deal and Brexit without a deal. What are the appropriate powers needed by the Government under each of these circumstances?

Unfortunately, what we have before us is a Bill that casts its net much wider than the European Union. Noble Lords do not have to take my word for this—the House of Lords Constitution Committee, whose report was published yesterday morning, says:

"While the exceptional circumstances of the UK's departure from the European Union might justify legislation containing broader powers than would otherwise be constitutionally acceptable, this does not extend to giving effect to new policy unrelated to Brexit. The Bill should be limited to the making of arrangements for future reciprocal healthcare arrangements with countries that participate in the existing European Health Insurance Card scheme".

The DPRR Committee noted in its first report in November the "breath-taking scope" of this Bill, commenting that,

"the scope of the regulations could hardly be wider".

The committee said:

"It is one thing to introduce skeletal legislation needed in the event of no EU withdrawal agreement. But this Bill is as much to do with implementing future reciprocal healthcare agreements entered with non-EU countries. Indeed, it goes much wider than

[Baroness Thornton]

merely giving effect to healthcare agreements and covers the provision of any healthcare provided by anyone anywhere in the world."

It concluded that the powers in the Bill were,

"inappropriately wide and have not been adequately justified by the Department".

In other words, let us leave making healthcare arrangements with the rest of the world until we have dealt with the issues before us today: the 27 million EHIC holders and the healthcare needs of several hundred thousand fellow citizens in both the EU and UK.

When addressing the issue of the scope of the Bill in relation to reciprocal healthcare agreements with states other than the EU, the Minister says in her letter sent to noble Lords last night that,

"it is appropriate that we take this opportunity to consider how we may want to strengthen these"—

that is, other agreements—

"and seize the opportunities that a more global approach following EU exit can offer".

The letter goes on to say that the Bill has an important forward-facing policy aim. I realise that these are seductive words, as we all want to be part of forward-facing policies—of course we do—and, post Brexit, there is no doubt that we will need to address several issues, which will include healthcare trade policy. The Minister is at pains to assure us that the Government are committed to public service and to ensuring that the NHS is free at the point of use and adequately funded. Perhaps we can have a discussion some other time about the adequacy of the funding, but the Minister was firm in her statement about this matter at Second Reading, and I would have expected no less. However, her assurances miss the point which I made then and will make again for clarification, and which I think the Minister needs to address. The scope and powers of this Bill enable the Secretary of State to arrange contracts with providers to our NHS from anywhere. The noble Baroness has not denied this, either at Second Reading or in the letter she sent yesterday. This matter concerns those who might be suppliers of services and goods to our NHS. While it might be the legitimate scope of a trade Bill, or even a future healthcare trade Bill, it is not appropriate in this Bill, which seeks to protect and ensure reciprocal healthcare across the European Union.

My contention at Second Reading and my contention now is that the breadth of scope which introduces new Brexit policy, combined with the "breath-taking" powers in this Bill, pretty much confers on the Secretary of State the ability to make deals with anyone he wants to anywhere in the world. That is a matter for concern. Is it possible for the Secretary of State to undertake such deals? Perhaps the noble Baroness could tell us. Certainly, as was shown in the first Delegated Powers and Regulatory Reform Committee report in November, and repeated in its report last week, the Government have not yet convinced that committee and they certainly have not convinced these Benches.

The Constitution Committee takes the view that the Bill goes beyond the powers necessary to enable the Government to respond effectively post Brexit on healthcare arrangements and,

"allows for the creation of new policy relating to healthcare agreements with countries outside of the EU".

I think the Constitution Committee is correct, particularly when it refers to the powers in the Bill and suggests that they should not extend to give effect to new policy unrelated to Brexit.

At Second Reading, I said to the Minister that the Government would have to convince the House—and certainly these Benches—about the new policy agenda, which is accompanied by huge powers which encompass the world. So far the Minister has not convinced me, but I would say that that is not her main challenge. She has not convinced either the DPRR committee or the Constitution Committee and that is a matter for major concern. I beg to move.

Lord Patel (CB): My Lords, before addressing the amendments in my name and the names of my noble and learned friend Lord Judge and my noble friend Lord Kakkar—the clause stand part debate and Amendments 5 and 44—I welcome the Minister to the House and to her first experience of Committee. I sympathise with her, as she has to take this Bill through; she was not part of it from the very beginning, as it had already passed in the House of Commons. However, I have no doubt that she will do well.

I start by saying that if we were not in these times of uncertainty about leaving the European Union, this Bill—if it had been brought to the House in the state that it is in today—would have received the most stringent scrutiny and would have been drastically amended. However, because we do not want UK citizens who live in, work in and visit the European Union to feel the threat of not getting healthcare, we might be more constrained in the way we deal with this. I accept that this Bill is essential to serve the needs of UK citizens who live in EU countries and EU citizens who live in the United Kingdom, allowing them to benefit from the reciprocity of the current healthcare arrangements.

I have to say that, in all its clauses, this Bill is quite wide in its power and scope and goes way beyond what is required to deliver the EU arrangements. I could go on, but the House's Delegated Powers and Regulatory Reform Committee laid it out much more clearly, and I hope my noble friend Lord Lisvane, who is on that committee, has something to say. He nods, so I am sure he will join in. I summarise what the committee said regarding the Bill:

"There is no limit to the amount of the payments … no limit to who can be funded world-wide … no limit to the types of healthcare being funded … regulations can confer functions",

anywhere in the world. The committee continued:

"The regulations can delegate functions to anyone anywhere".

That shows how wide the Bill's scope is.

4 pm

The worry about the wide powers the Secretary of State will have was added to when the Minister said in Committee in the Commons:

"The Bill will support the potential strengthening of existing reciprocal healthcare agreements",

and that it will add to the number of countries,

"as part of future health and trade policy".—[*Official Report*, Commons, Healthcare (International Arrangements) Bill Committee, 29/11/18; col. 24.]

That worried some people who read it. Is this a Bill about healthcare provision, or one that might include trade policy? The Minister also suggested that the arrangement powers would be appropriate and would,

"support wider health and foreign policy objectives".—[*Official Report*, Commons, Healthcare (International Arrangements) Bill Committee, 29/11/18; col. 22.]

I know he might not have meant to say that, and the noble Baroness may well clarify what he meant. It is possible he did not mean to say it that way, in which case I look forward to the clarification the noble Baroness might provide.

There is concern about the breadth of powers in Clause 2 and about the lack of future scrutiny by Parliament. My noble and learned friend Lord Judge will no doubt say more about Amendment 44, which relates to what we regard as a sunset provision. I recognise that that might cause a problem in the Bill, partly because it would mean that any healthcare arrangements we currently make with the EU for our citizens to be looked after would have to be revisited, but I would like a discussion and a debate about why that might cause a problem. I have no doubt that my noble and learned friend will expand on it. I will come back to it at a later stage.

At this stage, suffice it to say that while opposing the question that Clause 1 stands part of the Bill might be regarded as a wrecking amendment, it is not. It would be wrecking only if a vote was called and I won it. I do not intend to call a vote, but I put it on the Marshalled List so we could have a wider debate.

Lord Judge (CB): My Lords, this should be Brexit legislation. If it were, in accordance with the withdrawal agreement, subject to minor changes, the established arrangements for healthcare between the United Kingdom and the European Union would continue during the transitional period until December 2020, 21 months after exit day, which is where the suggestion for a two-year sunset provision obtained.

Without the withdrawal agreement, those arrangements would collapse next month, so appropriate provision is undoubtedly needed. I have no difficulty with legislation that makes provision against the potential consequences of such a collapse, which would be awful. The objective—to cure that problem—is laudable. Nevertheless, I have put my name to something that, as my noble friend Lord Patel said a few moments ago, if carried through would be wrecking. In fairness to the Committee, I must explain this apparent inconsistency.

I sometimes overhear my grandchildren when they do not think I can hear them, saying that Grandpa is banging on about things. Noble Lords have listened to me with great patience banging on about these issues: constitutionally flawed legislation, skeleton Bills, rule by regulation and Henry VIII clauses. I have grumbled and griped, and will go on grumbling and griping about legislation of this kind, because it simply reinforces the steady erosion—indeed, the systematic corrosion—of the arrangements for parliamentary control and scrutiny of the exercise of executive power. Every time Parliament enacts legislation in this way, including today, we are complicit in the accretion of power to the Executive. Without parliamentary consent, it could not happen, so we have become habituated to these processes and should no longer continue to be.

My concern is not with Brexit or no Brexit, or with deal or no deal. I recognise that at the moment it is hard to conceive of the possibility that there is anything more important to the future of the country than Brexit, but there is. Hard as it is for us to face the fact now, with time all the turbulence surrounding Brexit will inevitably settle down and abate. When it does, the need for proper constitutional arrangements which provide reasonable constraints on executive power will be an abiding issue and, unless we protest now, as I am protesting, it will come to be assumed that legislation framed in the way this Bill is framed will be entirely acceptable constitutionally, when constitutionally it is dangerously flawed.

The way in which this legislation extends way beyond our departure from the EU has been discussed and analysed by the noble Baroness, Lady Thornton, and I agree with her. But may I be forgiven for underlining the longer-term issues? As has already been recorded—it bears repetition—the Delegated Powers and Regulatory Reform Committee observed that the provisions in Clause 2 had "a breath-taking scope". Can we just contemplate those words? That is a startling description but, having read the Bill, I do not see how that description is anything other than honest, balanced and realistic.

As my noble friend Lord Patel has pointed out, the amount of payments which may be made to achieve the statutory objectives in the regulations is unlimited. The power to describe those in respect of whom payments may be made is wholly unconstrained. As the committee observes, it could provide funding for healthcare for anyone, anywhere in the world; for holidaymakers in the Galapagos or Guadeloupe, countries far away from the EU, and not places to which men and women on universal credit can afford to go.

The power is unconstrained in relation to the type of healthcare which may be funded. On one reading of it—certainly I read it this way—it would allow the Minister to make payments abroad for treatment which would not be available under the National Health Service here in England. As my noble friend Lord Patel recently underlined—the amendment to which he referred dealt with this—the functions to achieve wide objectives can be delegated and exercised by anyone, anywhere in the world, and the powers and the discretions can be conferred by the Minister on whomsoever the Minister chooses. Clause 2 alone has nine regulation-making powers of, to adopt the committee's observation again, "the widest possible scope". But even that, apparently, is not enough. This list is incomplete. The Bill expressly provides that even those nine regulation-making powers are merely, to use the word in the text of the Bill, "examples". Sadly, and almost unbelievably, without further primary legislation, ample scope exists in the regulations for regulations to create yet further regulations, presumably to cover something that might arise in the imagination of the then Secretary of State some years—however many it may be—down the line.

[LORD JUDGE]

This is all before we get anywhere near Clause 5, which is a power, among other things, to dispense with primary legislation, overlooking the fact that King James II was chucked out of the country because he sought a dispensing and suspending power. That was the whole basis of the Bill of Rights. The clause resurrects that ogre, Henry VIII, in subsection (4), without recognising the distinction expressly made in the European Union (Withdrawal) Act 2018 between principal and minor retained direct EU legislation. It overlooks or ignores the careful scrutiny procedures for which provision was made in the withdrawal Act itself.

A late Victorian, or maybe Edwardian, professor of history described Henry VIII as "the mighty lord who broke the bonds of Rome", but even Henry VIII was compelled to do it through express, primary legislation enacted in the Reformation Parliament. On one view, it may be a misdescription to call this a Henry VIII clause. Bearing in mind that it applies to both UK and EU primary legislation, perhaps in this context it is a Henry XVI clause.

This is serious. I will provide the context to the use by the Delegated Legislation Committee of the word "breath-taking"; it did not conjure this out of the blue. I could go right through that context, but it would take me too long and noble Lords would not be interested. Just before this Bill, the committee had examined the Agriculture Bill. That Bill was mainly about regulation-making powers, vesting powers in the Executive. The committee expressed its "dismay" at those proposals. It underlined how parliamentary scrutiny was "minimised" and deplored Bills relating to our exit from the EU which were being put together in this fashion. Well, our Bill, suffering from all the flaws to which the committee had just referred, was introduced into the House of Commons nine days later. Unsurprisingly, the earlier "dismay" of the committee became its breath being taken away. What description comes next? Disgraceful? Shocking? What words are appropriate for a committee of this House to use about a government proposal which completely fails to attend to its own earlier reports?

In passing, I immediately recognise—and the dates will show—that none of these things happened on the Minister's watch. At the Principality next week, in a somewhat different context, someone is going to be given a hospital pass. She has received a hospital pass here and I hope she realises that I am sorry that she personally has had to endure these criticisms of the Bill.

I am a member of the Constitution Committee, but I am speaking for myself. I merely underline that it is not just the Delegated Powers Committee that is critical of this way of legislating. The Constitution Committee is equally disturbed, as the noble Baroness, Lady Thornton, summarised a few minutes ago; I shall not go through it all. Noble Lords have to ask themselves what on earth the Executive think these committees actually do. What do they think that their point is? I assure the House that we do not sit around talking about cricket or rugby or anything else: we address these issues. I can speak only for mine, but I am absolutely sure that this is also true of the Delegated Powers Committee. Both committees speak on a cross-party basis. I am about to break a most important confidence; I am going to say something about our discussions. In my four years on the Constitution Committee, I have not detected a single moment where any of the discussions saw a division arise even wide enough for a piece of paper to go through on party-political lines. These committees work to achieve the best that they can for the legislative process. The message from these committees about the dangers of statutory provisions that divert power by the misuse of regulation-making powers is a constant concern for both committees, as it is for the secondary legislation committee.

4.15 pm

Time after time the message to the Government is clear and unequivocal. Time after time, sometimes all together, one or other of the committees deplores the present approach to the legislative process. Yet the starting point, too often—and for this Bill in particular—is that the balanced views expressed by these committees, each of them working across party lines, are utterly ignored. Well, they are not quite ignored. From time to time the Government will say, as if they are offering us a most wonderful reward, "You can have an upgrade. It can be moved from a negative into the affirmative procedure". We are supposed to be thrilled and beguiled by the idea that affirmative procedure represents the same or much the same as parliamentary scrutiny—but it does not. Even if you have the affirmative procedure, it is one look, one examination and no power to amend a single one of any of the regulations that are included.

The harsh reality is summarised in the fact that it is exactly 40 years since the other place rejected a statutory instrument—40 years. Commemorative stamps are printed for all sorts of occasions. Maybe we should have a commemorative stamp to remind us that the power of rejection exists, or perhaps, unless we wake up to the reality of what is going on, it would be a memorial to more glorious, happy days when scrutiny was properly undertaken.

Noble Lords have been very patient with me; I will try not to bang on any longer. If we had time and exit day was further away, I should propose that this Bill should be sent packing back to the Government to redraft it and produce a Bill that is constitutionally acceptable. That option is not open. The healthcare of our citizens in Europe, and EU citizens here, must continue and survive. I shall support the amendments proposed by the noble Baroness, Lady Thornton. This breath-takingly flawed Bill undoubtedly requires the further safeguard of a sunset clause. This would enable the Government the opportunity to rethink their legislation—instead of having it cast straight back on to the Minister's desk—and come back to the House with fresh proposals before the end of March 2021, when there really should have been enough time to produce an acceptable Bill. Once the Brexit legislative crisis has diminished, Bills like this one should indeed be wrecked.

Baroness Jolly (LD): My Lords, I thank the Minister for her letter, but I rather feel that it posed as many questions as it has answered. Much of what I was going

to be talking about with this group of amendments has been said very elegantly by the noble and learned Lord, Lord Judge. However, I am supporting Amendments 1, 2, 12, 13, 45, 46 and 47. As has just been said, your Lordships' House has many committees. The refrain of the Second Reading was the expression "breath-taking scope". The 47th report of the Delegated Powers Committee continues in the same vein:

"Under the powers in clause 2(1)(a) and (b) of the Bill, the Secretary of State could fund the entire cost of mental health provision in, say, the state of Arizona as well as the cost of all hip replacements in, say, Australia. If this might appear fanciful, we assess powers by how they are capable of being used, not by how governments say that they propose to use them. The fact that the powers could be used in these ways suggests that they are too widely drawn".

When I read the Bill, parts of it read very much like a trade Bill. We believe that reciprocal arrangements with other than EU states are better dealt with one-to-one, much like those with Australia and New Zealand, for example. I am not convinced that arrangements with other than EU states will all fit in the same pattern. If the Minister wishes to bring a subsequent Bill for worldwide minus EU, we would be happy to look at it. Will she confirm that the Bill before us has been drawn up to fit in with future trade agreements across the world? Would any further secondary legislation be required? What parliamentary scrutiny would there be and are there any red lines?

Lord Brooke of Alverthorpe (Lab): My Lords, first, I apologise to the Committee for not having been able to speak at Second Reading. Secondly, I welcome the Minister to her new post and wish her well with it, although I am sorry, like the noble and learned Lord, Lord Judge, that she has been given a hospital pass on this one. I shall speak briefly in support of Amendment 1 in the name of the noble Baroness, Lady Thornton. I am sorry to hear that the clause stand part may not be pushed to a vote, but perhaps the way that the debate goes may necessitate that.

My interest goes back before the Minister came into the House. I asked a series of questions about the proposed trade agreement between the UK and the USA. I have been particularly concerned, as have many in the health industry, that this agreement will open up an opportunity for the USA to come in very strongly indeed. The health industry in America is a very big part of the economy, and one area in which it has not been able to make great movement is within the NHS. Some of us have been concerned that the trade agreement would open that up, and we have been seeking to have it taken off the agenda. I have tabled Questions asking for it not to be on the agenda, and the Government have so far not been prepared to give any such assurance. I have contemplated moving an amendment to this Bill to ensure that, while the Minister is saying that this has nothing to do with that, she could accept such an amendment and set my mind at rest very quickly.

I read very carefully what she said in response to similar criticisms of the Bill at Second Reading:

"The Government are completely committed to the guiding principles of the NHS—that it is universal and free at the point of need. Our position is definitive: the NHS is not and never will be for sale".—[*Official Report*, 5/2/19; col. 1488.]

She was not saying anything there with which I would disagree, but one worries about trade agreements whereby people can effectively take over and, while not owning it, can run parts of a major utility such as the NHS. That is why some of us have been seeking an agreement that it would not be on the agenda at all and the NHS would be left as it is, free of any trade agreement, particularly with the United States. I would be grateful, therefore, if the Minister could reassure me that in no way would a trade agreement with the USA have the NHS as part of it. If not, I may have to go away and see whether I can bring back an amendment on this issue.

Lord Ribeiro (Con): One can see why, in the event of a no-deal Brexit, the amendment moved by the noble Baroness, Lady Thornton, would be attractive, as it focuses our minds on restoring reciprocal healthcare arrangements with the EU 27, other EEA countries and Switzerland. As I said on Second Reading, a disproportionate number of UK citizens benefit from the S1 scheme compared with EU citizens in the UK, so there is much to lose in a no-deal scenario.

In March 2018, the UK reached an agreement in principle with the EU on the implementation period which would ensure continuation of the current reciprocal healthcare rights until 31 December 2020. If we crash out, there has to be a plan B which allows us to consider reciprocal healthcare arrangements with other countries. Although I understand the need to write "international arrangements" into the Bill, it presents problems. They were identified by the Delegated Powers and Regulatory Reform Committee, as mentioned by the noble Baroness, Lady Jolly, which described as "fanciful" the idea of providing the Secretary of State with wide powers to fund the costs of healthcare anywhere in the world—for example, as the noble Baroness described, mental health provision in Arizona or all hip replacements in Australia.

This is far too wide, and the focus of international arrangements should in the first instance be applied to Britain's 13 overseas territories, far-flung as they are—some in the Falklands and the Galapagos, as the noble and learned Lord, Lord Judge, stated—but the closest of which is Gibraltar: close to us and close to Europe. Ninety-six per cent of Gibraltarians voted to remain in the EU, and our focus should be to ensure reciprocal healthcare for those overseas countries for which we have responsibility. Post Brexit, whatever the arrangements are, we can then think about the wider international arrangements; but for now, we should focus on the areas for which we have responsibility.

I hope that my noble friend can provide assurances as to how best to protect the overseas territories in the event of no deal and give further consideration to what the Government intend "international arrangements" to cover.

Lord Lisvane (CB): My Lords, it is a great pleasure to welcome the new noble Baroness to the Front Bench and I echo the welcome offered by other noble Lords. I am only sorry that the first task that has fallen to her is, as described by my noble and learned friend Lord Judge, a hospital pass. I prefer to see it as a sort of legislative grenade with the pin out.

[Lord Lisvane]

As my noble friend Lord Patel mentioned, I am a member of the Delegated Powers and Regulatory Reform Committee, but of course I do not speak on its behalf: this is an entirely personal set of observations. Delegated powers of unacceptable scope and inadequate arrangements for scrutiny are simply getting worse. Noble Lords may recall our extended debate on the EU withdrawal Bill in Committee and at Report, when noble Lords rightly became very agitated about the use of the word "appropriate"—widening the way in which ministerial powers might be used—as against "necessary", which provided some sort of objective test as to whether those powers should be deployed. Amendments which would have fixed that went down the oubliette in the Commons. With my noble friend Lord Wilson of Dinton, I declare a degree of interest because my name and his, along with that of other noble Lords, were on those amendments.

This Bill takes us into new realms of the use of delegated powers, albeit that the Trade Bill and the Agriculture Bill, both of which have already been mentioned this afternoon, are strong competitors for this legislative wooden spoon. I congratulate my noble and learned friend Lord Judge on his forensic dismantling of the need for the powers contained in the Bill and his warnings about the way in which they might be used. Any thought of his grandchildren saying that he was "banging on" should not inhibit him in any way from continuing to bang on about those subjects, and I hope that many other noble Lords will do the same.

Two points of principle have a general application but are particularly lively in the context of this worrying Bill. The first is the use of Henry VIII powers. I think that His late Majesty would be extremely jealous of some of what is contained in the Bill, as with the Agriculture Bill, the Trade Bill and the other Brexit Bills to come trooping our way. I accept that Henry VIII powers are sometimes needed, perhaps when there are urgent issues for which you need to make primary legislative provision, but you cannot get a Bill through in the normal course of events. However, where such powers are used, I suggest that there should be a test: that of the three Ss.

4.30 pm

The first S is scope, which my noble and learned friend Lord Judge touched on. When a Henry VIII power is contained in a Bill, it should be possible to predict how Ministers will use it. That makes it slightly less rebarbative for the purposes we are discussing.

The second S is scrutiny. Will use of the power be subject to an adequate level of scrutiny? Again, my noble and learned friend hit the nail on the head in talking about affirmatives. They are not a splendid box of legislative sweeties to make all these problems go away; they do not assuage concern about the use of Henry VIII powers because of the level of scrutiny to which they are subject and because, for good reasons I well understand, they are not subject to amendment.

The third S is sunset. On several occasions—a great many occasions, alas—the Delegated Powers Committee has expressed concerns, the list of which is now becoming wearyingly long, on two accounts. The first is that any Government may say how they wish to use the powers they seek from Parliament, but there is no guarantee that these things are done in the best of faith and that this is how the powers will be used. Once those powers are on the statute book, they are available to not just the Government giving that undertaking and those assurances but to any Administration of whatever colour that may be at the helm and able to use those powers in the years ahead.

Amendment 44, in the name of my noble friends Lord Patel and Lord Kakkar and my noble and learned friend Lord Judge, is particularly to the point on sunsetting. I suggest with all respect to them that it is no more than a sticking plaster to put over some of these areas of serious concern, but it deserves serious consideration in your Lordships' House at this stage of the Bill.

Lord Cormack (Con): My Lords, I associate myself entirely with the remarks of the noble Lord, Lord Lisvane. We have been here before. We went through these issues many times last year, when a number of us spoke about constitutional issues. I want to concentrate my remarks there today. Before doing so, I add my welcome to my noble friend on the Front Bench. I am sure that she will have a distinguished career in your Lordships' House. I was extremely sorry to miss her Second Reading speech but I was recovering from surgery, so I could not be present and take part as I would have otherwise sought to do.

The noble and learned Lord, Lord Judge, and the noble Lord, Lord Lisvane, are members of a group that I have the privilege of chairing: the Campaign for an Effective Second Chamber. I want to reflect on those words for a few moments. You can have a truly effective second Chamber in a Parliament, or indeed an effective first Chamber, only if you do not have an overbearing Executive. Everything that the noble and learned Lord, Lord Judge, and the noble Lord, Lord Lisvane, have said underlines the fact that we are in extremely dangerous territory.

Of course, as they have done, I entirely absolve my noble friend on the Front Bench. She has been given a poisoned chalice and she will handle it with dexterity and finesse, but whatever she does, she will not be able to remove the hemlock and replace it with quaffable wine because this really is a very dangerous Bill. The name of Henry VIII has already been quoted a number of times—and even Henry XVI, although I am not quite sure what he will be up to. But I prefer to call this Bill a carte blanche Bill because what we are being asked to do is to give the Executive a totally blank cheque. That is inimical to constitutional parliamentary democracy. There has been a great deal of talk recently, and there will be more next week, about the role of Parliament vis-à-vis the Executive. We have to have a proper balance, but we do not have a proper balance if we have an Executive invested with so much power that Parliament really counts for nothing.

Of course, I know why we are going to have to give this Bill a speedy passage, but I deeply regret it. It goes against the parliamentary grain as far as I am concerned. In the almost 49 years that I have been in one House or the other, I have seen what the noble and learned

Lord, Lord Judge, referred to as the steady accretion of power to the Executive branch. No lip service to the power of Parliament paid by the setting up of Back-Bench committees and all the rest of it has really disguised that. It is one of the reasons why colleagues in another place have recently been flexing their muscles in seeking to wrest back power from the Executive to Parliament. I will not pursue that argument now because, frankly, in a Committee stage it would be straying out of order. But what I will say to your Lordships is that if we give this Bill its passage, as I suppose we must, it is crucial that we redouble our resolve to ensure that this sort of thing happens less frequently in the future.

In a parliamentary democracy there has to be a true balance of power and a responsibility to scrutinise legislation, but how can you scrutinise legislation which is so open-ended that it gives unbridled power for years to come? The noble Lord, Lord Lisvane, referred to that. I do not want to trespass on the private grief of friends opposite—and I do regard them as friends—but do I really want powers like these to be exercised by Mr McDonnell or Mr Corbyn? No, I do not, and I suspect that there are very few, if any, in your Lordships' House who do.

I therefore put down a marker in total support of the eloquence of the noble and learned Lord, Lord Judge, and say that when we have got over the next few traumatic weeks, if we get over them—I suppose we will—we must send an emphatic message to the Executive that this sort of sharp practice is something up with which we will not put.

Baroness Andrews (Lab): My Lords, first, I welcome the Minister. I will not add to her burdens by trying to find another metaphor for the difficult position she is in. We have had poisoned chalices and hand grenades, but I am sure she would be more than capable of dealing with all that. I am sure she will already have picked up some of the deep frustrations in the Committee about the position we find ourselves in—having to deal with legislation that is, frankly, rather surreal. We are trying to deal with the worst possible scenarios just in time, just in case we should need to be as draconian as necessary in the most extreme emergency situations. We are focusing on the exercise of powers that may never need to be used but which we may have to reach for in the most ghastly circumstances—so we are over a barrel. This is an essential Bill. We have to protect UK citizens from the worst that could happen to them, having sadly neglected to do what we could have done at the very beginning of this two-year process and given them assurances and the sort of security—as we would have been expected to be able to offer EU citizens in this country—that many in this House tried to achieve.

My speech in support of the amendment moved by my noble friend will be much shorter, because I can do hardly anything other than compliment the noble and learned Lord, Lord Judge, on his most forensic and splendid interpretation of what the Delegated Powers and Regulatory Reform Committee said, and my colleague on that committee, the noble Lord, Lord Lisvane. The one thing on which I might take issue with him is that in that committee we have not, in fact, become habituated to the ways in which government departments always try to take more power. We are not naive but we deeply resent the ways in which government departments have tried to accumulate powers over the past few years and to sneak it under our noses.

Coming down the track we have Bills—the noble Lord, Lord Lisvane, has already referred to them—with swathes of inappropriate delegation cultivated by civil servants and Ministers, for whom, frankly, this is Christmas. They have wanted to acquire these sorts of powers for years and have tried on many different occasions. They have been stopped in Bill after Bill and sent back. But now they have the power of post-Brexit uncertainty to aid them. It is extremely difficult to know where our vocabulary might lead us next. It is a fabulous opportunity, because for years they have chafed against the boring predictability of our scrutiny committees telling them to go away and think again. They come back with excuses about urgency, technicalities and flexibilities, yet when we expose these for what they are, they tend to try to do it again in another form.

One of the most disappointing things is that this was our second report; our first was blunt enough. We thought that between November and now the department and Ministers would respond more sensitively—perhaps more in the spirit of the European Union (Withdrawal) Bill, with our agonised discussions over the fine-tuning of appropriateness and necessity—but we received not a word; not a blink. I am sad to say that what the department came back with—I know the Minister was not responsible—was another 43 paragraphs about all manner of explanations, most of which were not relevant. They did not address the fundamental question that the Committee is raising this afternoon: why are these powers necessary? What is it that only these powers will be able to achieve? The Minister was very flattering to the scrutiny committees at Second Reading; she called our powers "forensic". There is nothing that needs forensic scrutiny here. You could take a spade to this Bill; it is that blunt.

4.45 pm

We drew attention to the absence of limits on who could be funded worldwide; to the types of healthcare; and to the amount of healthcare funded. As has been said, just as unconditional are the powers to confer functions on, and delegate functions to, anyone, anywhere, anytime, and the regulations to amend or repeal any Act of Parliament ever passed for the purpose of conferring these functions—all done by the negative procedure. This is eye-watering stuff.

We looked for a response which would be commensurate with our deep anxiety about what this Bill represented, coming as it did after other equally vague Bills, although not quite in this class—even the Agriculture Bill had something to recommend it. Instead, we got 43 further paragraphs with arguments for more flexibility, greater clarity and forward-facing powers. This is empty rhetoric with no justifications for the powers themselves. The arguments bear all the hallmarks of a government department that is trying to get itself off the hook.

[Baroness Andrews]

What, for example, will be the nature of the reciprocal arrangements that might demand no conditions be attached to funding, purpose or client? What primary legislation might need to be amended in future? How wide is that scope? If this is so vital, and if such flexibility is required, surely the first place the Minister should come to is Parliament to explain what it might involve. Of course there is uncertainty on a scale we have never had to deal with before, but why not wait for greater clarity and certainty, when the powers that are necessary can be legitimised and used effectively and transparently? That is the case that the DPRRC's report makes.

We were told by the noble Lord, Lord O'Shaughnessy, at Second Reading that,

"as we become an independent trading nation once again, we want to be able to enter into similar arrangements with our trading partners … and … make the most of the opportunities … to strike new, more sophisticated deals with our trading partners".

That is about the clearest statement we have had. My noble friend has raised the issue of American healthcare insurance arrangements and the hole that would be blown through the protections that we absolutely must have for our NHS. If this is indeed the case, why the panic now? Why put it into a Bill of this kind in this way? Why the risk? The Government must be afraid of something that they are not telling us about. As the noble Lord, Lord O'Shaughnessy, went on to say,

"with our new-found freedoms it is likely that we will want to consider additional, yet to be anticipated approaches".—[*Official Report*, 5/2/19; cols. 1450-51.]

I am sure he will have shared those ambitions with the Minister, and perhaps she can tell us what these unanticipated approaches might be, what they will be for, to whom and at what cost. How is it that only the extraordinary powers taken in this Bill will secure them?

Both Ministers acknowledge that the reach and scope of these powers give rise to concern, but they blithely say that there is nothing for us to worry about because it will all be contained in treaty arrangements. That is not good enough: it is not persuasive enough for this Parliament or for the Welsh Assembly. It does not deal with the gift of these powers, in this clause, in this way, for these purposes, on this scale.

This may be something of a side issue in the great Brexit scandal, but for all the reasons that the noble and learned Lord, Lord Judge, and the noble Lord, Lord Lisvane, have set out, these are—one does not want or need to use inflated language—massive and significant constitutional issues. This is a Bill under which a red line should be drawn. I believe that, as the noble and learned Lord has said, under normal circumstances we would not be entertaining such a Bill. I do not think we should entertain either Clause 1 or Clause 2, and I shall certainly support amendments to remove them from the Bill.

Lord O'Shaughnessy (Con): Perhaps noble Lords will allow me to follow the noble Baroness, given that she made specific reference to some of the comments I made on Second Reading and previously.

I have listened carefully, as I always do—and always did as a Minister—to the views expressed by noble Lords whether through the reports of the two committees or in debate. However, some fundamental mistakes of logic have been exposed in this group of amendments which I want to dive into.

The first mistake is the assumption that this is a Brexit Bill. It is not a Brexit Bill—or at least not solely a Brexit Bill—in the sense that it is required because our statute book will change after we leave the European and this will ensure that we have continuity of arrangements going forward. It is worth pointing out that we do not need to rush into this because statutory instruments have been laid to provide for arrangements in a no-deal scenario. We are considering this Bill in order to replace statutes that exist on our books which will become unworkable once we leave the European Union because of their reciprocal nature—it is not possible to have a one-sided reciprocal commitment in law—and that is what this Bill seeks to do.

The report of the Constitutional Affairs Committee states on this point:

"While the exceptional circumstances of the UK's departure from the European Union might justify legislation containing broader powers that would not otherwise be constitutionally acceptable, this does not extend to giving effect to new policy unrelated to Brexit. The Bill should be limited to the making of arrangements for future reciprocal healthcare arrangements with countries that participate in the existing European Health Insurance Card scheme".

However, that is conflating two different issues: one is the nature of the restrictions that apply to primary legislation and the way in which secondary legislation should be carried out, and we have heard the discussion on why that should be the case; and the second is whether or not this Bill should limit itself in scope only to countries which are within the EEA and Switzerland.

There is no good reason why we should limit ourselves in such a way. Indeed the opposition parties are always telling the Government that they are too focused on Brexit and should take a wider view. The Bill does two things: it provides us with an opportunity for continuity and to put in place new arrangements, as well as an opportunity to make legislation of the kind that we are always being encouraged to make so that we can continue with our relationships—and deepen them—that we have with every other country in the world. Given that the Conservative Party and this Government are always accused of being too parochial, I would have thought this would be welcomed.

There is no reason to think that this Bill, a priori, should not have two functions. Yes, we need to replace the legislation under which we have powers in order to strike reciprocal agreements, but there is no good reason why we should limit ourselves to having those agreements with the European Union, the EEA and Switzerland as a set of countries. It may be that we ought to have different arrangements for approving such agreements. We all want to see continuity and it is the stated aim of the Government to provide it, but there is no reason why we might not have one set of arrangements to deal with that given that there is a deadline coming up.

I take issue, advisedly, with the noble Lord, Lord Patel, and others, who have said that this process is being expedited. The Bill is not being expedited. It had proper scrutiny in the other place and is being properly scrutinised in this place. It is not being rushed through or dealt with inappropriately in terms of procedure. We are able to proceed properly in scrutinising the Bill and to think about the way in which we want to enact the two kinds of reciprocal arrangements that we will have in the future.

Baroness Thornton: I am not sure that the noble Lord, Lord O'Shaughnessy, is helping the Minister in his exposition. Certainly he is convincing me that we need to have two Bills. Perhaps I may ask the noble Lord why all the documentation accompanying this Bill starts with the words, "This Bill is being introduced as a result of the decision to leave the European Union and is intended to enable the Government"—blah, blah, blah—"to deal with reciprocal healthcare"?

Lord O'Shaughnessy: My Lords, the reason is that the statute by which we are able to strike reciprocal healthcare agreements—the regulations stated in the Explanatory Notes—comes from the body of EU law. Without that we are not able to have reciprocal agreements with anyone, so in that sense we are replacing the source of our law with a different source. It does not follow that with the law we have in place, we should restrict ourselves to having arrangements with a subset of the countries where we could do so.

Lord Winston (Lab): I have the greatest respect for the noble Lord, Lord O'Shaughnessy, who we feel did a great job while he was in the department as a Minister, but does he not see that this is indeed a Brexit Bill? Out there in the community, people voting in the referendum said, "Take back power". It was about taking back control and the paradox in this amendment—it may be irony, I am not quite sure which—is that we are not taking back control. Parliament will not have the control, which is what the people wanted at the time of voting for Brexit. That is fundamentally wrong and inappropriate, therefore I am quite certain that this amendment is appropriate.

Lord O'Shaughnessy: That is a separate issue. As I said at the beginning, the issue here is actually in two parts. The first is whether we ought to use the new legislation to strike deals with a subset of countries, those with which we already have reciprocal deals through our membership of the EU, or to strike broader ones. The secondary question is: what ought to be the correct process for Parliament to provide scrutiny of the kind of deals that are set up, either to provide continuity with the ones that we have under the EU or with new partners? Those are different questions. It is up to this Committee to make its decision about what it feels is the appropriate route to go forward, but it is important to expose that those are different and separate questions and we ought to consider them as such.

Perhaps I may respond to the point made by the noble Baroness, Lady Andrews, and others about trade. It is absolutely not the case that this is some Trojan horse for privatisation of the NHS, as the noble Lord, Lord Brooke, said, or anything else. My noble friend the Minister made that completely clear in her letter, as I used to in the letters that I once sent the noble Lord as well. Consider this: one of the reasons that we have deep reciprocal healthcare agreements with EU countries is due to the fact that we are part of a large trading bloc called the European Union. It is perfectly normal for partners engaged in economic, social, cultural, scientific and other activities to have these kind of agreements, partly because they facilitate the movement of people from one to another, whether on holiday or for work and other things.

I would hope, regardless of whether we were leaving the European Union or not, that we would want to have these kind of agreements with our partner countries throughout the world. Regardless of one's views on Brexit, we ought to want to do that. It is not something that we have the legal basis to do at the moment and the Bill gives us that. I want to correct the impression given by the noble Baroness, Lady Andrews, which I do not think is fair, that this is somehow a Trojan horse for some sort of nefarious agenda. That is absolutely not the case; it is about taking a broader view of the kind of relationships that we currently enjoy with the EU and want to enjoy with other countries, whether they are Commonwealth partners or the overseas territories and Crown dependencies noted by my noble friend Lord Ribeiro.

I hope that I have described clearly what I believe the intent is in this regard. It is absolutely noble and will facilitate the broader movement of people throughout the world.

Baroness Andrews: I take the noble Lord's personal assurances on that. Who could disagree with what he has just said about the need to have these sorts of vigorous, expansive and generous trading arrangements, which we hope will involve skills, health and knowledge? My question is really: why are these powers in this Bill? If they are necessary and within our reach, why can we not have them in an appropriate Bill with appropriate powers, which we can all be certain will not be exploited and lead to perverse consequences?

Lord O'Shaughnessy: I take the noble Baroness's point but the critical thing here is that the powers set out in the Bill are constrained by giving effect to healthcare agreements, which themselves sit under the aegis of the creation of international agreements. My noble friend's letter set out how the entire so-called CRaG arrangements govern how they ought to be approved. To satisfy my noble friend Lord Cormack's concern, it is simply not the case that this Bill could be used unilaterally to fund the healthcare of the people of Venezuela, which might be a concern of the leaders of the Labour Party, as he pointed out.

5 pm

I wanted to speak on this because there is a misconception that the purpose of this Bill ought to be to limit itself to provide continuity of the arrangements we have. That is a purpose of the Bill and the Government have been very clear about it. They were clear when I was a Minister and they are clear now my noble friend

[LORD O'SHAUGHNESSY]
is the Minister. However it also gives us the opportunity—and why should it not?—to strike similar arrangements reciprocally with countries with which we want to deepen partnerships. It falls to this Committee to debate appropriate ways in which scrutiny and accountability are provided to look at those arrangements. It may be that the Committee believes it is necessary to put in different kinds of arrangements for different kinds of deals, a point my noble friend Lord Lansley made at Second Reading. However, it does not seem to me that because of a need for a more sophisticated approach to scrutiny based on what kind of agreements are being put forward it follows that this Bill should limit itself to repeating and continuing the deals we currently have as a result of our EU membership.

Lord Marks of Henley-on-Thames (LD): My Lords, this is a compendious group of amendments to a Bill that may appear simple but is made complex by the fact that it is, for all the reasons developed by the noble and learned Lord, Lord Judge, the noble Lord, Lord Lisvane, the noble Baroness, Lady Andrews, and others, frankly a constitutional affront. I of course join other noble Lords in welcoming the Minister to her first Committee stage. We tangled on some of these issues at Second Reading, but I am afraid I look forward to tangling with her a great deal during the rest of the passage of the Bill.

Most of what I will say about the powers in the Bill and its geographical scope I will address in the context of the amendments I and others have tabled to Clause 2, which are in the next group. I will also address much of what the noble Lord, Lord O'Shaughnessy, said, but I agree with what the noble Baronesses, Lady Thornton and Lady Andrews, said when they intervened during the speech of the noble Lord, Lord O'Shaughnessy. It seems that he was trying to justify international arrangements outside of our existing arrangements with the EU, the EEA and Switzerland, within the same Bill and subject to the same time constraints and breadth of powers that the existing arrangements might justify for their extension, in a way that would enable international arrangements to be made within a legislative framework that is frankly unacceptable. The whole point of our amendment in the next group is that the Bill should be drawn in tight terms to replace our existing arrangements, and that other arrangements can then be made for future international agreements.

It is always a great pleasure to hear from the noble Lord, Lord Cormack, but I have to say that whereas I have agreed with almost everything everybody else has said, on this occasion I thought his ambition was limited when he said, "I suppose we must pass this Bill and it is to be hoped that in future Bills like this will become much rarer".

On the amendments already tabled for today and Thursday, it would be possible, certainly when they are refined on Report, to produce a Bill on this restricted aim of replicating our arrangements with the EU, the EEA and Switzerland that was not a constitutional affront. It will be our aim to enable the Government to tailor this Bill to an acceptable, laudable and desirable aim without it being the constitutional outrage that it presently is. To that end, Amendment 3 is in my name.

I completely agree with the view expressed so far in this debate that Clause 1 is wildly inappropriate as it stands. On the face of it, it gives the Secretary of State an unrestricted blanket power to organise and make payments from the pocket of the British taxpayer for healthcare outside the UK—that is, anywhere in the world. In one sense, I suppose that it could be described as a general political statement but it really is not; it confers a power on the Secretary of State that is simply far too wide.

I agree with the straightforward position taken by the noble Lords, Lord Patel and Lord Kakkar, and the noble and learned Lord, Lord Judge, that Clause 1 should simply not stand part of the Bill, and I agree with every word that the noble and learned Lord uttered. If his grandchildren say that he is banging on, I join with the noble Lord, Lord Lisvane, in saying, "Long may it continue. May he bang on unrestrained by his grandchildren, certainly on this issue, for as long as he wishes to contribute in this House". These are important points that deserve constant repetition until they are finally listened to and we get back to a semblance of parliamentary democracy that allows proper scrutiny by this House, and the other House—where scrutiny is, frankly, often lacking.

If striking down Clause 1 is not accepted by the Committee, my amendment would at least address the fundamental point that the power proposed in the clause is not limited by any provision setting out how that power should be exercised. It would simply limit Clause 1 by insisting that the exercise of the power to make and arrange payments for healthcare abroad may be exercised only in accordance with regulations.

Clause 2(1) confers on the Secretary of State the power to make regulations, on which we have heard much already and much more will be heard later from me and others. My amendment would, however, add a limitation to the effect that the Secretary of State may not exercise the power under Clause 1 other than in accordance with the legitimate regulations. The need for such an amendment, if Clause 1 survives and stands part of the Bill, is, I suggest, self-evident. The power of the Secretary of State must be governed, defined and limited by clauses in the statute and by regulations made under the statute. That is how law-making in a parliamentary democracy must work if parliamentary democracy is to mean anything at all. If the Bill remains as drawn, I expect the Minister will say that it is the Government's intention that regulations under Clause 2 will be constrained. However, that is not the point; the point is the potential of such regulations. My amendment would ensure that regulations constrained Clause 1 as well.

Lord Wilson of Dinton (CB): My Lords, I assure the Minister that my comments, which are very much in support of the noble and learned Lord, Lord Judge, the noble Lords, Lord Lisvane and Lord Cormack, and in fact all noble Lords except the noble Lord, Lord O'Shaughnessy, are in no way a criticism of her. I heard her maiden speech, which was memorable. I think we will all remember it, and we all know that she is not responsible for the problem that she has today.

To the noble Lord, Lord O'Shaughnessy, whom I do not follow, I simply say that I think that accidentally he made a really powerful case for splitting the Bill so that we can deal immediately with the immediate problem and the Government can think more carefully about the legal framework within which new arrangements are brought forward. I thought that he made a very persuasive case; it just happened to be in the opposite direction from the one he intended.

I support the arguments made, which we have heard before. We heard them on Clause 7 of the EU withdrawal Bill, as the noble Lord, Lord Lisvane, reminded us. I still regard the word "appropriate" as objectionable, but we did our best there. We must not let only the noble and learned Lord, Lord Judge, bang on; we must not leave it to him alone. We all have to bang on about this issue because it is of fundamental constitutional importance.

I say to the Minister that this Bill is worse than the EU withdrawal Bill because, as the noble Lord, Lord O'Shaughnessy, admirably demonstrated, it is not confined to Brexit. Let us look at the use of words. The language in Clause 5 is like a red rag to a bull:

"Regulations … may amend, repeal, or revoke primary legislation".

We cannot accept this practice creeping in general into our legislation. I believe that there is such a thing as good and bad government. I have thought about my career and the years when we were governed well, and when we were governed badly—the years when the machinery worked well, and when it worked badly. Sometimes—in the 1970s, for example—it was really dreadful, and we are in a period of really bad government now.

I remember my first Bill 50 years ago, the Trade Descriptions Bill, which I connect with this Chamber. I was a junior official. We went to see parliamentary counsel who, in those days, were venerable people. You were allowed to see them only with a solicitor present. My assistant secretary was asked why we needed a particular power, and he rather flippantly replied, "Because I thought it might be useful". Parliamentary counsel gave him a withering look and said, "I am not going to draft a clause for you simply because it might be useful. You have to know what you want it for". He did not know, and we did not get that power. I read this Bill today and thought, "It has all been thrown in just in case it is useful". The Government do not know what they want; they are putting it in simply in case it might be useful later on. My goodness, the job of this House is to stand up and say no to that. In Mrs Thatcher's words: "No, no, no".

I hope the Minister will accept the amendment of the noble Baroness, Lady Thornton, or that she will at least pause, consider it and come back on Report. I hope that she will also consider the option of a sunset clause, which I believe will be overwhelmingly important. The Bill as drafted breaks all the rules of our constitutional understanding. We have no written constitution. The machinery of government works only because we know where the constraints are and what the rules and behaviours are. We have understandings between ourselves—Governments and Oppositions—about how we run and manage legislation. This Bill tramples on that understanding. It does so in the name of Brexit, but it goes far too wide.

I hope that parliamentary counsel will say no to the Government, in private, and that the machine will say no. I hope the Government will have the wisdom—this is about wisdom—to think again, because the precedent being set here is wholly unacceptable. We have to make a stand.

Lord Lansley (Con): My Lords, I believe it falls to me to be a back-marker. I can be brief, not least because I agreed with much of what my noble friend Lord O'Shaughnessy had to say. However, it might be helpful if I were to explain, purely from my own point of view, why some of the criticisms levelled at the Bill are excessive. First, the structure of the legislation—which provides a power to make payments that are then subject to a number of specific constraints and criteria—is not unusual. One sees this in a lot of legislation. Treating Clause 1 in isolation is therefore a mistake; it must always be treated in the context of the Bill as a whole.

Secondly, on the scope of the Bill, it would have been perfectly possible—I presume; I was not party to the discussion—for Ministers to bring forward legislation with a purpose simply to seek to replicate the existing EU reciprocal healthcare agreements. However, the nature of the agreements we will enter into with our partners across Europe are as yet undetermined. This is not about the transition period. This is effectively about the political declaration and what the future relationship looks like. As my noble friend said—and no doubt the Minister can add more specifics if necessary—the regulations that have been laid separately are intended to deal with the immediate consequences if we leave without any deal and without bilateral agreements with other countries across Europe in place.

5.15 pm

What are we trying to do here? I hope noble Lords will collectively agree that the Bill should pass because, as my noble friend Lord Cormack said, if we do not have it we will not be able to agree to maintain reciprocal healthcare arrangements across Europe. It is in our interests and it is devoutly to be wished for by the public. When we discuss those bilateral agreements, however, we may not be able to do so with every country. We may have to discuss them in the specific context of the arrangements for mobility across Europe, because the reciprocal healthcare agreements are presently structured in relation to freedom of movement across Europe, and freedom of movement may vary in future. Other countries may look at agreements with the United Kingdom at the same time and ask, perfectly reasonably, on what basis the United Kingdom is proposing to have a certain healthcare agreement with Spain, Italy or Cyprus, but not proposing to have something similar with them, if it promotes freedom of movement, mobility and the development of global Britain, for example.

That is what we are looking for. If we construct what we are doing as simply reproducing the present EU-UK relationship, we might as well not leave. As it

[Lord Lansley]
happens, I am a remainer. I might well take that view, and deeply resent the fact that we are devoting an enormous amount of time, energy and money to seeking to reproduce the existing relationship with the European Union. However, if we leave, I would far rather that we did so on the basis that we were able to take aspects of our relationship with the European Union which are generally regarded as positive and apply them more widely. It does not seem an extravagant notion on the part of Ministers that the Bill should be brought forward on that basis. Parliament may say that we are giving the Secretary of State the power to spend money on hip replacements in Arizona, but we are not. We are giving the Secretary of State, under regulations which we agreed to, the power to pay for healthcare outside the United Kingdom where that is subject to an international healthcare agreement, but not otherwise.

There is a benefit to participating in the debates on the Trade Bill at the same time. We will have to think in a broader context about whether the Constitutional Reform and Governance Act 2010 provides sufficient basis for the scrutiny and ratification of treaties. We will inevitably agree some form of ratification process for such international agreements in future, and they will apply to any international healthcare agreements as well. To that extent, we should rest on that. The regulations that flow from it will be implementing legislation in relation to those agreements which, strictly speaking, under CRaG, the House of Commons can choose not to ratify—we cannot, but it can.

Lord Marks of Henley-on-Thames: Does the noble Lord accept that all Parliament can do to treaties is withhold agreement in the House of Commons? Is he seriously arguing that that is sufficient scrutiny of potential healthcare treaties and that this House should not persist in its objection?

Lord Lansley: The noble Lord invites me to go on about a subject that I anticipate Report stage of the Trade Bill will discuss in considerable detail. I do not propose to discuss it now, if he will forgive me, because this is a wide debate that raises broader issues that will have to be addressed. Quite properly, they might be better addressed in the Trade Bill, which is actually about large-scale international treaties that we are likely to enter into in short order. I am not aware of any proposals for an international healthcare agreement that will be presented in the form of a treaty that we will have to ratify in any immediate timescale. I would rather think about it under those circumstances.

I will say one more thing about sunset clauses. Because of their nature, I am rather sympathetic to the idea that, if we know legislation has a limited shelf life, we should put one into the legislation, otherwise the temptation to go on and on will be irresistible to Ministers. But I do not understand that this Bill has such a limited shelf life. We want to enter into healthcare agreements that might or might not be agreed by December 2020; they might be agreed in 2021 or 2022. In so far as they relate to non-European Economic Area countries, they might arise at any time. There is no immediate prospect of them doing so. To have a sunset clause of this kind would be potentially unduly restrictive, especially expressed as a two-year limit, as it is.

For all those reasons, the debate has been useful. I absolutely understand its importance, because I have future amendments, as the noble and learned Lord, Lord Judge, said, about the ability to amend retained EU law and the question of whether there should be different arrangements relating to agreements that replicate an EU agreement or do something different. As my noble friend Lord O'Shaughnessy rightly said, I raised that at Second Reading and I have amendments that will allow us to debate it later. Those are practical steps where we can question the structure of scrutiny and control that Parliament will exercise in relation to these regulations. A future group that I hope we will get to this evening questions the extent of the Secretary of State's power to pay money—to whom and how much. That is important. All of us want to set down in legislation how we think Ministers' use of this power should be structured in the agreements they might consider with other countries. Those debates will be useful, not least in terms of the Minister's response—which I very much look forward to.

Baroness Brinton (LD): My Lords, I will comment on a couple of points from a political perspective. We have heard from a significant constitutional expert during the course of the last hour and a half. I thank the Minister for her letter following Second Reading and for her response at Second Reading. But what has become clear in the past hour is that for most of us who have been engaging in the debate this has clearly been a Brexit Bill. Indeed, the Minister says at the beginning of her letter:

"Although this Bill is being brought forward as a result of the UK's exit from the EU, it is not intended to only deal with EU exit".

However, it is one of the series of Bills that must be passed by 29 March, regardless of whether there is a deal, because we do not yet have the detail. As far as this House is concerned, it is in the list of Bills that we have been told must go through by that date. For that reason, I am afraid that I take issue with the noble Lord, Lord O'Shaughnessy, who says that it is not being rushed through. We have been waiting for this Bill and others for some time. We now have to rush it through because we are 39 days away from 29 March and time is extremely limited.

Some of the allegations that some of us made at Second Reading that this was all about future trade deals have become much clearer to us. I raised concerns then about TTIP. In her letter, the Minister appears to contradict herself. She says on page 2:

"Should the Government wish to enter into new comprehensive arrangements, this Bill provides the framework to implement these".

Two paragraphs later she says:

"This Bill is not about negotiating new agreements, but to ensure … appropriate mechanisms … to implement them".

It seems from everything that the noble Lords, Lord Lansley and Lord O'Shaughnessy, said that this provides the framework that will influence the Trade Bill and any future trade agreements. That is one of

the most important reasons why a Bill that we understood was coming before us in order to replicate health arrangements with the EU, whatever our relationship is with it after 29 March, is now moving into a much broader political arena that deserves more than one and a half days in Committee to discuss it—let alone whatever time we are going to be allowed at Report.

I want to leave it there at this point, except to say to the noble Baroness—because I do not think there is another point at which I can do so without laying down an amendment that does not particularly have reference to the scope—that she tried to reassure me and others, both in *Hansard* in what she said winding up the Second Reading debate and in her letter, that the NHS was safe in the hands of this Government, and that the Government basically agree with the principle of the service of the NHS being free at the point of need. But the question that I asked has not been answered, either in her letter or in her response on the Bill. I am concerned about the replication of the EU directive on public procurement that provides many of the protections that we are seeking for the NHS in its entirety as we continue in the future.

I went on to the NHS Confederation website to look at what advice the Government were providing for the NHS in the event of a no-deal Brexit, and found that all the bullet points relating to public procurement were about emergency supplies running out. There is nothing about the intrinsic changes that are provided for in the current EU directive about not having to go out to competitive tender for certain parts of NHS procurement. We have used those as a protection over recent years, including during the coalition Government, to say that the NHS is safe in our hands. So I ask the Minister specifically if she can point me to where the replication of that EU directive on public procurement will appear before us prior to 29 March this year, because I am having trouble finding it.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, it is not often that one rises to speak for the first time in Committee in the presence of the head of one's graduate college, who has just quoted Lady Thatcher at you in no uncertain terms. I am most grateful to the noble Lord, Lord Wilson, for his characteristic directness, and I promise that I shall be on my best behaviour.

I thank the noble Baronesses, Lady Thornton and Lady Jolly, for Amendments 1, 2, 12, 13, 14, 45, 46 and 47, the noble Lord, Lord Marks, for Amendment 3, the noble Lord, Lord Patel, for Amendment 5, and the noble Lords, Lord Patel and Lord Kakkar, and the noble and learned Lord, Lord Judge, for Amendment 44 and the notice of their intent to oppose Clause 1 standing part of the Bill. I am grateful to them for being clear that their intention is to strengthen, not to wreck, the Bill. I was, however, a little hurt by the noble and learned Lord, Lord Judge, stating that the role of committees of the House, particularly the Delegated Powers and Regulatory Reform Committee and the Constitution Committee, and indeed the scrutiny of this Chamber, was being dismissed or in any way taken lightly by the Government in this case.

As the noble Lord, Lord Lisvane, an old friend of mine from the other place, will know, as a former chair of a Select Committee, I could not take the scrutiny of this House more seriously, and my purpose here today is to engage seriously and effectively with the firm intention of the Bill leaving this place in a better state. Perhaps it is the optimism of a novice speaking. I welcome my noble friend Lord Cormack back from his sick bed, but believe that, given the quality of engagement in this place today, we can aspire perhaps not to quaffable wine but to more than just improving the Bill to make it applicable to the EU, the EEA and Switzerland, as the noble Lord, Lord Marks, said. We can aspire to non-EU healthcare agreements that are as valued by recipients as the EU scheme is.

Each of these amendments allows me to speak to the intent of the Bill and to the future of reciprocal healthcare arrangements after we exit the EU. As noble Lords have mentioned, although the Bill has been brought forward in response to our exiting the EU, it is not intended to deal just with that. It is designed to respond and offer certainty to those who rely on EU reciprocal healthcare, but it is more than that. It can give us the opportunity to strengthen existing reciprocal healthcare agreements with non-EU countries and to consider future additional reciprocal healthcare agreements. Given the level of public support for EU reciprocal healthcare, I would have thought that the Government seeking to strengthen global reciprocal healthcare would be a welcome move, provided, of course, that the Bill is appropriately scrutinised and strengthened.

5.30 pm

With that in mind, I turn to today's amendments, speaking first on Amendments 1, 2, 12, 13, 14, 45, 46 and 47 from the noble Baronesses, Lady Thornton and Lady Jolly, which seek to limit the scope of the Bill to the EU, EEA and Switzerland. I will first address the concerns, raised by the noble Baroness, Lady Thornton, the noble Lord, Lord Patel, and others, that the Bill will open up the NHS to future trade deals. The Bill is not about trade deals; it is about reciprocal healthcare. It is an implementing Bill.

Baroness Thornton: The Minister's colleague in the Commons said exactly that: it was a trade Bill.

Baroness Blackwood of North Oxford: He may have said that, but I have clarified this point with the department, the Secretary of State, and others: that is not the case. The Bill is not about trade deals; it is about reciprocal healthcare. In addition to that, I have clarified that free trade agreements, including those to which we are currently party as EU members, contain specific wording to safeguard public services, including the NHS. As we leave the EU, the UK will ensure that future agreements have the same protections. I clarified this at Second Reading and I reiterate it now: the NHS is not and never will be for sale to the private sector, overseas or domestic. If the noble Lord, Lord Brooke, would like to follow up on the points he has raised today, I would be happy to do so outside this Chamber.

[Baroness Blackwood of North Oxford]

I have heard the concerns raised today and at Second Reading regarding the global scope of the powers and I will explain why the Government have drafted the Bill in this way. We believe that the reciprocal healthcare arrangements that we enjoy with EU member states are a positive and beneficial policy. This view has been supported in today's debate, and by both Houses. It has broad public and clinical support. Indeed, the EU Home Affairs Sub-Committee of this House remarked in its *Brexit: Reciprocal Healthcare* report:

"Reciprocal healthcare oils the wheels of the day-to-day lives of millions of citizens",

and the arrangements,

"bring greatest benefit to some of the most vulnerable members of our society".

In addition, we already have reciprocal healthcare agreements with non-EU countries such as Australia and New Zealand, other European countries such as the Balkan states, and the British Overseas Territories. These often pre-date the EU and have never been limited to Europe.

Lord Brooke of Alverthorpe: Do we have one with America?

Baroness Blackwood of North Oxford: There would be significant challenges to a reciprocal healthcare agreement with the United States, because it has a different payment system. I do not envisage one being on the cards. Having listened to the debate today, I do not believe that there is an in-principle objection to non-EU reciprocal healthcare agreements. There is, however, a concern about the nature of the powers in the Bill, to which I now turn.

As noble Lords have mentioned, Clause 1 gives the Secretary of State a new power to make payments, and to arrange for payments to be made, to fund healthcare abroad. Currently there are limited domestic powers in relation to funding healthcare abroad so at the moment non-EU healthcare agreements do not transfer money. The payment system for funding EU reciprocal healthcare is currently set out in EU law. For this reason, if we want to enter into international healthcare agreements, whether with EU or non-EU countries, we need the powers in the Bill to extend beyond 2020 or in certain no-deal scenarios. Clause 1, therefore, enables the funding of any reciprocal healthcare agreements that the UK may enter into with EU member states, non-EU states and international organisations, such as the EU, as well as unilateral funding of treatment abroad in exceptional circumstances.

In the future, detailed provisions could be given effect domestically by regulations under Clause 2(1), which we will debate in the fifth group of amendments. This approach speaks to Amendment 3, tabled by the noble Lord, Lord Marks, with whom it is always a delight to tangle in the Chamber. He has proposed that the power in Clause 1 should be used only after regulations have been laid. I completely understand the motive behind this amendment, but there is a reason why the Bill has been drafted in this way. While it is making good progress through Parliament, it is very unlikely that the Bill will achieve Royal Assent before March. With the best will in the world, it would not be possible to lay regulations using the powers in the Bill until, we estimate, at least summer 2019. In an unprecedented no-deal situation, there may be a need to use the powers before then.

The UK has recently concluded citizens' rights agreements with the EFTA states and with Switzerland to protect reciprocal healthcare for people living in those countries on exit day, or in other specified cross-border situations. It is good news that we would have an operative agreement in those states in a no-deal scenario, as they will guarantee healthcare for those covered by the agreements. However, in that situation, it is likely that we would need to use the power in Clause 1, alongside Clause 4, to temporarily implement those agreements to share data or make healthcare payments and associated arrangements, where required under the terms of each agreement, before laying regulations to implement them more transparently at the earliest opportunity. This may also be true of other agreements we conclude before or shortly after exit day if complete reciprocity was not agreed with EU countries. If this is the case, we will make Parliament aware of it, along with our plans to legislate for these agreements.

I have heard concerns about spending public money. This is obviously closely monitored; money spent under Clause 1 would be no exception to that rule and the usual Treasury safeguards would apply. This will be debated in more detail in the seventh and eighth groups of amendments, so I will leave that until then.

I turn to Amendment 5, in the name of the noble Lord, Lord Patel. I understand completely the basis for concern about how the power to confer functions has been drafted, so it may be helpful if I explain the intent of these provisions. The current EU reciprocal healthcare agreements are implemented in partnership with a number of NHS bodies and organisations. For example, the NHS Business Services Authority has responsibility for customer services in EU reciprocal healthcare. It prints and distributes EHICs, processes claims and recovers costs. NHS England is responsible for authorising applications for the S2 route. NHS trusts are obviously responsible for identifying visitors and making sure that they are not individually charged, and for ensuring that the UK can recover costs from member states.

It is important to note that it is not just healthcare bodies that are relevant to delivering reciprocal healthcare. For example, the DWP has a role with its responsibility for pensions and social security. When we lay regulations to implement healthcare agreements, such as those currently operating, we will need to confer the relevant functions on each organisation according to the role it plays, giving it a clear legal responsibility and operating mandate. That is the purpose of these two provisions. I note the concerns raised by noble Lords on this point and am open to discussing this issue in further detail.

Finally, I shall address Amendment 44 in the names of the noble Lords, Lord Patel and Lord Kakkar, and the noble and learned Lord, Lord Judge, which would limit the legal effect of the Bill to a two-year period after exit day. I entirely recognise the rationale behind

this approach, but I have some concerns about the amendment's potential consequences. It would mean that hundreds of thousands of people who access healthcare under these arrangements would have no certainty that their healthcare could continue two years after exit day. It would also mean that it would be difficult for the Government to enter into medium and longer-term healthcare agreements. I hope noble Lords will understand that the Government cannot support an amendment that places such uncertainty on the people for whom these arrangements are intended. However, I recognise the nature of the concerns raised by noble Lords and, as we proceed through Committee and on to Report, I want to continue working with and listening to noble Lords, on an individual and party level.

For these reasons, I hope the noble Baroness will withdraw the amendment and that the noble Lords, Lord Patel and Lord Kakkar, and the noble and learned Lord, Lord Judge, will not oppose Clause 1 standing part of the Bill.

Baroness Thornton: I congratulate the Minister on her summing up and answers. As these things go, it was absolutely perfect. I did not agree with a lot of it, but I commend her skills.

I thank all noble Lords who have taken part in this debate. I know it has taken almost two hours, and I knew this would be a very important debate because it is about the scope of the Bill. The noble Lord, Lord Patel, was right to put down clause stand part, because it focuses the mind—of the Government, certainly—when you are facing a clause stand part. We all knew that this was probing the scope of the Bill, which was exactly right.

I say to the noble and learned Lord, Lord Judge—just keep banging on. I agree with other noble Lords that this is very important. All of us will be reading the noble and learned Lord's remarks very carefully, because they have given us a lot of material for how we are going to take these discussions forward. The noble and learned Lord may have used the term "carte blanche Bill". My honourable friend Justin Madders in the other place called it the Martini Bill: good "any time, any place, anywhere". I wanted to join in with finding different ways of describing the Bill and the experience of the noble Baroness.

The noble Lord, Lord Ribeiro, was right to draw attention to the issue of no deal and to talk about the problems of the scope of this Bill. I welcome the remarks of the noble Lord, Lord Lisvane, because he has such huge knowledge of the powers that are being talked about in this Bill. With the noble Lords, Lord Cormack and Lord Wilson, he expressed enormous frustration—from enormous knowledge, power and experience—with what we are dealing with here and how unacceptable it is. I am afraid that the Minister and the noble Lords, Lord O'Shaughnessy and Lord Lansley, have not dealt with that frustration. I take one grain of hope from the fact that the noble Baroness said she was open to discussion, and that was very wise of her. We will need to have more discussions.

I am looking forward to the future amendments in the name of noble Lord, Lord Marks, but this was a very useful amendment to put into this group. The noble Baroness, Lady Brinton, is quite right to talk about changes to NHS procurement. As we know—and I declare an interest as the chair of the procurement committee for a clinical commissioning group—European rules do rule, and that is important.

Lord Foulkes of Cumnock (Lab Co-op): I apologise to my noble friend that I was not here earlier, due to travel difficulties—

Noble Lords: Oh!

Lord Foulkes of Cumnock: It is in order to ask a question during Committee.

Baroness Thornton: As much as I admire and love my noble friend, he should probably not intervene at this moment, but he has lots of opportunities to do so in the next few hours and I know he will take them.

The letter that the Minister sent, and the representations of the Government to the DPRRC, really did not take these concerns seriously. My noble friend Lady Andrews was right when she said that while these long letters are full of interesting things, they do not address the powers. The powers are not just for Brexit and the following years—they are for ever. That is the point.

While of course I will withdraw the amendment, because that is what we do in Committee, I assure the Minister that unless something changes in the next few weeks regarding discussions with her, I suspect we will be returning to this at the next stage of the Bill. I beg leave to withdraw.

Amendment 1 withdrawn.

Clause 1 agreed.

5.45 pm

Clause 2: Healthcare and healthcare agreements

Amendments 2 and 3 not moved.

Amendment 4

Moved by ***Lord Marks of Henley-on-Thames***

4: Clause 2, page 1, line 11, leave out subsections (2) to (4) and insert—

"(2) Regulations under subsection (1) may be used only to the extent necessary to replicate so far as possible the model of reciprocal healthcare for the European Union, the European Economic Area and Switzerland in place before the withdrawal of the United Kingdom from the European Union."

Lord Marks of Henley-on-Thames: My Lords, this group contains two amendments. Amendment 4 is in my name and the names of the noble Baronesses, Lady Finlay of Llandaff and Lady Watkins of Tavistock. Amendment 10 is in the names of the noble Baroness, Lady Thornton, and the noble Earl, Lord Dundee.

[Lord Marks of Henley-on-Thames]

Amendment 4 addresses two fundamental faults, as we see them, with the Bill. The first is that the Bill is a global Bill, when it does not need to be. The second is that the powers proposed for the Secretary of State in the Bill are, in effect, unlimited and so thoroughly dangerous. The first point, the international scope of the Bill, has been considered in part and defended by noble Lords opposite—the Minister and the noble Lords, Lord Lansley and Lord O'Shaughnessy—in the previous group. Notwithstanding the position taken by the Government and those noble Lords, my position is firmly that the noble Lord, Lord Wilson of Dinton, and the noble Baroness, Lady Thornton, were right to say that the Bill ought to be directed solely at ensuring the continuation of the reciprocal healthcare arrangements we currently enjoy with the EU, the EEA and Switzerland, and that international healthcare arrangements outside that context should be left for another day when they can be more carefully considered, with a consideration that I raised with the noble Lord, Lord Lansley, about the effect of CRaG in the picture at that time.

That immediate EU/EEA/Switzerland Bill is what British travellers in Europe need; what EU visitors to the UK need; and, perhaps most important from a UK point of view, what 190,000 desperately worried British pensioners living in other states of the EU need to ensure that their existing healthcare will continue. The Explanatory Memorandum makes it clear that the Bill is being introduced because we are leaving the EU. Whatever our views of that decision, we all share the aim of ensuring that our current reciprocal healthcare arrangements continue.

The Bill is necessary if—but only if—we leave without a deal that secures a transitional period as envisaged by the current version of the withdrawal agreement. If we do secure the withdrawal agreement, or something like it, our reciprocal healthcare arrangements will continue, and one would hope that they would be replicated on a permanent basis before the transitional period ended. However, the Bill goes far further than is needed to achieve that limited and legitimate aim. The Government are seeking—unashamedly—to use the Bill to go global in healthcare by making arrangements with other countries across the world. That is simply not necessary because arrangements with third countries can be made at any time, and they should be negotiated and brought before Parliament properly, subject to the CRaG procedure and extra procedures. There is no urgency about that. We already have agreements with Australia, New Zealand and some others. So far as I know—and the noble Lord, Lord Lansley, knows—there are no others in the pipeline, but any which are in prospect can be dealt with individually in their own time.

The Constitution Committee, as has been said, reported on the Bill yesterday. While it acknowledged that Brexit legislation might justify,

"broader powers than would otherwise be constitutionally acceptable",

it was absolutely clear that such powers should be used only for the limited purpose of passing that Brexit legislation. It reported in clear terms that:

"The Bill should be limited to the making of arrangements for future reciprocal healthcare arrangements with countries that participate in the existing European Health Insurance Card scheme".

Lord Foulkes of Cumnock: The noble Lord has quite rightly referred to the existing countries—Australia, Bosnia-Herzegovina, North Macedonia, Montenegro, New Zealand and Serbia, as well as our independent territories—with which we have reciprocal agreements. They are being dealt with at the moment without the need for this Bill, so is my noble friend Lady Thornton not right to be suspicious, irrespective of the Minister's assurances? We know that 24 Tory MPs and Peers have links to 15 private healthcare companies which have £1.5 billion worth of NHS contracts. We are right to be suspicious about what they are up to; indeed, there is one of them sitting opposite.

Lord Marks of Henley-on-Thames: My Lords, I am grateful for that intervention: I did not know the facts about the involvement of certain members of our political establishment in healthcare arrangements. I agree that we are right to be suspicious and I shall come to that later in my contribution, but for now I will go on to the second fundamental fault with the Bill, which is that the proposed powers would enable the Secretary of State not only to make healthcare arrangements with countries across the world but to make such arrangements on whatever terms he or she chooses. That is a dangerous concept.

Many noble Lords, including me, quoted the Delegated Powers Committee's powerful first report on the Bill at Second Reading. We have now had its second report, published on 14 February. It is in similarly strong terms, speaking, for example, of,

"unprecedented powers for Ministers to make law by statutory instrument".

The powers are described as far too wide and,

"drafted in far wider terms than are necessary to give effect to the Department's limited aims".

I agree with the noble Baroness, Lady Andrews, that the Government ought to be listening more carefully to that committee and to the Constitution Committee. I agree that it is frankly outrageous that, on receipt of the first report of a committee that, when I was a member of it, generally expected its reports to be accepted by the Government, instead of that report being accepted, the Government came back with a response that stuck by every word in the Bill, made no real amendments to it, and provoked the second, outraged report of the committee. That, in my experience, is unprecedented. The committee chose, on this occasion, to deal with the Bill before the Commons had finished dealing it, rather than between Second Reading and Committee in the House of Lords, and the Government, frankly, took no notice.

The Constitution Committee said:

"We agree with the Delegated Powers and Regulatory Reform Committee that the powers in clause 2 are 'inappropriately wide and have not been adequately justified'".

I went through the powers in outline at Second Reading. The committees have been through the powers in detail, but the Bill puts absolutely no limit on the Government's power to enter such deals. The Secretary of State would be empowered to authorise payments and claim reimbursement at any level he or she chooses and for any kinds of healthcare arrangements. Parliament would have no effective scrutiny or control. I urge the

Committee to remember the Delegated Powers Committee's central point, which it repeated in its second report, that,

"we assess powers by how they are capable of being used, not by how governments say that they propose to use them".

The Government now profess entirely innocuous motivations for taking the powers contained in the Bill to make international healthcare arrangements outside the European context. Indeed, the noble Lords, Lord O'Shaughnessy and Lord Lansley, almost suggested that this was an exciting prospect. In closing the Second Reading debate, the Minister spoke of,

"a natural opportunity to consider how we can best support Britons in an increasingly global world … Global reciprocal healthcare agreements have the potential to protect public health by supporting international visitors to access emergency and needs-arising treatment when they need it".—[*Official Report*, 5/2/19; col. 1488.]

She may be right. She repeats all those points in her long and detailed letter—a well-drafted, well-written and impressive letter that she sent to all of us yesterday or the day before. However, I am afraid that what she envisages as the use of the powers misses the point, as her answer to the noble Lord, Lord Brooke, on the possibility of a healthcare arrangement with the United States, illustrated. It is the powers that count, not what Ministers of the day might envisage for their use. The powers are not limited to such benign purposes.

I am not generally a cynic, but if we leave without a deal, then the day after Brexit one can foresee this Government, battered by the failure to reach an agreement, being desperately keen to make all kinds of trade deals with third countries across the world, in an effort to protect a vision of our future as "global Britain", and no doubt to give the Department for International Trade a purpose to fulfil at the same time. There is a serious risk, in such a climate, of the Government offering third countries health deals in return for trade deals. The terms of such health deals could be seriously detrimental to the United Kingdom. Access to the NHS could be sold cheaply, and across wide and populous markets. UK taxpayers could be committed to unreasonable payments to foreign countries for offering treatment to UK citizens, and all as sweeteners to secure free trade deals. This is why I share the suspicions of the noble Lord, Lord Foulkes, and all this in an attempt to rescue an economy in difficulties—

Lord Lansley: I am sorry, but I am getting a bit confused here. By what mechanism does the Bill, which provides a power to make payments in respect of healthcare outside the United Kingdom, give power to access the NHS? It simply does not, does it?

Lord Marks of Henley-on-Thames: It simply does: you can make a healthcare arrangement with countries outside the United Kingdom in return for access to healthcare within the United Kingdom, on the same basis as the EU reciprocal arrangements do at the moment.

Lord Lansley: I do not mean to badger the noble Lord, but this is simply not true. The power in the Bill relates to payments for healthcare outside the United Kingdom. Governments make agreements with other Governments all the time, including trade agreements, but this Bill does not provide for what is in a trade agreement. It provides for the power to make payments outside the United Kingdom. That has no bearing on access to the NHS inside the United Kingdom.

Lord Marks of Henley-on-Thames: That does not, as I understand it, prevent the Government offering other countries access to the NHS on terms that are sweet for them.

Lord Foulkes of Cumnock: Clause 3(b) concerns,

"healthcare provided in the United Kingdom, payments in respect of which may be made by a country or territory outside the United Kingdom".

So it is reciprocal and the noble Lord, Lord Lansley, who is one of the people involved with private healthcare, is trying to mislead the House by intervening.

Lord Lansley: I object to what the noble Lord has said: I am not involved in private healthcare in any sense. Not now nor at any time in the past have I acted in any way as a representative of the private healthcare sector. I think the noble Lord should simply withdraw that.

Lord Marks of Henley-on-Thames: My Lords, I make no aspersions on either the motivation or the interests of the noble Lord, Lord Lansley, but I think the noble Lord, Lord Foulkes, was right to draw attention to the definition of "healthcare agreement" in Clause 3, which provides that,

"'healthcare agreement' means an agreement made between the government of the United Kingdom and either the government of a country or territory outside the United Kingdom or an international organisation, concerning either or both of the following— (a) healthcare provided outside the United Kingdom, payments in respect of which may be made by the government of the United Kingdom; (b) healthcare provided in the United Kingdom, payments in respect of which may be made by a country or territory outside the United Kingdom".

That makes the point I am trying to make about the danger. If the noble Lord, Lord Lansley, disagrees with me about that, perhaps we could discuss it outside the Chamber, but for the moment I regard it as a serious danger.

Lord Lansley: With respect to the noble Lord, we are having the debate now. I have read the Bill, and reading it out does not make his point. The Bill simply defines what a healthcare agreement is. The Government have the power to make healthcare agreements now. He is objecting to the Bill. The only power it gives the Government that they do not presently have is to make payments in respect of healthcare outside the United Kingdom.

6 pm

Lord Marks of Henley-on-Thames: It is right that Clause 1 allows the Secretary of State to make payments out, but the point is that the regulations in Clause 2 provide for giving effect to a healthcare agreement. A healthcare agreement, as defined, allows reciprocity. My concern is that if we enter into healthcare agreements

[Lord Marks of Henley-on-Thames]
giving reciprocity on terms that are disadvantageous to the United Kingdom, that could involve our giving cheap access to the NHS.

Lord O'Shaughnessy: This is a reciprocal healthcare Bill, after all. Let us separate out the point that the noble Lord is making about non-EEA countries for a moment. First, why would a Government—any Government—want to make such an agreement? It is meant to be reciprocal; it is not reciprocal if it is heavily one-sided. Secondly, why on earth would the House of Commons, which has the power to reject such a Bill, accept it? It is like saying that we would trade one thing for something entirely different because it is logically possible. Well, possibly, but that does not mean that anyone in their right mind would do it.

My noble friend could not have been clearer in everything she said: this Government, whose motives the noble Lord is impugning, would not act in such a way. The insinuation he is making simply does not follow from the Bill.

Lord Marks of Henley-on-Thames: The noble Lord makes the point that whatever innocuous motivations may be expressed by Ministers at this stage, the powers in the Bill go far further. If there comes a stage where a Government are not so benign and have motivations that are political and unhelpful to the NHS—those could be, as I suggest, trade motivations—that presents a real risk. If easy access is given to the NHS in return, for example, for trade deals—

Baroness Blackwood of North Oxford: The noble Lord, Lord Marks, is very kind in giving way. It may be helpful if I clarify. The Bill is an implementing Bill, and that power can implement only an international agreement which has been entered into; it would be laid before Parliament for scrutiny under the CRaG process. That reciprocity would have to be scrutinised by Parliament.

Lord Marks of Henley-on-Thames: That is a helpful intervention. It brings me back to the point that all that Parliament can do under CRaG is for the House of Commons to reject the entire treaty. If there is a stage at which a Government are interested in securing a trade Bill that even a majority in Parliament may regard as deleterious to the NHS, they may decide not to throw out the treaty because that is a very strong thing to do. Although I take the view that I suspect the noble Lord, Lord Lansley, takes—that the CRaG procedures are insufficient—that merely makes the point in favour of my amendment.

We ought to be looking to the question of international healthcare agreements outside the context of the very important aim we now have of replicating EU arrangements. Taken at their worst—obviously, not if the noble Lord, Lord O'Shaughnessy, and the noble Baroness are right that these agreements will be used for wholly benign purposes for the benefit of the NHS—they could do serious damage to the NHS, which is already cash strapped. They could encourage visitors coming here to seek treatment from the NHS in competition with UK residents. They could put added pressure on a service that is already suffering from staff shortages, which will be compounded after Brexit by the additional loss of large numbers of EU doctors, nurses and vital support staff.

What the Bill needs to do, and all it needs to do, is to ensure that in the appalling event of no deal, we can attempt to salvage our reciprocal healthcare arrangements by coming to replacement healthcare agreements with our present partners. That can be simply assured by our amendment, which would leave out all the offensive unrestricted powers in Clauses 2(2) to 2(4) and substitute a requirement that regulations may be used only to the extent necessary to replicate, as far as possible, our existing arrangements.

Agreements with the rest of the world can be left for another day under clearer, more carefully constructed and constitutionally appropriate legislation, for which we will need a great deal of time to consider. I beg to move.

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I point out that if Amendment 4 is agreed, I cannot call Amendment 5 by reason of pre-emption.

Baroness Finlay of Llandaff (CB): My Lords, I listened to the first part of the debate today, and I add my welcome to the Minister to her new post. I regret that I was unable to be here at Second Reading because of a commitment that I could not cancel, and I declare that I am a member of the European advisory group to the Wales Assembly Government. I added my name to the amendment because the Bill goes far beyond its purported remit by providing the ability for the Government to create new policy relating to healthcare agreements with countries outside the European Union, the EEA and Switzerland.

We all understand that there is need for speedy passage of the Bill because of the approaching deadline, but the question arises: why not restrict it to the problem that it has to solve? Given that the purpose of the Bill is to ensure that reciprocal healthcare arrangements are in place once we have left the EU, it is appropriate that the Secretary of State's powers are limited to do just that and nothing more. As I understand it, that is what the amendment is intended to, and does so for three reasons, because it aims to achieve three things.

First, it aims to ensure that UK patients in the EU and vice versa can continue to access healthcare easily, including those with long-term conditions. Secondly, our NHS is protected from a dramatic increase in demand for services that a failure to reach an agreement could generate. We anticipate that 190,000—some figures say 180,000—UK pensioners in Europe are currently reliant on reciprocal healthcare. They may otherwise have to return to the UK for treatment if healthcare agreements are not replicated. Thirdly, the General Medical Council has already pointed out that the medical profession could be deemed to be at breaking point. Those working in healthcare need to be able to focus on providing care rather than on cost-recovery and complex administration.

I have questions for the Minister on that. In the event that we do not have an agreement and cannot get reciprocity, as we would like, how will the identity for eligibility be confirmed? How many people will need to be employed to make the relevant checks? Do the Government plan to issue current NHS cards that must be presented to prove eligibility, and would such NHS eligibility be incorporated in visas to work, study or be resident here?

Clause 2 authorises the Secretary of State to make regulations,

"in relation to the exercise of the power conferred by section 1 … for and in connection with the provision of healthcare outside the United Kingdom … to give effect to a healthcare agreement".

I fully accept the Minister's sincere confirmation that this is not a trade Bill, but I have a question about that. We have had firm confirmation here but, in the other place, something contrary was said and recorded. Which has precedent? Does what was said in the other place take precedence over any assurances given here? I accept that they are given after the event but, as far as I am aware, we have not received anything in writing or had placed before us anything from the Minister to say that that was not the case.

Another issue, raised in previous debates by the noble Baroness, Lady Jolly, concerns the risk of the Bill being used as a political tool to promote a global healthcare strategy by enabling the Secretary of State to make arrangements with countries across the world, without restrictions on the terms under which that would happen. As a clinician working in the NHS, my concern relates simply to overburdened NHS services. At the same time, I understand that the Welsh Government have not yet provided a consent Order in Council on the Bill. Has there been consultation? How do the Welsh Government anticipate the Welsh NHS coping in the event of no deal and the failure of reciprocal arrangements?

Lord Foulkes of Cumnock: My Lords, I apologise to the noble Lord, Lord Lansley, and accept his assurance, which was given in good faith. I support the amendment very much. In his intervention, the noble Lord, Lord O'Shaughnessy, said that anyone in their right mind would not do the kind of deal indicated by the noble Lord, Lord Marks. Anyone in their right mind would not be moving us towards a no-deal Brexit, which I am afraid the Government are doing, so sometimes we do not believe them. We expect all our politicians, particularly the current ones, to be in their right mind.

I am not a Corbynista, as my noble friend Lord Liddle knows very well, but I am still in the Labour Party because it is my party. I had the awful experience of 16 years in the other place with the Conservatives in office, so I have become increasingly wary of what they get up to. I watch them very carefully indeed. I listen to their assurances and see them broken. I listen to what they say about the health service and see it undermined, slowly but surely. It would have been further undermined if we on these Benches and those on the Labour Benches in the other place had not done as much as possible to protect it, which is why I am suspicious of what is proposed.

Our current reciprocal arrangements work very well; my son works in New Zealand where, as in Australia, they work very well. They have been dealt with through current legislation so why do we need additional legislation? The Minister has not explained that properly. If we can have such arrangements now—not just with New Zealand, Australia, Bosnia-Herzegovina and Serbia, whose arrangements were achieved under the current legal framework—why do we need something new? I am sure the Minister understands why we are suspicious of this being tacked on to a Bill originally planned to deal solely with the problems that would arise in the health service and our reciprocal arrangements with the European Union in the event of a no-deal Brexit.

This matter raises all sorts of issues with priorities. Which countries would come first? Would it be the EU 27, collectively or individually? Which other countries would be on the list of priorities? Would this be a priority for the hard-worked officials in the health department? The Minister did not answer that question properly in her intervention. Of course, as she knows, she can intervene in the debate in Committee just like the rest of us—as long as we are here at the beginning of the debate on a particular amendment, as I was reminded earlier and accept.

In her intervention, the Minister said that any deals would of course be scrutinised by Parliament. Yes, but we will come to debate later scrutiny and the negative procedure versus the "made affirmative" procedure, neither of which can amend instruments. That is the problem with the scrutiny here: it is not proper scrutiny. We are taking that up in another context to deal with it. We see it happening at the moment with statutory instrument after statutory instrument being pushed through without proper scrutiny as we rush towards the cliff edge of Brexit. That is why we are very suspicious.

Like the noble Baroness, Lady Finlay, I welcomed the Minister at Second Reading; the debate was very good and the Minister replied well to it. I hope that she will excuse me but I spent 26 years in the other place and have seen the differences between a Conservative Government undermining the National Health Service and a Labour Government expanding it, developing it and putting more resources into it. I hope that she understands why we get a bit suspicious sometimes.

6.15 pm

Baroness Thornton: My Lords, I intend to speak to Amendment 10 in my name. I thank the noble Lord, Lord Marks, and the noble Baroness, Lady Finlay, for their remarks and questions. I agree with my noble friend Lord Foulkes—he of the suspicious mind. Do not worry, I will not break into song.

The amendment seeks to retain the current arrangements. It proposes a new clause to put the Government's stated negotiating objective of remaining part of the EHIC scheme in the Bill. The reason for that is quite simple: 27 million of our citizens have EHICs, which cover pre-existing medical conditions as well as emergency care. Individuals with chronic illnesses—for example, those who require daily dialysis—can travel knowing that they will receive treatment on

[Baroness Thornton]
the same terms as the citizens of the country they are visiting or residing in. The Government have said that they want both UK and EU citizens to be able to continue using the EHIC scheme after Brexit. The amendment would put that beyond doubt.

Indeed, it reflects the 47th report of the Delegated Powers and Regulatory Reform Committee, which, as the Minister will be aware, has batted back to the Government and reaffirmed its view of the Bill. The report states:

"It is a skeleton Bill allowing the Secretary of State by regulations … to make provision in relation to the exercise of the power to make payments in respect of the cost of all forms of individual healthcare provided by anyone anywhere in the world … to make provision for and in connection with the provision of any such healthcare … and … to give effect to healthcare agreements".

It goes on to say:

"We are concerned that the Brexit process has given rise to a series of Bills, of which this is the latest, containing unprecedented powers for Ministers to make law by statutory instrument".

Neither the Minister nor her supporters have addressed why that is necessary and dangerous. They have not acknowledged the issue that this House is very concerned about.

I will mention two more things. In a recent briefing, the Association of British Insurers said that it is supportive of proposed amendments that would encourage detailed agreement with the EU to be sought in order to provide certainty for travellers with long-term medical conditions and reciprocal arrangements for pensioners in the UK and EU. Talking about the retention of current reciprocal arrangements, the BMA said in a recent briefing that it believes that,

"the UK Government should undertake every effort to retain the current model of reciprocal healthcare with the EU rather than seeking alternative mechanisms".

I will end there but that is why we have tabled this amendment.

The Earl of Dundee (Con): My Lords, within this grouping I support Amendment 10, spoken to just now by the noble Baroness, Lady Thornton.

As indicated, its objective is for current arrangements to be retained as they are. Certainly the Government would wish that in any case—and for the successful negotiation of a new healthcare arrangement to apply post Brexit.

But there are good reasons why this particular government intention should nevertheless now form part of the Bill, for its inclusion would give much comfort both to those directly affected and to all others concerned about their plight.

At the same time, its exhortation is a balanced one that is flexible without being at all restrictive. For example, the introductory words of the amendment are:

"It shall be the objective of Her Majesty's Government".

That does not compel the Government to achieve something which might prove to be impossible. Instead, as is only fitting within this Bill, these words properly encourage the Government to do everything they can to replicate what is already there.

Baroness Blackwood of North Oxford: I offer my thanks to the noble Lord, Lord Marks, the noble Baroness, Lady Thornton, and my noble friend Lord Dundee for tabling Amendments 4 and 10, and for the opportunity to speak to our intentions for reciprocal healthcare arrangements. I also thank all noble Lords who have participated in the debate on this group.

My first point, in response to the noble Lord, Lord Marks, is that, far from going global with this Bill, we are already global when it comes to reciprocal healthcare. The UK has had reciprocal healthcare agreements with individual countries in Europe and the rest of the world since the 1950s and has taken part in EU arrangements since the 1970s. We want reciprocal healthcare arrangements with the EU after we leave, and that is the purpose behind a suite of measures that we are taking. But when it comes to non-EU arrangements, which perhaps the noble Lord, Lord Foulkes, missed in my summing up on the previous group, one of the reasons we are seeking the powers in this Bill is that currently we do not exchange money or data in non-EU reciprocal healthcare arrangements. We do not have those powers in our domestic legislation. That is why we are seeking them, so that we can strengthen those non-EU reciprocal healthcare arrangements.

The Government's intention is to continue current reciprocal healthcare arrangements with countries as they are now in any exit scenario—deal or no deal—until 2020. The in-principle agreement that we have reached with the EU is that during the implementation period ending in 2020, all reciprocal healthcare entitlements will continue and there will be no changes to healthcare for pensioners, workers, students, tourists and other visitors, the EHIC scheme or planned treatment.

Lord Foulkes of Cumnock: The noble Baroness said that no money was exchanged in the case of New Zealand and Australia. So how do these reciprocal healthcare arrangements work? As I understand it, we have the same healthcare when we go to New Zealand as a New Zealander, and vice versa. Should that not be done? Why does it need the exchange of money?

Baroness Blackwood of North Oxford: It is done through waiver agreements.

Longer-term rights would also be guaranteed for those covered by the citizens' rights deal, including people living in other countries at the end of the implementation period.

Lord Foulkes of Cumnock: The noble Baroness said that this was done through waiver agreements. If they work through waiver agreements, why can waiver agreements not work with other countries as well? They work in Serbia and Bosnia and Herzegovina, along with a number of other countries, as well as Australia and New Zealand, under current legislation. The Minister still has not explained why these extra powers are needed.

Baroness Blackwood of North Oxford: We have relatively simple agreements with these countries that do not allow for the level of complexity which we have

within the EU reciprocal healthcare agreements, which allow for tourists, posted workers and UK pensioners who live in EU countries. We do not have that scale of agreements with non-EU countries. Perhaps we might like to explore that, as it has many benefits for people who go to those countries. However, that is yet to be explored and is part of the reason why we would be seeking those powers.

Perhaps I may continue to speak to the amendments in this group. The Government want to secure a wider reciprocal healthcare agreement with the EU following exit that supports a broader range of people such as those not covered by citizens' rights when they move between the UK and the EU for leisure, work or study. We would then use the Bill to enable the UK to implement any future relationship with the EU on reciprocal healthcare from 2021. In a no-deal scenario we are attempting to prepare for any outcome.

I would like to speak to the points raised by the noble Baroness, Lady Finlay. She asked how people would be identified and for the details of implementation and communication with individuals regarding potential changes in circumstances. These issues will be addressed in quite a lot of detail in the eighth or ninth group, so if she will forgive me, I will not address them now. Regarding the points she raised around trade, I would hope that the assurances that I have offered from the Dispatch Box today and in writing in my letter at the beginning of this week will offer the assurance that she is seeking that the position I have laid out is the position of the Government and it is not going to change.

Finally, regarding her question about the devolved Administrations and our consultations with them, we are very pleased to have received a legislative consent Motion from the Scottish Government and agreement from Northern Ireland, and we are in advanced discussions with the Welsh Government. I hope to be able to report back on that point in more detail on Report and I will be happy to continue discussions with her on it.

I will go into a little more detail on our offer to the EU, EEA and Switzerland. It is to maintain reciprocal healthcare agreements so that nobody faces sudden changes to how they access healthcare. Maintaining the current arrangements as they are now is possible only with agreement from other member states. I can reassure noble Lords that we have commenced formal discussions on this issue. The two SIs we have introduced under Section 8 of the EU withdrawal Act, and which I wrote to your Lordships about, afford the UK a mechanism for ensuring that there is no interruption to healthcare arrangements after exit day in those member states which agree to maintain the current arrangements after exit day. Through these instruments, the UK can maintain current EU reciprocal healthcare arrangements for countries where we have agreed reciprocity for the transitional period lasting up to 2020. These arrangements would not apply to a member state which did not agree to maintain the current reciprocal healthcare arrangements. Importantly, the SIs also provide protection for individuals regardless of reciprocity, both here and overseas, who are in a transitional situation. This would provide additional protection for people who are, for example, in the middle of treatment.

Turning to Amendment 10, I can assure the noble Baroness, Lady Thornton, and my noble friend Lord Dundee that we want a relationship with EU member states that includes reciprocal healthcare. The fact that we have introduced this Bill is evidence of that. However, I have concerns about the amendment. First, there is good reason for the convention that one does not put negotiating terms on the face of primary legislation, because that does not allow for dynamic international relations—and we are in quite a dynamic situation at the moment. Secondly, it is important that reciprocal healthcare arrangements are consistent with wider mobility arrangements between the UK and the EU, such as the rights of different groups of people to move and work. These are areas that will also be under negotiation and may have implications for reciprocal healthcare. It is necessary that we have the flexibility to make changes in response to that.

Baroness Thornton: I am quite happy to accept that this may be a faulty amendment—but that is allowed in Committee. Is the Minister saying that the reason for not accepting it is that it undermines the flexibility that is needed for the broader negotiation of healthcare arrangements? Of course, this is in line with our wish to limit this to being about the European Union Brexit arrangements for healthcare. As the noble Baroness knows, that is a better way forward. Putting that into the Bill would therefore not undermine any negotiations, because that is what we want to do.

Baroness Blackwood of North Oxford: Under a withdrawal deal, reciprocal healthcare is protected. Under the no-deal scenario with member states agreeing to reciprocal healthcare, people would be protected under the SIs. The powers in this Bill are for asymmetrical arrangements, as it were, which may arise if member states do not want to pursue reciprocal healthcare arrangements exactly as they stand, or for the negotiation of post-2020 arrangements. It is very difficult for us to predict exactly how they will go, so putting in the Bill that we will continue with the reciprocal healthcare arrangements exactly as they are now is not realistic, given that we do not know where EU legislation will go. That is not within our power and we cannot predict it.

The amendment would mean that a future arrangement provided for under this Bill would as far as possible need to conform with and replicate the current EU, EEA and Swiss model of reciprocal healthcare as it stands at exit day. There is a lot to commend the current EU model of reciprocal healthcare. It supports people to obtain healthcare if they move between countries—EHIC—and people with long-term conditions, but the amendment would be too restrictive when we think about the future reciprocal healthcare arrangements, both in a deal and a no-deal scenario. For example, in a deal scenario it is important that future reciprocal healthcare arrangements are consistent with wider mobility arrangements between the UK and the EU, such as rights people have to travel, move and work.

[Baroness Blackwood of North Oxford]
These areas will be under negotiation and may have implications for reciprocal healthcare. This amendment would remove our flexibility to adapt to this.

On a technical point, as I mentioned, EU law in this area evolves and under proposals currently before the European Parliament, elements of the model will soon change. This amendment would prevent the UK implementing such an evolved arrangement even if there were a desired negotiating position from the UK. In a no-deal scenario, the Bill will ensure the UK can respond to all possible scenarios and complements the approach we are taking with the withdrawal Act SIs, which I have already mentioned.

6.30 pm

A specific example is the citizens' rights agreement we have entered into and recently signed with the EFTA countries. It is crucial that we have the powers in this Bill to allow us the flexibility to implement such arrangements. Discussions with member states continue, and if we reach different arrangements we would implement them using this Bill. This might not be possible if we were to accept this amendment. Under no deal, following any transitional solutions the UK is likely to want to have longer-term reciprocal healthcare agreements with the EU, EEA and Switzerland. All we can say for now is that it will be important for us to have flexibility regarding what we can negotiate and implement; that might not be possible if we accepted the amendment.

I hope that, on consideration of these points, the noble Lord will withdraw his amendment.

Lord Marks of Henley-on-Thames: My Lords, I propose to withdraw the amendment at this stage. We have had a lively debate, and I am grateful to everybody who has taken part in it and extremely grateful to the Minister for her comprehensive reply. In begging leave to withdraw the amendment, however, I urge the Government to consider very seriously the points made in this group and the last on the two issues that our amendment raises. The first is the global scope of the Bill and the second is the extent of the powers, particularly in Clause 2.

On the global scope, of course we wish the Government the very best of fortune in negotiating reciprocal arrangements against the horrible possibility of leaving the EU without a deal. If that can be done and reciprocal healthcare with as many countries as possible can be safeguarded in that way, that is all to the good. The Minister made technical points about the need to change our amendments to cover difficulties that might arise if they were passed in their present form. If she is attracted by the idea of restricting this Bill to EU, EEA and Switzerland arrangements, we would be very keen to discuss with her ways in which the amendment can be altered and for her to come back on Report with a different type of Bill.

On the powers, everything that needed to be said was said in the first group. Our amendment would replace the unacceptable powers with the aim of replicating the arrangements we have with the EU. If I may say so, it is a very important aim. I do not believe this House will let powers of the nature of those included in Clause 2 at present pass Report without dividing—and I have a fairly clear idea what the outcome of any such Division will be. So we will come back to this on Report—probably, in any event. It is an important issue that we raise.

On the dangers I saw in future healthcare agreements with third countries outside the EU, EEA and Switzerland, I was pressed—in a number of interventions that I can only describe as vigorous—by a former Health Secretary, a former Health Minister and an existing Health Minister, and I stood up to those interventions as best I could. But after I sat down, as one always does, I remembered something I probably ought to have said. To be fair, the noble Baroness, Lady Brinton, passed me her iPad with a mention of something I ought to have said. It was a quote from a document, and I will read it:

> "The Bill will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU. The Bill is also a key piece of legislation to ensure that the UK can respond to all possible scenarios".

As the Minister probably recognises, that document originated with the lady who signed it "Yours, Nicola"—the Minister. That is the danger. We are concerned; it is a concern that needs addressing. With those words, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

Amendment 6

Moved by ***Baroness Wheeler***

6: Clause 2, page 2, line 3, at end insert—

"(2A) Regulations under subsection (1)(c) may not be made unless they specify a defined process for settling disputes concerning healthcare agreements.

(2B) The process specified under subsection (2A) must include information on—

(a) the body, bodies or jurisdiction that will be responsible for settling disputes;

(b) the procedure which will be followed by that body, bodies or jurisdiction when settling a dispute, including details of any further appeal mechanisms; and

(c) anything else the Secretary of State thinks is relevant to settling such disputes."

Baroness Wheeler (Lab): My Lords, I am moving Amendment 6 in the name of my noble friend Lady Thornton. The amendment would prevent regulations being made unless they specify the process for settling disputes concerning healthcare agreements, including the name of the responsible body or bodies, their jurisdiction, the procedure that must be followed and any further appeals mechanisms.

Amendment 9 in the names of the noble Earl, Lord Dundee, and my noble friend Lord Foulkes has similar intent but includes a specific reference to the need for information on the involvement, if any, of the European Court of Justice in the resolution of disputes relating to healthcare agreements made in the EU. My honourable friend Justin Madders doggedly pursued

this matter in the Commons, particularly the lack of clarity and information about how disputes would be resolved and whether the Government would oppose the European Court of Justice having any jurisdiction where there are disputes over agreements with European countries.

Agreements between countries must be applied, interpreted and enforced if they are to be worth making. Any and every healthcare agreement made under this Act will need to stipulate a dispute resolution process that must be followed in the event of a dispute between the UK and another country. The Government have repeatedly stated that they intend to end the jurisdiction of the European Court of Justice in the UK. However, it is hard to see how leaving the EU will not still involve some sort of continuing role for the ECJ in cross-border disputes. I understand that in the event of a deal under the terms of the draft Brexit withdrawal agreement, mechanisms for resolving disputes would be through consultation at the Joint Committee and, if that is unsuccessful, an independent arbitration panel. However, if any dispute rests on the interpretation of EU law, the arbitration panel refers the case to the ECJ for a binding decision. We have yet to receive any clarity on how disputes will be adjudicated in a no-deal scenario which, following the Government's historic defeat in the meaningful vote and failure to renegotiate the backstop, looks increasingly likely.

In dispute resolution, would the ECJ also be the final tier and ultimate arbitrator? The European Commission's negotiating guidelines say that the ECJ should be able to decide any disputes that involve the interpretation of EU law that still applies to the UK, rights of citizens or the financial settlement between the UK and the EU. While the draft EU withdrawal agreement does contain the bare bones of a disputes process through consultation at the Joint Committee level and, if that is unsuccessful, independent arbitration if requested, the response from the Government to a no-deal scenario is so far just to refer to having case-by-case bilateral dispute resolutions included in negotiations, with no single dispute resolution process. What further work has been undertaken by the Government on how this process will operate? What kind of dispute resolution procedure does the Minister envisage in the case of bilateral agreements with individual states?

The Minister's response in the Commons did not appear to contain any confirmation that there were red lines on ECJ involvement in the case of the uncharted territory and chaos we would have in respect of disputes over reciprocal health agreements if there is no deal. Is the Minister able to clarify today the position of the Government? It is difficult to see what incentive there will be for other countries to agree a brand new architecture for dispute resolution, let alone pay for one. Is it not only desirable but inevitable that the ECJ will need to play a continued role in dispute resolution on these matters?

The Minister has previously advised that the Government are in "advanced negotiations" for bilateral healthcare agreements with at least five EEA countries as part of the Department of Health's no-deal planning. Can the Minister advise what dispute-resolution mechanisms have been discussed in each case and whether the Government's position is still that the ECJ will have no jurisdiction over such issues? Can she also tell the House what alternative institutional mechanisms have been discussed?

Lord Marks of Henley-on-Thames: My Lords, I will speak to the amendment in my name and that of the noble Baroness, Lady Thornton.

As the noble Baroness, Lady Wheeler, pointed out in moving the amendment, our existing arrangements are the result of European law. The EHIC scheme is provided by EU regulation 883 of 2004. As was mentioned at Second Reading, there are 27 million active EHICs in circulation. Most importantly from our point of view, the S1 scheme entitles 190,000 UK pensioners living elsewhere in the EU to healthcare provision on the basis that they are in receipt of a UK pension. The scheme also entitles anyone enjoying an income from a particular member state but living elsewhere within the EU and EEA countries to reciprocal healthcare. The S2 scheme authorises pre-authorised elected health and maternity care abroad for those away from their country of residence or those who choose to go away to receive that care. The S1 and S2 schemes are established under the same EU regulation. The patients' rights directive enables patients from one EU or EEA country to access specialist or high-quality healthcare available in different member states of their choice and to claim reimbursement from the member state of which they are resident. The common feature of all these beneficial arrangements is that they are established under European law.

I repeat all the questions that the noble Baroness, Lady Wheeler, has asked. My concern is that there seems to be an aversion, which I would accurately describe as pathological, among members of the Government, and many advocates of Brexit in the Conservative Party's ranks, to dispute resolution that depends on the European Court of Justice having a role that ultimately monitors the development of the law. It is important to ensure that, whatever arrangements we have for reciprocal healthcare, we have a sensible and practical dispute-resolution system, and one that develops in accordance with EU law under the regulations and the directive that are being replicated.

No one has come up with any suggestion at all that there is anything wrong with or unworkable about the arrangement whereby our legal rights to reciprocal healthcare are embodied in domestic law but are subject to an appellate arrangement that ensures consistency across the EU and the EEA under the aegis of the Court of Justice of the European Union. But if political dogma is to drive us to adopt an alternative, the Government need to start thinking now about what that alternative will be and how it will ensure the important objective of securing a body of healthcare law, consonant with the law of the European Union, that will apply to future arrangements with our partners as developments continue. I support this amendment.

6.45 pm

The Earl of Dundee: My Lords, I will speak to Amendment 9 in this group, which, as the noble Baroness, Lady Wheeler, has indicated, differs from

[The Earl of Dundee]
Amendment 6 in only one respect: through its reference to the European court. It is intended as a probing amendment.

It may have been implied that post Brexit we will not have recourse to the ECJ for arbitration or any other purpose. However, so far, that has not been clarified. Is my noble friend able to comment?

Could it be that we might come to use the ECJ for dispute resolution all the same, even if such were to be confined to reciprocal healthcare only? If not, how confident are we that, compared with the ECJ, an alternative system of arbitration will not be much more expensive—as the noble Baroness, Lady Wheeler, warns—and perhaps much less efficient? Who will the judges be? Where will adjudication take place? Will it be an open process?

If, as the Government have indicated in another place, the ECJ must keep a limited role in any case—this being for an accurate interpretation of EU law—might it then follow that it should therefore be retained more widely?

That would be the case not least if, as a result and compared with alternatives, this were to emerge as a cheaper and more convincing way for achieving competent arbitration in reciprocal healthcare disputes in the United Kingdom and the EU.

Lord Foulkes of Cumnock: My Lords, there is very little I can add to what my friend the noble Earl, Lord Dundee, said. If there is not a role for the ECJ, what system will there be? If there are disputes, how will they be resolved? I would like to hear what the Minister suggests.

Baroness Blackwood of North Oxford: My Lords, I thank the noble Baroness, Lady Wheeler, for moving Amendment 6 in the names of the noble Baroness, Lady Thornton, and the noble Lord, Lord Marks. I thank also my noble friend Lord Dundee and the noble Lord, Lord Foulkes, for tabling and speaking to Amendment 9. These allow me the opportunity to dwell for a moment on the importance of dispute resolution in the context of the Bill.

I am sympathetic to the spirit of these amendments and agree that it is of great importance that the Government establish robust dispute resolution in future healthcare agreements. We have every intention of being transparent and accountable as this develops. There are a number of ways in which dispute resolution might be approached in future reciprocal healthcare arrangements, but the majority would not require or benefit from regulations under the Bill. Dispute-resolution mechanisms that apply between two international parties should be set out in the agreement itself rather than in domestic regulations, since such regulations cannot bind another country's Government. These regulations would be used to make any necessary domestic provisions for the agreed dispute-resolution mechanism.

I would, however, like to give further reassurance on the Government's intention for future dispute-resolution mechanisms. There are different options for dispute-resolution mechanisms and it will be important to discuss these as part of future negotiations with other countries or the EU in respect of a future relationship.

To give some further context, as has been debated, the primary mechanism for resolving disputes on the withdrawal agreement is through consultation at the joint committee with the aim of reaching a mutually agreeable resolution. If parties are unable to resolve a dispute in the joint committee, either party can request the establishment of an independent arbitration panel to resolve the dispute. Prior to this, the parties can also agree to refer the dispute to independent arbitration. Future agreements for reciprocal healthcare may therefore seek to set out similar dispute mechanisms, but this is all subject to negotiation on an international rather than domestic level. This would be the case in a no-deal scenario as well as in a scenario post 2020.

In particular, noble Lords raised the point about clarity over the role of the ECJ in any future agreement with the EU. This is one point on which I believe the Government have been consistently clear, and I am happy to lay out our position. As we leave the EU, the direct jurisdiction of the European court will come to an end. However, as outlined in the political declaration, we have agreed that where a dispute raises a question of interpretation of EU law, the arbitration panel can refer this question to the CJEU for interpretation.

I reassure the Committee that, in resisting this amendment, the Government are in no way indicating that we do not place importance on dispute resolution; nor do we intend to conceal from noble Lords the approach that we may pursue. Instead, we resist this amendment as it would not be feasible or necessary to provide this level of detail regarding all possible dispute-resolution mechanisms in the regulations used to give effect to future negotiations and agreements. The correct place for this detail is in the international agreement itself, as I am sure your Lordships will agree.

The CRaG procedure will provide opportunity for scrutiny of those international agreements, which are legally binding and require ratification. We have been and will continue to be transparent about the agreements we reach. I am sure Noble Lords will agree that we abide by the rule of international law and take those commitments seriously. This means that we would be committed to upholding our end of any international agreement, including dispute resolution, and we would hold our partners accountable for doing the same.

I hope I have addressed the crux of the concerns raised and that the noble Baroness will withdraw the amendment.

Baroness Wheeler: I thank noble Lords for their contributions. It is hard to see how the ECJ will not have some kind of role in future health agreements. The contributions we have heard obviously underline the importance of dispute agreements being an integral part of healthcare agreements and the need for them to uphold the principles adhered to under the current provisions.

I thank the Minister for her response and her reassurances about transparency, accountability and future intentions. I hope she will reflect further on this important issue and provide fuller details as soon as

possible on the dispute and appeals procedure and processes that will pertain. It is essential work that needs to be done and I hope we will be kept informed on it. I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Amendment 7

Moved by ***Lord Lansley***

7: Clause 2, page 2, line 3, at end insert—

"( ) Regulations under subsection (1) may not specify or describe persons who are not—

(a) United Kingdom citizens;

(b) in receipt of a United Kingdom state pension; or

(c) eligible at the relevant time for free NHS treatment because they are ordinarily resident in the United Kingdom."

Lord Lansley: My Lords, perhaps it is my turn now to try to mark the Government's card on the use of these powers.

We are dealing with Clause 2 and the implementing regulations. There are a number of respects in the regulations under which the Government will have to specify to whom they apply, under what circumstances and what payments will be made. For example, in Clause 2(2)(a) and (e), provision is expected to be made about the levels of payment and how they are to be calculated, and the reimbursement levels. Under subsection (2)(b) the regulations may specify or describe persons in respect of whom payments and provision may be made. Who are these persons and what is the extent of the payment?

I freely acknowledge that the amendments are intended to draw out the Government rather than for final inclusion in the Bill. I think this will be useful in two respects. Amendment 7 seeks to discover who we intend to provide payments for outside the United Kingdom. I have included United Kingdom citizens but not all United Kingdom citizens. I remember that when I was in the Natal province of South Africa there were 250,000 UK passport holders; I am not sure what proportion of them are UK citizens but it may be a relatively large number, so being a UK citizen is clearly not a sufficient criterion.

What else does the amendment require? It requires too that a person is in receipt of the United Kingdom state pension. It is not intended to be UK citizens who are also in receipt of the United Kingdom state pension because the state pension is a consideration in itself. This is what the EU reciprocal healthcare agreement presently provides. If one is a UK pensioner living in Spain, France or the Republic of Ireland, one has access to healthcare in that country as if one was a resident of that country. The UK is regarded as the competent member state and the Government of that country can seek reimbursement from the United Kingdom Government, and do so. So receiving a state pension is a sufficient consideration in itself.

Interestingly, as I understand it, one does not have to be a UK citizen in order for that to be the case. This is one of the reasons why there is a relatively large number of UK-insured registered pensioners in Ireland. The Explanatory Notes state that the most recent number, for 2018, is 45,000. They are principally citizens of the Republic of Ireland who have worked in the United Kingdom, acquired a United Kingdom state pension and subsequently retired to the Republic of Ireland. They are covered by virtue of that.

The third consideration is whether the person in respect of whom the payment is made is eligible for free NHS treatment because they are ordinarily resident in the United Kingdom. In these bilateral agreements there is a certain discontinuity between the way in which healthcare is provided in this country and for whom, compared with how and for whom it is provided in other countries. Therefore, although the structure of the EU regulation looks straightforward—it is that wherever people go they should be treated as though they were resident in that country—in practice that does not mean that in every EU country everything is free in the way that it is in the United Kingdom.

This means that those who are ordinarily resident in the United Kingdom can apply, as I understand it—the Minister will doubtless correct me if I am wrong—for a European health insurance card. By virtue of possessing that—it gives them eligibility for NHS treatment—they can secure access to healthcare in the country they are visiting. I presume that that explains the figure in the Explanatory Notes, in the table on page 4, which says that there were 55,000 UK residents using EHIC in Poland in 2016. These are not by and large people who were born and brought up in the United Kingdom but people who have moved to the United Kingdom from Poland and are now visiting Poland with their European health insurance card.

When we are considering who we are paying for we probably have to think in terms of those people who are eligible for NHS treatment. When they go somewhere else, they should have access to the support that the United Kingdom Government give them. Amendment 7 seeks to show who we are describing and, by implication, to say that it would not extend to other people. We do not have responsibility for them so why would we not limit the regulation-making power to those people?

Amendment 8, also in my name, concerns the amount of payment. Proposed new paragraph (a) would not permit the payment to exceed what the cost of the healthcare would be in the country or territory where the healthcare was being provided. For example, if a country would expect to pay £1,000 for a treatment, it would not be permissible for it to charge the United Kingdom £2,000.

There is an issue here in relation to the Republic of Ireland, which I will briefly mention. My noble friend may wish to refer to it. I am not sure of the current situation but it used to be the case when I was Secretary of State that the amount we paid the Republic of Ireland, when averaged across the number of pensioners we paid for there, significantly exceeded two- or threefold—rather than an order of magnitude—the amount that we paid on average for pensioners in England. This begged the question: was healthcare in the Republic of Ireland that much more expensive? I do not think the answer was yes. The answer was that an agreement had been reached that had acquired a certain character over time. I initiated further discussions with our Republic of Ireland colleagues on this matter, which may or may not have led to a conclusion.

Lord Cormack: Or a backstop.

Lord Lansley: Yes. It might have been part of the backstop agreement in the old days, I do not know.

The second limb of Amendment 8 is to say that although care is free to NHS patients in the United Kingdom, the object of the support is to put people in the same position in other countries as if they were residents of that country. Of course, care is not free in other countries. In a significant number of EU countries—I think about half—some out-of-pocket expenses are required in relation to their healthcare provision, which would not necessarily be reimbursed. We should not expect to pay more than would be the case if somebody were a resident of that country. The expectation should not be that because the NHS is a free service here, there should be a free service everywhere.

7 pm

Those are the purposes of my amendments. They are grouped with Amendments 17 to 19, which I will say nothing about other than it seems, on the face of it, that the Government want to achieve those objectives. I am rather hopeful that the Minister will be able to give that assurance. It would therefore not normally be necessary to put into the Bill those things which the Government intend to achieve in any case, and which do not require statutory backing. However, I am rather hopeful that she will see some merit in at least thinking about Amendments 7 and 8, and whether the Government should be clear about how far they should go—and where they should not go—on payments or persons for whom payments are made. I beg to move.

Lord Foulkes of Cumnock: My Lords, it is encouraging that on this occasion the noble Lord, Lord Lansley, and I are on the same page. We agree in relation to this. I declare my interest as chair of Age Scotland, which is concerned with the interests of older people in Scotland. Amendments 18 and 19 deal with travellers with long-term medical conditions, and pensioners. These are particularly vulnerable categories in the case of the noble Lord's amendments. We are suggesting that the current provision in respect of healthcare for UK citizens with long-term medical conditions travelling to the EU, and for EU citizens with such conditions travelling to the United Kingdom, should remain the same. This would create an essential legal commitment for those travelling to the European Union, who would otherwise have to face astronomical insurance charges that could price them out of travelling altogether.

There may be one or two Members of this House over the age of 75. If they have tried to get travel insurance to a non-European country, I think they will have found that very difficult. The banks often give insurance as part of having your account with them up to the age of 75, but after that Age UK or Saga—I again declare my interests—may be the only two companies or organisations which can provide insurance for such older people, particularly those with long-term medical conditions, so we are in a difficult area.

The cost of overseas medical treatment varies according to the country and the type of treatment needed but the costs for those with long-term illnesses are inevitably much higher. If we do not put arrangements in place, often families will go away without some of their older relatives being able to go. The costs add up extremely quickly; as we know from countries where we do not currently have healthcare agreements, they can be thousands of pounds. As we heard in previous debates, we do not currently enjoy reciprocal health arrangements with most of the world. This means that, at the moment, the EU and EEA countries present the only realistic travel option for many people with health conditions. It is a tragedy for them that they may not have that option after 29 March.

Take those who have kidney dialysis, for example. There are 29,000 who get kidney dialysis, usually on about three days a week. At present when they travel to the EU, they need to book slots in units near where they stay. The EHIC allows them to do that, but in the event of no deal, UK citizens would be required to pay for those slots. That could cost anything between €250 and €350 for each session—something like €1,000 a week, which will be impossible for most people. The Law Society of Scotland has reported that more than a quarter of disabled adults already feel that they are being charged more for travel insurance, or simply denied it, because of their condition. That is at the moment but it would be as nothing compared with the post-Brexit scenario. The Association of British Insurers has written to all of us, I think. It is supportive of this amendment, stating that it,

"would encourage detailed agreement with the EU to be sought in order to provide certainty for travellers with long-term medical conditions".

If the ABI supports it, I would hope that the Government will, too.

I turn to healthcare provision for pensioners. There are currently 180,000 UK state pensioners and their dependants living abroad, as mentioned earlier by the noble Lord, Lord Lansley. They are mostly in Ireland, Spain, France and Cyprus. Under the S1 scheme, the UK provides healthcare for all those British people abroad. The S1 covers not only pensioners but some others with exportable benefits, such as frontier workers and posted workers, for an initial period. It is estimated that UK state pensioners and their dependants made up about 75% of the total cost of £468 million in 2016-17.

The UK Government have said on their website that the S1 will be invalid with effect from 30 March. But the website offers no sensible advice—I hope that the Minister will—or alternatives to UK pensioners resident in the European Union, who are totally dependent now on the S1 for their medical care. British in Europe, which is the coalition of UK citizens in Europe, said:

"The maintenance of this scheme from March 30th in the event of No Deal is absolutely vital for those it covers. It is quite literally their only life-line. It is their NHS. They moved to the EU confident that they would be entitled to healthcare for life, based on this scheme".

In fact, when I was in France last weekend, some people talked to me about it and they were deeply worried about their future. This is understandably causing alarm among all these citizens.

After Second Reading, I received an email from a British citizen living in Germany who had written to the Department of Health and Social Care. I hope that the Minister may have seen and even replied to his letter. He said:

"Any decision by the German authorities giving us a token right to stay after a No Deal Brexit would be pointless if we did not have the financial means to do so".

I heard a pensioner in France say that she would be in difficulties in this way as well. This Brit in Germany went on to say that,

"most pensioners will have paid national insurance contributions and taxes into the UK system all their working lives. I continue to pay all my taxes into the UK. For what? Even if I could afford an extra €400-500 premium monthly for public health insurance … I should not have to".

Of course he should not have to. He continued:

"If I am unlucky enough to require hospital or medical treatment after 29th March, the UK Department will be receiving the relevant invoices or will have to provide details of how they will be reimbursing me for my national insurance contributions".

He has paid for it and is getting nothing in return. He said:

"Otherwise, it would just amount to the UK Government pocketing our contributions",

and he is right on that. He also said:

"UK expat pensioners are innocent people caught in the middle of this debacle. We can't just go out next month and top up our income if we are a bit low in funds. Please don't play political games with people's lives and livelihoods. If we must leave the EU"—

incidentally, as everyone knows here, I do not think that we should—

"then at the very least, please ensure Citizens' Rights are properly protected".

In cases where UK residents are not eligible for permanent residency, there will in some countries be potential for a voluntary opt-in to public health insurance schemes but that will vary from state to state and generally involve additional costs. In Spain, for example, there is a public health insurance policy if you have lived in that country for more than five years. However, it costs €1,900 for those 65 and over and €700 for those under 65. These are costs which British citizens in Europe do not currently incur. For them, it will be another Brexit tax. These innocent citizens will be caught out in this way because of Brexit. The Government must offer them some hope; otherwise it will be a really sorry situation.

The Earl of Dundee: My Lords, in this group, I support Amendments 18 and 19, which were addressed by the noble Lord, Lord Foulkes of Cumnock. As with a number of earlier amendments, here there are two specifications, each of which serves a clear and useful purpose: giving assurance without applying any onerous impositions.

In their forthcoming negotiations, the Government will clearly seek to protect current arrangements, in this case including those affecting travellers with long-term medical conditions as well as those for pensioners.

Be that as it may, incorporating these categories in the Bill would give much-needed comfort to direct participants as it would to others desirous of protecting them. If that is a positive effect, there is really no downside. That is avoided through Amendment 18, which states:

"It shall be the objective of Her Majesty's Government".

Post Brexit, those words will encourage the Government to replicate what already obtains without forcing that eventuality against insurmountable difficulties if any such should happen to intervene.

Baroness Jolly: My Lords, at Second Reading I spoke about Northern Ireland. All noble Lords will be aware that there is no Assembly in Northern Ireland, which makes for difficulties. Notwithstanding that, for the past 20 years there has been two-way traffic of patients across the Northern Ireland border. There is a raft of cross-border successes including radiotherapy, ENT, cardiology, ambulance services which operate north and south of the border and the common travel area. I do not need to underline to noble Lords that any barrier at the border would be detrimental to healthcare, especially to children and vulnerable patients.

While international agreements are for the UK Government to agree, healthcare is a devolved matter, so as powers become repatriated from the EU after Brexit, the potential for overlapping competences will increase as well as the possibility for disagreement about how health issues should be managed. The Constitution Committee recommended that the Government set out how they intend to manage overlapping competences in relation to the Bill and other policy areas. Will the Minister clarify this? The amendment also outlines that the UK Government must ensure they use as a negotiating strategy continued access to healthcare in Northern Ireland and the Republic. There is also a danger that the Secretary of State will be able to overturn any Act of Parliament in history, including Northern Ireland legislation. This is theoretical, but the Bill should be judged on what it can do, not on what the Government of the day anticipate it will do.

I have a few questions for the Minister. Within the EU, we have had peace of mind knowing that our health needs are safeguarded if medical attention is required. Does the Minister agree that if a withdrawal agreement has not been ratified by exit day it is essential that UK citizens living in Northern Ireland can continue to access medical treatment in the Republic under a healthcare agreement so that this amendment is necessary? How is that best managed? The noble Baroness, Lady Thornton, talked about a strategy. Can the Minister confirm that in negotiations with the EU the common travel area is treated as a priority for healthcare in the island of Ireland? Is it intended to create a strategy or does one exist? With whom was it negotiated? Can Parliament see it?

7.15 pm

Baroness Thornton: My Lords, I shall briefly reply to the remarks of the noble Baroness, Lady Jolly. I think the noble Lord, Lord Lansley, asked some very good questions and I looking forward to hearing the answers. These are genuine probing amendments to seek reassurance and understanding about the Bill. My noble friend Lord Foulkes and the noble Earl, Lord Dundee, spoke very well, so I do not intend to repeat their remarks.

I think I need to declare an interest as I have quite a large family in Cavan just the other side of the border in the Republic. They have asked me what I think is

[Baroness Thornton]
going to happen—not that I know the answer—and I imagine they are not alone among citizens of the Republic of Ireland and Northern Ireland in asking those questions because, as the noble Baroness, Lady Jolly, said, there is enormous cross-border traffic. We had a very useful briefing from the BMA, which firmly believes that continued access to medical care in Northern Ireland and the Republic of Ireland is very important. Cross-border arrangements have been established. They provide high-quality care for patients in a range of areas which the noble Baroness, Lady Jolly, mentioned, and it is important that those services are not destabilised during or after the Brexit process. We are seeking reassurance about some very practical issues regarding the treatment of children and other people in the Republic and in Northern Ireland.

Baroness Finlay of Llandaff: My Lords, I support the amendments in this group. They go to the very heart of the human aspect of healthcare provision. If you have a sick child who needs to go to a cardiology clinic, you may well have other children, and you need to be able to look after all of them as well as focusing on the one who is sick. Anything that endangers the services that have taken years to set up and which are known to be working well will have a major downstream effect not only on individual patients but on all others in the family when you have cross-border flow.

When we talk about people who are already ill travelling, quite often they are going to major family events or reunions. They are not going just for the sake of having a nice holiday. To deny them the ability to travel because the cost of insurance is prohibitive or because they will not have reciprocal cover could have quite severe downstream effects on the mental health and psychological welfare of some of the people who have been affected by it. While these are probing amendments, they go to the heart of why we need to have things in place.

Lord O'Shaughnessy: I shall follow the theme expounded by the noble Baroness, Lady Finlay, and talk about Northern Ireland and the Republic of Ireland. It will come as no surprise to noble Lords that with a name such as mine I have family in Ireland, but more importantly, I had several meetings with Irish Health Ministers during my time as Minister and I want to provide insight and reassurance from those conversations. Noble Lords will understand that during those conversations we had to discuss difficult issues—more challenging topics, shall we say—within the Brexit realm, but there was absolute clarity in every meeting about the intended outcome being continued cross-border delivery and co-ordination of healthcare. That could be done under the aegis of the common travel area and the Belfast agreement and there was no reason for the fact of the United Kingdom leaving the European Union to interrupt that. Clearly that needed to be established as well as the legal processes and basis, but that was deep, long-standing and productive work.

I wonder whether the Minister can update the Committee to give a flavour of where we have got to; it is not just about the Republic and the north, as people from the Republic of Ireland use tertiary healthcare services in the UK. This is an incredibly deep and long-standing relationship with huge benefits, and I am sure that the Minister will be able to confirm that we are at the right point in those discussions to provide reassurance. I can tell her that it has always been the intention of the UK Government, and it was clearly the intention of the Irish Government, to achieve that.

Perhaps I may reflect briefly on the amendments in the name of my noble friend Lord Lansley, which in a sense are about clarifying who benefits. I absolutely agree that that is necessary, and I am sure that the Minister will be able to respond.

I shall risk partially agreeing with the noble Lord, Lord Foulkes, and my noble friend Lord Dundee in the sense that they make a very strong case for our agreement with the European Union incorporating pensioners and those with long-term conditions, as indeed is the case now. I do not think that that needs to be in the Bill, not least because their amendments include the word "preserves". Of course, these are ongoing and dynamic relationships that will change over time; nevertheless, that is the Government's objective.

The noble Lord, Lord Foulkes, made a very compelling case for the Bill having a global reach when he talked about those with long-term conditions being unable to travel outside the EU because the arrangements are not in place. I hope that that is a sign that there might be agreement across the aisle about how it is necessary to formulate these agreements so that when our people travel to Australia, New Zealand, Serbia, Gibraltar, Guernsey and other places, they are able to do so with the same kind of reassurance with which they are able to travel in Europe now.

Baroness Blackwood of North Oxford: I offer my thanks to my noble friend Lord Lansley for his Amendments 7 and 8, to the noble Baronesses, Lady Thornton and Lady Jolly, for Amendment 17, and to my noble friend Lord Dundee and the noble Lord, Lord Foulkes, for Amendments 18 and 19. I also thank all noble Lords for a good debate on this group.

Each of the amendments seeks to provide clarity about the nature of the reciprocal healthcare agreements that we are seeking to implement after exit for the people who benefit from them. I understand that these are uncertain times and that people want to know that the UK Government are doing all they can so that there are no disruptions to people's healthcare abroad after the UK exits the EU. I hope that noble Lords can all agree that this legislation is important, as it grants the public the confidence that this Parliament is working to ensure that people can continue to access healthcare abroad.

The Government's intention is to continue current reciprocal healthcare arrangements with countries in any exit scenario—deal or no deal—as they are now until 2020. In any exit scenario, we are committed to the principle of equal treatment—that is, that UK nationals are not treated differently from local citizens when accessing healthcare in the EU. The Government are also committed to ensuring good value for taxpayers' money and will carefully consider the associated costs of any future reciprocal healthcare agreement that they enter into. I think that that speaks directly to the points made by my noble friend Lord Lansley.

I agree with the sentiment of my noble friend's Amendments 7 and 8, but I suggest that requirements such as the scope of people to be included in regulations and the principle of equal treatment are matters for the healthcare agreement. Questions around who should be eligible within specific reciprocal healthcare agreements and the affordability of those agreements would naturally be part of the scrutiny of any international healthcare agreement brought before Parliament as part of the CRaG process.

I just note, again, that the purpose of the Bill is to implement those agreements, not to define their parameters, as we do not yet know how the negotiations will proceed between now and the final agreements. However, my noble friend is absolutely right when he says that questions of eligibility, the principle of equality of in-country care, the impact on the NHS and value for the taxpayer will be at the heart of the Government's consideration as they move forward with reciprocal healthcare. It is certainly our intention to be clear and transparent about this, not least because we are discussing the personal healthcare arrangements of UK citizens. As the noble Baroness, Lady Finlay, put it, this goes to the human heart of the Bill.

In addressing the specific concerns raised by the other amendments, I shall offer reassurances about some of the specific cohorts of people mentioned in the debate. First, I shall speak directly to Amendment 17 in the names of the noble Baronesses, Lady Thornton and Lady Jolly, and spoken to by the noble Baroness, Lady Finlay, and my noble friend Lord O'Shaughnessy. I can confirm that it is the UK's negotiation strategy to continue UK-Irish healthcare co-operation regardless of EU exit. Both the UK and Ireland are committed to continuing reciprocal healthcare rights so that UK and Irish nationals can continue to access healthcare when they live in, work in or visit the other country.

To turn to a point raised by the noble Baroness, Lady Finlay, we also want to maintain co-operation between the UK and Ireland on a range of health issues, including planned treatment. We want people to be able to live their lives as they do now and for our healthcare systems to continue supporting each other. The common travel area provides an important context for this. The CTA holds a special importance for people in their daily lives and it goes to the heart of the relationship between these islands.

To answer the point raised by the noble Baroness, Lady Jolly, about overlapping competences, two amendments have been tabled on devolution, so we will be looking at that when we reach Amendment 42 and I will deal with that matter in more detail then.

With regard to Amendments 18 and 19 tabled by my noble friend Lord Dundee and the noble Lord, Lord Foulkes, the Government are acutely aware of how reciprocal healthcare arrangements benefit UK state pensioners and those with long-term conditions. Speaking as someone with a rare condition, when I travel, I travel at risk; I am not eligible for insurance. I understand this only too personally. Therefore, I thank the noble Lord, Lord Foulkes, for rightly raising the question of how effectively we communicate with those who currently rely on reciprocal healthcare arrangements. As well as speaking from a personal perspective, I can say that the Government are very conscious that it can be difficult to get insurance. We are working with Kidney Care UK to ensure that advice is sensitive to these issues and that people have the information they need to make the best decisions. We will discuss this issue in a lot more detail when we reach the group commencing with Amendment 20, but I want to offer the noble Lord my personal thanks.

The noble Lord also referred to a letter from a friend of his. I think that that would have gone to my right honourable friend the Minister with responsibility for Brexit. However, if he has not received a response, will he please let me know?

Access to healthcare overseas is obviously vital for the groups we have mentioned. The Government are seeking to maintain reciprocal healthcare rights for pensioners and those with long-term conditions through the "in principle" withdrawal agreement in a deal scenario, and in a no-deal scenario through our discussions with member states, the two EU withdrawal Act SIs that we have introduced, and of course through the powers in this Bill.

In responding to these amendments, I hope that I have made it clear that the Government's negotiating position is to provide for the continuation of the current reciprocal arrangements and the ease of access to healthcare that these provide, especially to the people on the island of Ireland, those with long-term illnesses and pensioners. I hope that this reassurance addresses the concerns of noble Lords and that my noble friend will feel sufficiently reassured to withdraw his amendment.

Baroness Thornton: Would the noble Baroness mind repeating the part of her answer that referred to overlapping competences? I would be very grateful if she could do so.

Baroness Blackwood of North Oxford: I simply said that two amendments on devolution have been tabled, so we will be discussing that issue in a lot of detail when we reach Amendment 42.

I hope that my noble friend will feel able to withdraw his amendment.

Lord Lansley: I am very grateful to my noble friend. Her response has given reassurance. She is quite right to say that it will not be until such agreements are negotiated and entered into that we will have absolute clarity, but the commitment to the equal treatment principle is clear. I just hope that, equally, other countries recognise that. There is an awful temptation for them to think that healthcare is delivered in the United Kingdom on the basis of ordinary residence and that therefore a significant proportion of the citizens of those countries who go to live and work in the United Kingdom become eligible for NHS care. It might suit them to choose not to be the competent member state when it comes to the purposes of the agreement and paying for their healthcare in the United Kingdom. I hope that they will not be tempted in that direction but there is a potential discontinuity and indeed an imbalance between what we provide in the United Kingdom and what is provided in other countries. I

[Lord Lansley]
suppose that, if I say nothing else, I should say that we should always guard against that and ensure that agreements are, as far as we can make them, properly bilateral and reciprocal. However, on the basis of the reassurance that my noble friend has been able to give me, I am happy to beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Amendments 8 and 9 not moved.

Clause 2 agreed.

Amendment 10 not moved.

House resumed. Committee to begin again not before 8.29 pm.

Amritsar Massacre: Centenary

Question for Short Debate

7. 30 pm

Asked by ***Lord Loomba***

To ask Her Majesty's Government what plans they have to commemorate the 100th anniversary of the Amritsar massacre.

Baroness Stedman-Scott (Con): My Lords, speakers in this debate are limited to four minutes so time is very tight. As ever, if we overrun, we take time from the Minister, so I ask all noble Lords to stick to the allocated time and I thank your Lordships in advance.

Lord Loomba (CB): My Lords, I thank the noble Lord, Lord Taylor of Holbeach, for agreeing to our request for this debate. It is a privilege to be able to put this Question to your Lordships, surrounded by so many noble Lords who have pledged their support to encourage the Government to commemorate the 100th anniversary of the Amritsar massacre. I hope that the Government will finally realise that now is the time to make amends and offer a formal apology for the atrocities; I will come to that later in my speech. I declare my interest as a member of the Jallianwala Bagh Centenary Commemoration Committee.

Much has been written about what happened on 13 April 1919 in the Jallianwala Bagh. Jallianwala is a place and "bagh" is the Punjabi word for "park". I myself come from the area of Amritsar and, even though I was not around at that time, I heard many stories passed down the generations, especially through my grandmother. I have also visited the park many times and seen for myself the bullet holes in the walls and the well from which 150 bodies were extracted. Around the park, many stories are written on placards and stones, and it is impossible to come away from the place without tears rolling down your face. It is a shocking event to recall, even after 100 years. As Winston Churchill said during a debate in the other place:

"That is an episode which appears to me to be without precedent or parallel in the modern history of the British Empire. It is an event of an entirely different order from any of those tragical occurrences which take place when troops are brought into collision with the civil population. It is an extraordinary event, a monstrous event, an event which stands in singular and sinister isolation".—[*Official Report*, Commons, 8/7/1920; col. 1725.]

People, including children, had gathered at the Jallianwala Bagh to protest about the arrest of some of their leaders earlier in the week. Martial law was in force at the time. Brigadier General Dyer took the view that the gathering was not only illegal but an expression of defiance against the authorities. Ordering his soldiers to the spot, he blocked all the exits. The people were trapped like rats, and fired upon without warning or any order to disperse. The firing continued on the crowd until the soldiers ran out of ammunition. It is not clear how many people, including children, died that day. But many who were injured and died later were not counted—they had been afraid of going to hospital in case they would be arrested for having defied the martial law.

As Edwin Montagu, the Secretary of State for India, said in the other place:

"Once you are entitled to have regard neither to the intentions nor to the conduct of a particular gathering, and to shoot and to go on shooting, with all the horrors that were here involved, in order to teach somebody else a lesson, you are embarking on terrorism, to which there is no end".—[*Official Report*, Commons, 8/7/1920; col. 1707.]

Those innocent, unarmed civilians who died immediately, and those left to suffer a horrendous and prolonged death, were let down by the very people who should have been protecting them, not opening fire, killing and injuring mindlessly. At the time, many Indians had given of their lives "for King and country" by fighting in the First World War, and had subsequently been promised greater autonomy and freedom from the oppression of British rule. Two years later, however, there was still no sign of this happening and the population was becoming increasingly frustrated. People were beginning to despair of a rule that appeared to be becoming tyrannical and oppressive and were fearful of the future.

Six years ago, David Cameron became the first serving British Prime Minister to pay his respects by visiting Jallianwala Bagh, where he described the massacre as,

"a deeply shameful event in British history",

but he stopped short of issuing a formal apology, and sidestepped the issue by saying that there had been condemnation at the time from the British Government. While I commend his visit, it was not an adequate response to all the suffering and pain that was inflicted on innocent civilians, unarmed and with no escape, who had every right to gather peacefully.

Winston Churchill, again speaking in the other place, accused General Dyer of resorting to the doctrine of "frightfulness", saying:

"What I mean by frightfulness is the inflicting of great slaughter or massacre upon a particular crowd of people, with the intention of terrorising not merely the rest of the crowd, but the whole district or the whole country".—[*Official Report*, Commons, 8/7/1920; col. 1728.]

It is not difficult to see that this massacre encapsulated what the protests were about: tyranny and oppression; General Dyer confirmed the people's worst fears. The Jallianwala Bagh incident broke the trust between the people and their rulers and that trust was never restored.

What followed was Gandhi's non-violent lawbreaking movement, which eventually led to the end of the Empire.

Today, things are different. People from the subcontinent have made their homes here in the United Kingdom, and it is a multiracial society. It would be appropriate in my view for a formal apology to be issued by the Government. The noble Lord, Lord Desai, and I have written to the Prime Minister urging that an apology be made to bring about the closure of this very unfortunate episode. It would be appreciated by the millions of south Asians living in the UK, as well as by the people of India.

7.39 pm

Baroness Verma (Con): My Lords, for such a critical period in India's history, this short debate cannot give true justice to the thousands of lives that were lost, injured and impacted on, on that tragic day, 13 April 1919, at Jallianwala Bagh, Amritsar, India. On the instructions of Sir Michael Francis O'Dwyer, the Lieutenant Governor of Punjab, General Dyer ordered troops to fire on men, women and children who had come together to enjoy and share one of the most auspicious days in the Sikh calendar, Vaisakhi.

I was born in Amritsar. In fact, my mother went into labour with me at the Shri Harmandir Sahib Gurudwara, the Golden Temple, where she went for her daily prayers with my grandmother. I feel incredibly blessed to have started my life in the most revered religious place of the Sikh faith. I have visited Jallianwala Bagh and the Golden Temple many times, often when I needed to take difficult decisions or when I was looking to start a new venture. I go there for clarity in my decision-making process and to reflect on the impact my decisions will have on others.

Why is this relevant to the debate today? This massacre did not just affect the Sikh community; it was a turning point in the minds of those who were leading the free India movement. That most horrific day in history remains in the memories of Indians all over the world even today. This act of complete disregard—opening fire on innocent people who had no escape routes or an opportunity to voice their protests—is truly a black cloud in British history. As such, when world history is taught, it is and must be relevant to have these events recorded and taught in history lessons for a number of purposes, among them teaching the importance of identifying the consequences of decisions that were wrong.

I am extremely grateful for the work and support of Lady Kishwar Desai in getting the Partition Museum built and opened in Amritsar, enabling people to have an understanding of India's past from an Indian perspective. Even today, when I visit the Jallianwala Bagh, there is an eerie atmosphere—a feeling of sadness lingers in the air. How do we right this terrible wrong? I was pleased when the former Prime Minister David Cameron visited and paid his respects at the memorial. I was also pleased to see Her Majesty the Queen and the Duke of Edinburgh go there to pay their respects.

One hundred years on, we are commemorating in the very place that exonerated General Dyer of any wrongdoing and which in fact praised him for his actions, so I thank my noble friend Lord Loomba for putting this debate before the House today. David Cameron rightly condemned the actions of General Dyer for that day's outrage. This debate, like all discussions, provides us with opportunities to demonstrate how important checks and balances and proper scrutiny of political decisions are, and what terrible outcomes occur if we as politicians fail to hold ourselves and those who serve us to account.

I have often said to friends and colleagues that we share a history but our reflections are through very different lenses. Our heroes should be part of our history books, too, to give children a sense of where they are today, the journey to get here and, more importantly, where they come from. My family served in the British Army under the Raj and in the Indian Army after gaining independence. Service to our country is ingrained in the Indian community, which continues to remain the most law-abiding community wherever it has settled in the world. I ask the Minister to reflect very carefully on today's contributions.

7.43 pm

Lord Desai (Lab): My Lords, in the brief time I have, I want to concentrate on what the House of Lords did during the Jallianwala Bagh massacre and the discussions afterwards. It is a particularly sad episode in the history of your Lordships' House. While the House of Commons condemned Dyer's behaviour and cashiered him—Edwin Montagu, who was Secretary of State for India, made a very powerful speech and the noble Lord, Lord Loomba, has already quoted what Winston Churchill said that night about General Dyer's behaviour—the House of Lords debated a Motion saying:

> "That this House deplores the conduct of the case of General Dyer as unjust to that officer, and as establishing a precedent dangerous to the preservation of order in face of rebellion".—[*Official Report*, 19/7/1920; col. 222.]

It was introduced by Viscount Finlay. There were 10 speakers and, at the end, the Motion was passed.

At some stage, the House of Lords ought to reflect on its own behaviour. I do not have time to go through what was said in any detail, but Viscount Finlay's objections were mainly that Dyer was misjudged, that he really was facing an armed rebellion and therefore that he had every right to do what he did. He also said that the Hunter Commission, which was appointed to investigate this, had three Indian members, and that that was not the right thing to do because they were partisan, and the partisan commission ruled against Dyer. As it happened, both the majority report and the minority report of the Hunter commission condemned Dyer—but let us leave that aside.

The view was taken that somehow injustice had been done to a brave officer who was putting down a rebellion. The nightmare of the 1857 rebellion haunted some of the officers in Punjab at that time and they overreacted. Punjab was under martial law and it was not only Jallianwala Bagh which was a problem. Throughout April and after, there was martial law in Punjab. Lahore suffered as much as the rest of Punjab and Gujranwala, a small town which is now in Pakistan, was bombed from the air to control what the Lieutenant

[Lord Desai]
Governor, Sir Michael O'Dwyer, thought was happening. It was a very unusual moment in which Punjab was held almost captive.

I think we ought to reflect on this, when we get the chance. The debate from 19 July 1920, which is in *Hansard*, should be read by Members of your Lordships' House and, at another stage, we should ask ourselves whether we should not apologise to the world for what this House did. That at least we can do ourselves—we do not need the permission of the Government.

7.47 pm

The Earl of Sandwich (CB): My Lords, my noble friend Lord Loomba is a recognised advocate of the rights of women, especially widows, and he has a formidable reputation as a philanthropist, both in the UK and in his home state of Punjab. Once a Liberal, he crossed to the Cross-Benches, saying that he wished to,

"concentrate on issues such as human rights",

so it is natural that he should be concerned about this event, alongside many others.

Horrific as the massacre was, my first instinct was that this was too long ago and we cannot continue to regret events so far in the past. In the last 100 years, there have been many other incidents that should never have occurred. For India and Pakistan, partition will be the most prominent of all and well within living memory. Then of course I remembered the extended families—the grandchildren and great-grandchildren—who still live in and around Amritsar with the memory and the scars of that terrible day.

Of course, there were genuine fears which led to the attack and it is easier to judge with hindsight. However, as the noble Lord, Lord Desai, said, the 1920 vote in favour of General Dyer was disgraceful and should never have happened. We cannot wipe it from the record, but we can try to put it straight today. We all respect the decision of the noble Lords, Lord Desai and Lord Loomba, to create education programmes that will ensure that this event is not forgotten. I am glad to say that my 14 year-old grandson told me today that he is already aware of it.

Uniquely brutal and misguided as the general was, the event must also be seen in the context of the decline of British imperialism and a gradual change in British attitudes. It was a turning point that helped Gandhi to reframe the remarkable doctrine of non-violence and satyagraha. It soon led to the salt march of 1930, the twists and turns in Whitehall and the inevitable political path up to partition and independence in 1947. But there is a paradox. Even at the time of the massacre, there were strong intellectual and cultural ties between the two countries. I lived in India in the 1960s and visited the Ramakrishna Mission on the Hooghly, where relations of mine were influenced by Swami Vivekananda even before 1900. I also became aware of the common ground that existed in the 1920s between Tagore in Bengal and many English families, including the Elmhirsts of Dartington. Last year saw the centenary of Sister Nivedita, who was born Margaret Noble and is still a legend in Bengal. These facts are to be set alongside the terrible event we are discussing.

In these few minutes, we should also be concerned about India today and the importance of human rights now. There has been another appalling massacre in Kashmir. To my mind, the ethnic divide in India is the most critical humanitarian issue in the coming election. With few exceptions, Indian Muslims are emphatically not terrorists. To my personal knowledge, they are upholders of dignity, integrity and many human virtues. Mr Modi does not have a good reputation among the Muslim minority and he has encouraged discrimination and worse in Maharashtra and in great cities such as Ahmedabad, where there are substantial Muslim populations. Talk of the resurgence of Congress under new leadership may be premature, but the Prime Minister, instead of flag-waving at Pakistan, needs to be more sensitive to the needs of his own Muslim minorities.

In conclusion, of course children must be taught history, but we must always remember its relevance to today and the future.

7.52 pm

Lord Bilimoria (CB): My Lords, we must put this appalling atrocity in context. It led from the First World War, in which more than 1 million Indians served and 74,000 made the ultimate sacrifice, in the expectation that after the war they would be rewarded with some measure of self-government. The punitive Rowlatt Act went back on this totally. Of course, there were protests in Punjab in March and April 1919. Then we had the actions of Brigadier-General Reginald Dyer, with the backing of the lieutenant-governor of Punjab, Sir Michael O'Dwyer.

The people who gathered peacefully—up to 15,000 people from the outskirts on Baisakhi day on 13 April—were Sikhs, Hindus and Muslims, and included women and children. They assembled in the walled garden, which the noble Lord, Lord Loomba, spoke about. I thank him for initiating the debate. It was a popular spot. Many of them probably had no idea that they were doing something supposedly illegal. When Brigadier-General Dyer came there, he ordered the firing without any warning. They did not fire in the air; they just fired at these women, children and non-violent individuals. They fired 1,650 rounds, officially killing 379 people, but it was probably nearer 1,000, with more than 1,000 wounded. They virtually ran out of ammunition. This is why it is called the Jallianwala Bagh massacre.

The worst thing is that Dyer never showed any remorse or regret. In fact, he said that he had personally directed the fire towards the exits. He called the victims "the targets", which were very "good". He forbade his soldiers from giving any aid to the wounded. He forbade the families from coming to attend these people for 24 hours. This is barbarism at its worst. Then he was rewarded in Britain with £26,000 from a public campaign and presented with a jewelled sword of honour. The poor families and the victims of the Jallianwala Bagh massacre were given 500 rupees each. It is no wonder that my friend, the Member of Parliament Shashi Tharoor, who wrote the book *Inglorious Empire*, has said:

"The massacre made Indians out of millions of people who had not thought consciously of their political identity before that grim Sunday".

Rabindranath Tagore, the Nobel laureate, returned his knighthood. This all spurred on Mahatma Gandhi to go even further in his struggle for India's independence.

It is not too late for the British Government to apologise. I was with David Cameron in India on that visit in 2013. I was hopeful that he would apologise, but he did not. He said that it was a "deeply shameful event", but he did not apologise. It is not too late. The Canadian Prime Minister Justin Trudeau did just that in 2016, when he apologised for Canada's actions in the atrocities a century earlier, when the Indian immigrants on the "Komagata Maru" were denied permission to land in Vancouver, thereby sending many of them to their deaths. Why can Britain not do this?

Does the Minister agree that children need to learn in schools about what happened in these atrocities? Even Winston Churchill said that this was an episode "without precedent". Herbert Asquith said:

"There has never been such an incident in … history".

AJP Taylor said it was,

"the decisive moment when Indians were alienated from British rule".

The Mayor of London, Sadiq Khan, in 2017 called on the British Government to make a full apology when he visited Amritsar. What happened? The British Government rejected that call for an apology for the massacre. Why can the Government not apologise? Gordon Brown apologised for the child migrant programme. In 2010, David Cameron, who did not apologise in Amritsar, gave a formal apology in the Commons on the day the Bloody Sunday report was published. He acknowledged that all those who died were unarmed when they were killed by British soldiers and that a British soldier had fired the first shot at civilians. He said that, although it was not a premeditated action, there was,

"no point in trying to soften, or equivocate … what happened should never, ever have happened".—[*Official Report*, Commons, 15/6/10; cols. 740.]

He apologised on behalf of the British Government by saying he was "deeply sorry". Why can the British Government not apologise?

I spoke to my 82 year-old mother and told her that I was going to speak in this debate. I visited Jallianwala Bagh with my mother. She said, "Son, it was nothing short of murder".

7.56 pm

Lord Suri (Con): My Lords, I am glad that we have the time to debate this important issue. I thank my noble colleagues for securing the required time.

This is a very sad story, and one for which the key facts deserve to be retold. On Sunday 13 April 1919, a large group of mainly Sikhs, but also Hindus and Muslims, had gathered in the courtyard of the Jallianwala Bagh. It was the day of Baisakhi, a Sikh festival, and a large gathering had formed. However, many were not celebrating. Many were merely civilians, living their lives, engaging in commerce and providing for their families. The atmosphere, above all, was peaceful.

That was until Reginald Dyer, now widely known as the butcher of Amritsar, arrived. He sought to disperse the crowd, not by peaceful but by wholly unjustified and entirely disproportionate means, firing over their heads and shooting into the crowds fleeing through the narrow exit passageways, the largest of which he blocked off with armoured vehicles. He later stated that he only stopped his soldiers firing due to a lack of ammunition. Some 1,600 innocents were murdered, with up to 1,000 more injured. I believe that this shameful event was the trigger for what became the independence movement.

The reaction back home was immediate and scarcely less shameful. It ought to be a black mark on the reputation of this place that in July the following year we voted to condone the massacre and the man who led it. Following the censure of Mr Dyer in the other place, this House passed a Motion that,

"this House deplores the conduct of the case of General Dyer as unjust to that officer, and as establishing a precedent dangerous to the preservation of order in face of rebellion".

In a particularly ill-informed speech, Viscount Finlay went on to say that Dyer,

"took every step to avert bloodshed in the way of warning the population and endeavouring to secure that the law should be obeyed without recourse to arms".—[*Official Report*, 19/7/1920; col. 227.]

He said those words despite claiming to have read the Hunter commission, the minority and majority report of which both recognised that no notice was given of the opening of fire, and that lethal force was used as the first resort, not as the last. I confess that going over that debate again has made me extremely sad at the disregard for human life shown in this place at that time.

There are those who say that the past is a foreign country which ought to be left and disturbed as little as possible. There are those, including the previous Administration, who have refused to offer up a full apology, although good steps have been taken, most notably by the Queen and the previous Prime Minister, to address the immense hurt and suffering caused at that time. But more needs to be done. It is the mark of a solemn and grown-up country to apologise for past crimes. Justin Trudeau was content to apologise for the shameful record of his country in turning away Jewish refugees in 1939. Tony Blair was content to apologise in 2007 for the UK's record of slavery. I ask the Minister directly: what good reason is there, in this auspicious centenary year, to withhold a full and frank apology for the massacre?

To close, I will quote from the Queen's 1997 speech from the site of the massacre:

"History cannot be rewritten, however much we might sometimes wish otherwise. It has its moments of sadness, as well as gladness. We must learn from the sadness and build on the gladness".

Those are wise words. To build on our burgeoning partnership with India, let us learn from the sadness, apologise, move on, and get on with building gladness.

8.02 pm

Lord Alton of Liverpool (CB): My noble friend Lord Loomba's eloquent speech and the erudite account by the noble Lord, Lord Desai, in *The Rediscovery of India*, of what occurred on 13 April 1919 at Amritsar,

[Lord Alton of Liverpool]
Jallianwala Bagh, remind us that brave Indian soldiers returning from World War I trenches wanted change. They then encountered two entirely different men: Mahatma Gandhi, with his commitment to peaceful change, and General Reginald Dyer, who, as we have been reminded, Winston Churchill told the House of Commons had resorted to,

"frightfulness… the inflicting of great slaughter or massacre… with the intention of terrorising not merely the rest of the crowd, but the whole district or the whole country".—[*Official Report*, Commons, 8/7/1920; col. 1728.]

A group of people had peacefully gathered to hold a prohibited public meeting. The response was wholly disproportionate and excessive. Although the House of Commons excoriated Dyer by denouncing his actions as an act of "brutality" that had "stunned this entire nation", your Lordships' House offered Dyer accolades. Perhaps today we can atone and help to heal that shocking moment of our history.

While we mark the Amritsar massacre, we must not neglect the other frightful tragedies currently unfolding in many parts of the world, in countries such as Burma and Sudan, which, like the Punjab, I have visited. On 12 February 2019—72 years since 12 February 1947, when ethnic and religious minorities in Burma, including the persecuted Rohingya Muslims and Kachin Christians, were promised autonomy within a federal Burma—over a thousand Karennis peacefully protested against the erection of a statue to General Aung San, the founder of the Tatmadaw, the Burmese army. The United Nations reported:

"Police fired rubber bullets and used batons and water cannons injuring up to 15 protesters in Loikaw, the capital of Kayah State and home to the Karenni ethnic minority".

In January, the United Nations reported on the use of excessive force in Sudan against protesters in the biggest popular uprising since 1956. Only last week I met with Sudanese opposition leaders who described the use of live ammunition by security forces against protestors, egregious human rights violations, including at least 57 killings, and the torture, rape and imprisonment of women and children. Hundreds have been arrested and, according to the United Nations, they include journalists, civil society representatives and opposition leaders. The UN says that the security forces fired tear gas and live ammunition inside the premises of the Omdurman hospital, and attacks also took place at the Bahri teaching hospital and Haj Al-Safi hospital. Doctors have been prohibited from treating the wounded.

The picture elsewhere also suggests that we have failed to learn the lessons of Jallianwala Bagh. Take Nicaragua, where the EU Council says that recent protests were,

"brutally repressed by security forces and pro-government armed groups, leading to clashes, several hundreds dead and injured and the arrest of hundreds of citizens".

That graphic account, recently given to me by a Nicaraguan, has been sent to the Foreign Secretary.

Peaceful protests and public gatherings are both enshrined in Articles 19 and 21 of the International Covenant on Civil and Political Rights and Articles 19 and 20 of the Universal Declaration of Human Rights. The best memorial to the victims of Jallianwala Bagh would be for Britain to fearlessly speak out for people who cannot do it for themselves, vociferously insisting on the right to freedom of expression and peaceful assembly. Do this, and it can help to redeem the callous and violent use of power such as 100 years ago at Amritsar, which Churchill described as,

"an extraordinary event, a monstrous event, an event which stands in singular and sinister isolation".—[*Official Report*, Commons, 8/7/1920; col. 1725.]

8.06 pm

Lord Morgan (Lab): My Lords, in the catalogue of crimes which featured in the defence of empire, from the suppression of the so-called Indian mutiny onwards, the Amritsar massacre is just about the worst. The conscience of the world was horrified by the events that other noble Lords have described so well.

Britain in 1919 was a hard, nationalist country; very prominent were the die-hards, the so-called "hard-faced men" of whom Keynes wrote. This was seen in Ireland, in relation to immigrants, and in the anti-Semitism which imposed itself on the Secretary of State for India, the Jewish Edwin Montagu. As it happens, the policy towards the empire and towards India was not so hostile during this period; on the contrary, with the Montagu-Chelmsford report the Government began a process of greater devolution and of bringing the Indians into government. But Amritsar, the pile of corpses in the bagh, changed all that.

The disaster, I believe, was to leave key decisions to the officers on the spot, who often had very limited understanding of the political factors and couched them in right-wing imperialist views. This was particularly true of Dyer. He was asked after the event by the Hunter commission if he had any regrets. He said "no". He was asked whether he would have proceeded into the bagh himself, and he said "yes"—and just to make sure, he would carry a machine-gun with him. His troops were stationed in an area of the road where people would accumulate, and therefore as many as possible were shot. It was followed by other shameful events: public crawling across the area of the march, and disturbances and public floggings in areas where violence had occurred.

The Government acted in a more positive fashion. Lloyd George dismissed Dyer from his post, though not from the Army. Winston Churchill made a powerful defence of government policy in Parliament. In the House of Commons, there was much backing for General Dyer, particularly interestingly from the Irish Ulster Unionists who equated the treatment of Indian nationalists with the resistance to Sinn Fein in Ireland and the policy of the Black and Tans. The effect was to antagonise all the religious bodies and create a new generation of nationalists: Nehru, the Muslim Jinnah and, of course, Mahatma Gandhi, whose campaign of civil disobedience took on a powerful new course.

What should be done now? As the House has heard, there has never been an official state policy or statement of regret. When the Queen visited India a few years ago, the speech she was given was quite inadequate for the purpose and the Duke of Edinburgh's off-the-cuff remarks made matters, if anything, somewhat worse. At a time when Britain is becoming more isolated in the world, it is so important to reinforce

our ties with India. These events are still resented there. We should have an official statement, if not of regret then at least documenting the facts in plain language, thereby restoring the principles and values for which the British Commonwealth has always stood.

8.11 pm

Lord Mawson (CB): My Lords, on 2 March 1985 I was responsible for arranging the celebrations for the reopening of Kingsley Hall, in the heart of the East End of London. It was the building where Mahatma Gandhi stayed for the 10-week Round Table Conference on India in 1931. I learned about those 10 weeks in 1984 from an East End grandmother, Lylie Valentine, who met the great man. Lylie told me the real story of the man and what happened on that rooftop at Kingsley Hall all those years ago. It was a human tale of a practical, imaginative human being, an empathetic man who took on the British Empire and won.

In Amritsar, British and Gurkha troops massacred at least 379 unarmed demonstrators meeting in the city's park. Gandhi had actively supported the British in the hope of winning partial autonomy for India. After the Amritsar massacre he was convinced that India should accept nothing less than full independence. To achieve this end he began harnessing his instinct, experience and all his many talents to organise his first campaign of mass civil disobedience against the British. His life's work had begun.

In his film, Richard Attenborough rather brilliantly captured this tipping point in the man and the moment. In 1985 Richard turned up at Kingsley Hall in his green Rolls-Royce with his wife Sheila Sim. Together, on that March evening, we reopened the Hall to a packed street and cheering East End crowds, with fireworks and lasers firing into the night sky. Richard, like Gandhi, had not only a sense of occasion but also a moral compass, in which passion and a practical business sense that gets things done, came together, most importantly, with imagination and empathy for others. They had a willingness to imagine the world as others both see and experience it. Amritsar was a critical change moment for the Mahatma; a turning point.

Gandhi, like Mandela, dug into the detail and joined the dots in such moments. These figures were deeply immersed in the machinery and life of their communities. Their antennae were tuned, their minds and bodies engaged at a deep level. Gandhi was a disrupter. He understood that the key to the future lay beyond simple reason and argument. It was not an intellectual game; it required a costly and instinctive leap of faith. Those physical deaths in Amritsar were the trigger and Richard captured the moment.

I have been reminded, during the countless repetitive and confrontational debates in your Lordships' House about Brexit, of the words of the late Denis Healey during the 1986 Libyan crisis: "We have listened to another manic monologue that sheds as much light as an electric drill". The apparently fundamentalist positions that have been taken remind me, sadly, of Brigadier General Reginald Dyer, who ordered the shooting at Amritsar and was so confident he was doing the right thing. As we have heard, even the House of Lords supported him at the time.

We should commemorate the events at Amritsar, not only because of their significance for India but because there is a clue in them. Reason alone, and intellectual games across this Chamber, may not get us where we need to be. We are not facing a black-and-white choice. The clues to the future may not be in the positions we are choosing to dig into, but actually deep down in the machinery of government, both here, in Europe and in the lived experiences and consciousness of the peoples of Europe. These imaginative men would be digging into the front end, searching for common ground.

There is much in this internet age that we share with the whole of Europe as we try to reimagine our world and that of our children, but the clues are not in this Chamber. The real debate that matters is, I fear, somewhere else. Let us commemorate Amritsar, not just as a significant date for the peoples of India, but as a world event grasped by an imaginative, instinctual man who took salt from the sea and used it to change India at every level, top, middle and bottom. He joined the dots. He saw, as a doer, what talkers failed to see, so blinded were they by what they thought they knew.

8.16 pm

Lord Collins of Highbury (Lab): My Lords, I apologise to the noble Lord for speaking in the gap—a failure on my part in not adding my name to the list in time.

In 1919, Josiah Wedgwood said in the Commons that,

"you can imagine the feelings of these Indians for generations over this terrible business … You will have a shrine erected there and every year there will be processions of Indians visiting the tombs of the martyrs and Englishmen will go there and stand bareheaded before it".—[*Official Report*, Commons, 22/12/1919; cols. 1231-32.]

Successive British Governments of all colours have been united in their condemnation of the massacre. Churchill called the incident "monstrous", Blair said that it represented the "worst aspects of colonialism", and Cameron referred to it as,

"a deeply shameful event in British history".

Visiting the memorial on 6 December 2017, Sadiq Khan said that as we reach the centenary of the massacre, the United Kingdom needed to properly acknowledge what happened by,

"giving the people of Amritsar and India the closure they need through a formal apology".

I hope the Minister will conclude tonight by making that commitment.

8.17 pm

Baroness Northover (LD): My Lords, I thank the noble Lord, Lord Loomba, for securing this very important debate. I pay tribute to the work that he and the noble Lord, Lord Desai, are doing on this matter. There have been some very passionate and personal contributions today. I was especially struck by that of the noble Baroness, Lady Verma.

We are looking at this centenary just after the one for the First World War. More than a million Indians fought for Britain in that war, 60,000 of whom were killed. I was glad that their contribution was marked,

[Baroness Northover]
for example, at the request of my noble friend Lord Wallace of Saltaire, in the Parliament and Bundestag choir concert, during which the immensely moving Naidu poem, "The Gift of India", was read.

Suffrage for women was granted immediately after the First World War, largely in recognition of their role. In India, pressure for independence mounted, but as the noble Lord, Lord Bilimoria, has pointed out, the reaction was not engagement or gratitude but the opposite. During the war, the British Government of India had passed repressive emergency powers. At its end, the expectation was that these would be eased and India would be given more autonomy. As the noble Lord, Lord Morgan, has pointed out with detailed historical perspective, the Montagu-Chelmsford Report of 1918 recommended limited local self-government. Instead, however, further repressive measures were passed. Widespread anger resulted, as we have heard, and Brigadier General Dyer banned all public meetings, which, he stated, would be dispersed by force if necessary.

Despite this, thousands gathered in the walled enclosure near Amritsar's Golden Temple. Dyer marched 90 Gurkha and Indian soldiers into the enclosure and, without warning, as we have heard, they opened fire for about 10 or 15 minutes on the panicking crowd trapped there. It was reported that 379 people were killed and about 1,200 wounded, although other estimates suggest much higher casualties. Dyer also issued humiliating instructions that all Indians going along the street where a woman missionary had been attacked were to crawl on their hands and knees.

The news of the massacre provoked fierce disapproval at the time, as we have heard. As the noble Lord, Lord Alton, and others have said, Churchill condemned this as,

"a monstrous event, an event which stands in singular and sinister isolation".—[Official Report, *Commons*, 8/7/1920; col. 1725.]

The Hunter Committee was appointed to report. Its conclusions were damning. Dyer was strongly censured and forced to resign. Opinion at the time was divided between those who agreed with the Hunter Committee and those who thought Dyer had acted effectively, including those in this House, as others have said. Rather tongue-in-cheek, I might just point out that at the time all would have been hereditary Peers and all would have been male—so we have had a little bit of reform in the Lords.

This massacre marked a turning point in India's modern history, as we have heard, and was the prelude to Gandhi's full commitment to the cause of Indian nationalism and independence. In our own time, when David Cameron visited the site, as we have heard, he described the events there as "shameful". Others, such as the writer William Dalrymple, have emphasised that the most important lesson should be that British colonial history must never be sanitised—a point that the noble Earl, Lord Sandwich, also emphasised. He and the noble Lord, Lord Alton, pointed to current tragedies, which must also be our focus.

It is right that in this centenary year the history of this massacre is being laid out, and that we learn the lessons from it. Nothing is more corrosive than feelings of injustice unaddressed. Surely, on the centenary of the massacre at Amritsar, which even an inquiry at the time found unacceptable, we should be able to issue a formal apology to help address that sense of injustice unaddressed.

8.21 pm

Baroness Goldie (Con): My Lords, I thank the noble Lord, Lord Loomba, for tabling this timely debate, and recognise and thank him for his long-standing commitment to humanitarian causes in India. I am also grateful to all noble Lords for their helpful contributions.

The massacre of Jallianwala Bagh was an appalling tragedy for the Sikh community of Amritsar, and a deeply shameful episode in British history. The British Government of the day rightly condemned the incident. A number of your Lordships—the noble Lords, Lord Loomba and Lord Desai, and the noble Baroness, Lady Northover—have referred to the remarks made at the time, particularly by Churchill. I thank the noble Lord, Lord Desai, for directing me to his book *The Rediscovery of India* and the passage on Amritsar, which I found very interesting. I was struck by something else that Churchill said, which some of your Lordships referred to:

"Frightfulness is not a remedy known to the British pharmacopœia".—[Official Report, *Commons*, 8/7/1920; col. 1728.]

He also said this was not,

"the British way of doing business".—[Official Report, *Commons*, 8/7/1920; col. 1730.]

Churchill was right then, and these sentiments endure and are right now.

One hundred years later we, the current Government, recognise that people here and in India, in the Sikh community and elsewhere, continue to feel deeply about the issue. That is why what took place on 13 April 1919 should never be forgotten, and why it is right that we remember and pay our respects to those who lost their lives. My noble friend Lady Verma described movingly the significance of Jallianwala Bagh to her, her birth in Amritsar, the continuing influence that that holy place holds for her and the peace it gives her. We recognise how important it is that we mark this tragic, sombre anniversary in the most appropriate way. This debate has been helpful in bringing suggestions forward.

History cannot be undone, but we can learn from the past and take steps to avoid repeating the same mistakes. My noble friends Lady Verma and Lord Suri commented on that, as did the noble Earl, Lord Sandwich, and the noble Baroness, Lady Northover. Indeed, that is what the UK is doing, in a number of different ways, in our work to address the root causes of conflict and the drivers of instability around the world. We support work to tackle corruption, promote good governance, improve access to security and justice, and promote inclusive economic development.

The noble Lord, Lord Alton, said very poignantly that the best memorial to the victims of Jallianwala Bagh would be for Britain to fearlessly speak out for people who cannot do it themselves, vociferously insisting on the right to freedom of expression and peaceful assembly. I totally agree and I add that the UK's substantial development budget is a key component.

More than 50% of the DfID budget is spent in fragile and conflict-affected states and our cross-government work on tackling insecurity and instability is supported by the Conflict, Stability and Security Fund, which is supporting and delivering programmes in more than 70 countries. We also have early warning mechanisms in place to identify countries at risk of instability. We invest billions of pounds in development aid to tackle poverty and to generate opportunity. We use our diplomatic network and our influence in multilateral organisations to help de-escalate tensions and resolve disputes wherever possible.

All this work fosters environments in which atrocities such as Jallianwala Bagh are less likely to take place. I have noted the number of noble Lords who have raised the matter of an apology from the Government. This was referred to by the noble Lords, Lord Loomba, Lord Desai, Lord Bilimoria, Lord Morgan and Lord Collins, my noble friend Lord Suri and the noble Baroness, Lady Northover. I know how passionately that issue is felt. The Government at the time, as we know, roundly condemned the atrocity, but it is the case that no subsequent Government have apologised. I understand that the reason is that Governments have considered that history cannot be rewritten and it is important that we do not get trapped by the past. We must also look forward to the future and do all we can to prevent atrocities happening. Having said that, during oral evidence from the Foreign Secretary to the Foreign Affairs Committee on 31 October 2018, the chair of that committee argued that this year may constitute an appropriate moment for Her Majesty's Government to formally apologise. The Foreign Secretary responded by saying:

"That is a very profound thought; let me reflect on that, but I can understand why that could be a potentially very significant gesture".

The Foreign Secretary is currently doing that—reflecting on the situation—and I can say that the views expressed in this debate are certainly noted and will be conveyed back to the department.

Lord Bilimoria: Will the Minister confirm that she will say that we must make an apology on the centenary of this atrocity? I gave examples in my speech of British Prime Ministers—David Cameron and Gordon Brown—who have apologised for things in the past, so we really must this time.

Baroness Goldie: I hope I have made the current position clear to noble Lords and I hope they will understand that I am unable to go any further. Learning lessons from the past is vital. It is also important that the UK and India continue to look ahead to our shared future. Happily and positively, today our relationship is one of equals. We share a proud parliamentary tradition, a global outlook and a commitment to maintain the rules-based international system. The noble Lord, Lord Mawson, gave an interesting local illustration of that relationship.

Baroness Verma: Will my noble friend give way?

Baroness Goldie: I am sorry, I am unable to take any further interventions: I have already lost time and I really want to deal with the contributions, if my noble friend will forgive me.

The noble Lord, Lord Mawson, gave a very interesting illustration from his own experience in the East End. It illustrates that our relationship is built on collaboration and partnership and is focused firmly on enhancing the security and prosperity of all our people. That relationship is thriving: we are each among the top four investors in the other's economy and Indian companies have created 110,000 jobs in the UK. We have launched an ambitious technology partnership and the UK issues more skilled work visas to India than to all other countries combined. More broadly, 89% of Indian visa applications are accepted. That is what Prime Minister Modi appositely describes as a "living bridge" between us. Our personal, professional, cultural and institutional ties have shaped each other's countries and give our relationship a unique depth.

This has been an important and helpful debate. I have listened with interest to the thoughtful and informed contributions from your Lordships. I am sorry that I do not have more time to address some of the specific points raised, but I shall read *Hansard* and endeavour to respond to your Lordships by letter if I have omitted to address points made.

To conclude, the Government wish to mark the centenary of Jallianwala Bagh in the most appropriate and respectful way. In deciding our approach, we shall certainly give full consideration to the points made by your Lordships today.

Healthcare (International Arrangements) Bill

Committee (1st Day) (Continued)

8.30 pm

Clause 3: Meaning of "healthcare" and "healthcare agreement"

Amendment 11

Moved by ***Lord Patel***

11: Clause 3, page 2, line 13, at end insert "but excludes care related to treatment for types of dementia"

Lord Patel (CB): My Lords, if my first amendment in the first group was a wrecking amendment, this is more like a slightly frivolous amendment. It seeks an explanation of the Government's intentions and relates to Clause 3, which is headed "Meaning of 'healthcare' and 'healthcare agreement'". The clause states:

"In this Act—

'healthcare' means all forms of healthcare provided for individuals, whether relating to mental or physical health, and includes related ancillary care".

That is fair enough—it includes mental and physical health—but there are conditions, such as some dementias, which are not progressive, as Alzheimer's is, which could have mental and physical overlay. Does this include dementias or not? That puts a completely different context to the cost that might be involved. I seek clarification. When the clause states "mental or physical health", does that include mental health or physical health that may also be overlaid on dementias?

Baroness Manzoor (Con): My Lords, I thank the noble Lord, Lord Patel, for moving Amendment 11 and highlighting the importance of an appropriate definition of healthcare in the Bill.

We have adapted the definition set out in the Health and Social Care Act 2012 to include the additional element of ancillary care, as the noble Lord noted. This is to reflect where current arrangements provide for ancillary costs, such as travel costs, which do not strictly fall within the definition of healthcare. This would be for use in such circumstances as in France, where residents are reimbursed with a contribution to their travel costs when attending healthcare appointments. The definition of healthcare in Clause 3 ensures that we can implement arrangements that are based on the current EU arrangements, if negotiated in future.

The noble Lord indicated that this is a probing amendment and, as a former clinician, he will understand that limiting the definition to exclude certain conditions would be inappropriate, as it is not in the UK's jurisdiction to determine what level of access to healthcare should be provided in another country. It is up to each country to determine what is available as part of its public healthcare system, as we do here in the NHS. The government definition would enable individuals to access healthcare on those terms under reciprocal healthcare agreements. The Government are committed to ensuring access to healthcare in line with current arrangements, and that UK nationals can continue to benefit from them, as they do now.

The Government have been clear during the passage of the Bill—this alights at the heart of the noble Lord's question—that access to social care in England would not be provided through any reciprocal healthcare agreement. However, it is worth noting that some types of treatment related to dementia care can be medical in nature and may be provided by the NHS. As the noble Lord knows, in the UK, we treat all people with any physical or mental health condition. This demonstrates the complexity of the issues that narrowing the scope of such an important definition in the Bill may afford. I hope the noble Lord, Lord Patel, will therefore agree that the definition used in the Bill is the most sensible. However, I thank him—he is a noble friend—for raising this important issue. With the assurances I have given, I hope he will feel able to withdraw his amendment.

Lord Patel: My Lords, I thank the Minister for her comments. I raised this issue only to make sure that whenever such agreements are made, it is borne in mind that there may be implications for other conditions not directly regarded as mental or physical health conditions; for example, an increasing number of people have dementia. On that basis, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendments 12 to 14 not moved.

Clause 3 agreed.

Amendment 15

Moved by ***Baroness Wheeler***

15: After Clause 3, insert the following new Clause—

"Annual report on the cost of healthcare agreements

(1) The Secretary of State must by the end of the period of 12 months beginning with the day on which this Act is passed and every year thereafter lay before Parliament a report setting out all expenditure and income arising over the preceding year from each healthcare agreement implemented under this Act.

(2) The annual report laid under subsection (1) must include, but is not limited to—

(a) all payments made by the government of the United Kingdom in respect of healthcare arrangements for healthcare provided outside the United Kingdom to British citizens;

(b) all payments received by the government of the United Kingdom in reimbursement of costs of healthcare provided by the United Kingdom to all non-British citizens;

(c) the number of British citizens treated under healthcare agreements outside the United Kingdom;

(d) the number of non-British citizens treated under healthcare agreements within the United Kingdom;

(e) any and all outstanding payments owed to or by the government of the United Kingdom in respect of the provision of healthcare outside the United Kingdom made before the passing of this Act; and

(f) any and all administrative costs faced by NHS Trusts in respect of implementing healthcare agreements.

(3) The information required under subsection (2)(a) and (b) must be listed by individual country in every annual report."

Baroness Wheeler (Lab): My Lords, we have pursued this matter in the Commons and this House because it is vital to be clear about how the Government will report annually to Parliament on the expenditure and income from each healthcare agreement implemented under the Act and what information will be provided. We are talking about potentially multiple and complex agreements, the costs and implications of which will not be known until the technical and operational provisions for the agreements are settled.

We have consistently been told by the Government that reporting processes are already in place. At Second Reading, the Minister assured the House that,

"all international healthcare agreements will be subject to the scrutiny route considered most appropriate by Parliament".—[*Official Report*, 5/2/19; col. 1489.]

As the amendment sets out, our clear view is that a report should be produced,

"by the end of the period of 12 months beginning with the day on which this Act is passed and every year thereafter … setting out all expenditure and income",

and the number of people treated under each healthcare agreement implemented under the Act by country. It should also detail the costs incurred by NHS trusts in administering these agreements and any outstanding payments owed to the UK.

Since it is not possible to know the detail of these healthcare agreements in advance, we cannot assess the likely costs and system implications. The detail of the impact assessment on costs is woefully inadequate.

Its assessment of the annual cost of establishing reciprocal healthcare agreements of £630 million takes no account of inflation, future medical developments or fluctuations in exchange rates. Moreover, the impact assessment's contention that the costs might even be less than the current costs is just not credible. Greater clarity on the cost of new healthcare agreements in the context of the presentation of a single report on the full range of schemes and arrangements is essential.

So far, the Government's response has been to insist that existing reporting arrangements will provide sufficient scrutiny and detail, whether through the Public Accounts Committee, the National Audit Office, similar bodies or existing processes for reporting and scrutinising international treaties. However, none of those would provide the scrutiny and strategic overview required in the circumstances we face. The Minister has, however, provided a chink of light. In paragraph 41 of her letter to the Delegated Powers Committee, dated 30 January and published in its report of 14 February, she says that,

"the Government has heard the need for greater transparency in our administration and implementation of reciprocal healthcare arrangements".

It also says that,

"the Government is committing to issue an annual written ministerial statement on the operation of reciprocal healthcare arrangements. This statement will be published as soon as is practicable after the end of each financial year to allow for accurate financial reporting".

Can the Minister provide further details on this proposed statement?

For the sake of clarity and the record, the Minister commits in that letter that the statement will provide, first:

"Information on the expenditure and income of healthcare provision overseas as a whole. This would include aggregated expenditure/income for the annual year, as well as country by country sum of expenditure/ income".

We are also promised:

"An update on the operation of arrangements. This statement could identify areas of successful operation or where arrangements are being improved to promote efficiency".

Finally, we are promised that information will be included on:

"The strategic direction of reciprocal healthcare arrangements. This would be a statement on the future priorities for the current operation or a statement of where the UK is engaging with other countries to establish new arrangements".

Certainly this is a step in the right direction towards the information and accountability needed, but can the noble Baroness answer some specific points concerning the Written Ministerial Statement that we have raised in our amendment?

Will it include full details of the payments made by the UK on healthcare arrangements for healthcare providers outside the UK to British citizens? Will payments received by the UK in respect of the investment costs of healthcare provided to all non-British citizens be recorded? Will the number of British and non-British citizens treated under healthcare agreements inside and outside the UK be included? Will any and all outstanding payments owed to or by the UK Government related to the provision of healthcare outside the UK be made before the passing of this Bill? Most important, as we heard in earlier amendments, can we be assured that any or all of the costs faced by NHS trusts in respect of implementing healthcare agreements will be shown, so that we can be clear not only on the costs but also that front-line staff are not having to spend additional time administering these schemes?

Our amendment would give Parliament its rightful role in scrutinising the schemes and, in particular, the Government's delivery on collection and reimbursement. It is perfectly reasonable to expect healthcare agreements, once they have been reached, to be reported back to Parliament annually. Parliament cannot be expected to grant a blank cheque. An annual report on the costs and arrangements for the new healthcare agreements would considerably increase accountability within the systems, exploring changes in both the expenditure and the scope of healthcare provision arising from the loss of access to reciprocal arrangements after Brexit. I beg to move.

The Earl of Dundee (Con): My Lords, I support Amendment 15, which proposes a new clause and has been moved by the noble Baroness, Lady Wheeler, on behalf of her noble friend Lady Thornton. As I indicated at Second Reading, in another place the Government may have slightly prevaricated on this issue by hiding behind the skirts of obvious current circumstances. While they say that the Bill should not prescribe a particular timetable for reporting back until new healthcare plans have come to light, they also claim that a number of reporting processes can anyway be deployed instead.

However, is there not a simple and necessary corollary to this? If we really want to increase confidence and transparency, why not just make sure that Parliament is given the relevant healthcare facts and figures at least once a year? If the Government should then wish to report additionally through other means, they are always free to do so.

Baroness Brinton (LD): My Lords, I echo the points made by the two previous speakers and will just point to one further reason why having an annual report with this level of detail is important for the future of monitoring any reciprocal agreements. In 2016-17 the National Audit Office published its report on the recovery of the costs of NHS treatment for overseas visitors, which makes fascinating reading. It includes how the amounts recouped, whether by reciprocal agreement or direct payment by the patient, had increased and by which type of trust. It is clear that unless that sort of detail is monitored regularly, we will not understand the consequences of changes to reciprocal agreements. I propose to talk more about this report in the next group of amendments, but that transparency means that we need an understanding of exactly how having these agreements will work and if, as was apparent when the report was written, more than 22 trusts never reported any cases under the EHIC scheme. It shows that there is an enormous differential between trusts in how they collect money owed to the Government in one form or another.

Baroness Finlay of Llandaff (CB): My Lords, perhaps I may add briefly to the very important comments made by the noble Baroness, Lady Brinton. I am concerned

[Baroness Finlay of Llandaff]
about not only how the data is collected in this country but how we can verify costs that may be charged to this country by other countries with which we have reciprocal arrangements. One of the difficulties with healthcare costs is the way they are calculated. There may be individual costs of bits of equipment and staff time, but then there will be overall management costs, which may simply be divided up among the number of patients or even in a more arbitrary way. I am concerned, and seek assurance from the Government, that verification procedures will be put in place to make sure that bills received by the UK fairly represent the terms of an agreement.

8.45 pm

Baroness Manzoor (Con): My Lords, in Amendment 15 the noble Baronesses, Lady Wheeler, Lady Brinton and Lady Finlay, and my noble friend Lord Dundee raise an important issue on the importance of financial reporting and facilitating parliamentary scrutiny, which I can assure noble Lords that the Government are committed to ensuring. As the noble Baroness, Lady Wheeler, said, this was also the subject of Labour Front-Bench amendments in the Commons and is an issue that the Government have carefully considered. I would like to reassure the noble Baroness, Lady Wheeler, and my noble friend Lord Dundee that—as the Minister, my noble friend Lady Blackwood, set out at Second Reading—the Government are committed to openness in managing public money. I understand the desire for transparency in this area. Noble Lords can be reassured that, as indicated by the noble Baroness, Lady Wheeler, there are existing robust annual reporting processes, overseen by the Comptroller and Auditor-General, that are used today and cover reciprocal health and other departmental spending.

Expenditure by the Department of Health and Social Care relating to EU reciprocal healthcare arrangements is currently published to Parliament in the form of annual resource accounts, and this will continue. This reporting allows for scrutiny by both Houses of Parliament, as well as the Public Accounts Committee. As now, the department's future expenditure on reciprocal healthcare will be subject to the existing government reporting requirements. However, the Government have heard the need for greater transparency in our administration and implementation of reciprocal healthcare arrangements. The Government are also committed to transparency and the prudent use of public money. This is why we have committed to going beyond the current reporting requirements.

As explained by the Minister, my noble friend Lady Blackwood, at Second Reading, the Government have committed to issuing an annual ministerial Statement on the operation of the reciprocal healthcare arrangements. The noble Baroness, Lady Wheeler, asked what this ministerial Statement would include. I am afraid that I cannot comment on that, because it is subject to any arrangements we enter into with the countries concerned. The Statement will be published as soon as is practical at the end of each financial year. It will include, but will not be limited to, reporting on the expenditure and income of reciprocal arrangements as a whole. This could include aggregated expenditure and income for the year, as well as country-by-country sums of expenditure and income. It could also provide an overview of the operation of arrangements, identifying areas of successful operation. I hope that that allays the fears that the noble Baroness, Lady Finlay, expressed. The types of reciprocal agreement entered into will determine the content of the Statement, as I said. However, I am happy to meet the noble Baroness to discuss these details further.

I hope that the noble Baroness, Lady Wheeler, and my noble friend Lord Dundee feel reassured on our commitment to ensuring that there are sufficient and appropriate checks and balances in place on reciprocal healthcare agreements and agree that it is not necessary to set out in the Bill detailed provisions on reporting. In any case, as I said, the frequency and detailed content of a financial report should and could only be determined once reciprocal healthcare agreements have been made. Currently, the UK and other EU member states are able to collect data and report both nationally as well as at EU level, as provided for in the relevant EU regulations.

The department is currently working to ensure that UK nationals can continue to access healthcare in the EU in the same way as they do now, either through an agreement at EU level or through agreements with relevant member states. In either case, we will have to agree how eligibility is evidenced, the way that and frequency with which information is exchanged and the reimbursement mechanisms that will govern these new agreements. Each of these could differ from country to country. Such agreements will have to take into account the operational possibilities and limitations of each contracting party to ensure the smooth operation of reciprocal healthcare arrangements. This should include how NHS trusts in the UK can evidence eligibility for the treatment of non-UK citizens in the most efficient and least burdensome manner. Once these administrative details are known, the Government will be able to confidently speak to the specific measures that can be reported for each country. It is therefore unnecessary to set out detailed reporting provisions in the Bill for aspects that are subject to negotiations.

It must not be forgotten, however, that regardless of the specifics of any arrangements entered into, as with all departmental expenditure, reciprocal healthcare costs are and will continue to be authorised by the Treasury supply process and included in the department's annual estimates, as well as being included in the annual resource accounts, which, as I said, are audited by the Comptroller and Auditor-General.

The noble Baroness, Lady Finlay, raised this issue, and it was raised earlier this evening. Let me be very clear that we do not need new front-line NHS processes to charge visitors and tourists from the EU, either directly or via reciprocal healthcare arrangements. We already have processes in place for non-EU visitors. After exit day, instead of identifying EU visitors for the purposes of EHIC claims, they will be identified for the purposes of whether they are chargeable directly or covered by a reciprocal healthcare arrangement, in the same way as non-EU visitors are currently identified. They will then be charged as appropriate.

I will end by saying this. As well as the auditing that will be done by the Auditor-General, as I have mentioned, the Government have committed to lay before the House an annual ministerial Statement, which will provide an additional check and balance on the Government's reciprocal healthcare arrangements. I hope that I have a given sufficient assurances to noble Lords, and that the noble Baroness will feel able to withdraw the amendment.

Baroness Finlay of Llandaff: Can the noble Baroness confirm whether she is absolutely confident that the current systems in place to pick up those coming from abroad who should not be treated on the NHS and who should be charged for their care are 100% effective? How many of those systems are not effective? I am concerned that, with a potentially increased number of people coming into the system, any system that is already not functioning well will just fall over unless more people are put in to administer it.

Baroness Manzoor: My Lords, no one can ever be 100% confident, but we are putting in place robust charging mechanisms. Each trust has an accountable person to look at how charging is working. We are working very closely with NHS organisations to ensure that, where charging needs to take place, it is done effectively and efficiently.

Baroness Brinton: I want to go back to the issue of the report. The noble Baroness read out a litany of different places where different items would be reported. Is there some benefit to having it all in one place? I do not know about other noble Lords, but I would be quite content if the annual ministerial Statement incorporated what is set out in the proposed new clause in the amendment—the information that parliamentarians think they want. But I wonder whether all parliamentarians, or anybody outside, would know all the different places to look for the odd sentence here and there in reports once a year.

Baroness Manzoor: I fully understand the point made by the noble Baroness, Lady Brinton. I always believe in a simplified place, but those are the accounting rules that we have for government and therefore they remain. We have gone the additional mile by saying that we will place on record a ministerial Statement at the end of each financial year and that this will include the areas I have indicated.

Baroness Jolly (LD): The Minister referred to arrangements being put into NHS organisations to make this happen—but what about GP practices? If you talk to GPs, they will tell you that they are in private partnerships. Presumably the Government are talking to the Royal College. The last time I had a conversation with GPs was five or six years ago, when they were totally averse to collecting money for their services. Can the Minister clarify whether things have changed?

Baroness Manzoor: I can clarify that NHS trusts are funded on the basis of existing agreements and will provide additional funding for any new agreements reached within the powers of the Bill. The same thing will apply to GPs where charges need to be made for people who are not entitled to that care and do not fall within the reciprocal arrangements that we have in place. The procedure would apply as it currently applies and such people would be charged as appropriate. If they are part of the reciprocal agreements that we have, whether bilaterally or multilaterally, such charges will not be incurred.

Baroness Wheeler: I thank the Minister for her response. Whichever way you look at it, it is a complex system for reporting information across a wide range of different sources. The point made by the noble Baroness, Lady Brinton, about having the information in one place as part of the ministerial Statement needs to be pursued, and I hope that the Minister will do that. I noted her agreement to discussing it or exchanging correspondence about it, but important matters need to be set out in the ministerial Statement—albeit that the information is presented elsewhere—in order to reassure and inform us about how these agreements are working. With that proviso, I withdraw the amendment.

Amendment 15 withdrawn.

Amendment 16

Moved by ***Baroness Brinton***

16: After Clause 3, insert the following new Clause—

"Cost recovery

The Secretary of State must grant funding to NHS Trusts sufficient to meet the costs associated with administering healthcare agreements under this Act."

Baroness Brinton: My Lords, I am moving this amendment on behalf of the noble Baroness, Lady Thornton, and myself.

Amendment 16 seeks to tackle the difficult issue of cost recovery—which we started to debate in the previous group of amendments—and states simply:

"The Secretary of State must grant funding to NHS Trusts sufficient to meet the costs associated with administering healthcare agreements under this Act".

I refer again to the excellent National Audit Office report, *Recovering the Cost of NHS Treatment for Overseas Visitors*, which looks back over the preceding five or so years. It becomes apparent on reading the report the point at which Governments and then the NHS started to seriously recover the costs which are due.

However, within that, it is very noticeable that different trusts have different abilities and resources available to collect these costs. London has 44% of EEA visitors and records 35% of the value of all EHIC cases in this country. Even within that, only 10 of the 150 acute and specialist trusts accrued half of all charges made to visitors from the EEA. So we have a very small number of very large hospitals which are expert in collecting and recovering these costs. Ten trusts were responsible for more than a quarter of the amounts, just under the EHIC scheme. As I said, 22 trusts did not report any cases under the EHIC scheme at all.

[Baroness Brinton]

The NAO report refers to the capacity of trusts to administer these schemes. In the debate this afternoon we discussed "usually resident" and how it is defined. After further digging it transpired that in the NHS there are 32 identifiers that clerks need to go through to establish whether somebody is normally resident in the UK. So already a large bureaucracy is being added on to an A&E department or any other part of a hospital.

The NAO report has a helpful flow chart to show where the pressures come within each NHS trust in working out cost recovery. While one could wish it were otherwise, one can understand how small, hard-pressed district hospital trusts struggle to cover the administrative costs to make those decisions and then to charge.

9 pm

I am grateful to the BMA for its helpful briefing. It has a particular concern, which the noble Baroness, Lady Manzoor, referred to in responding to the previous amendment, about the possible number of different reciprocal arrangements if we cannot get a broad EU reciprocal arrangement post Brexit. One of the worries is that we may end up having to recoup different levels of resource. Will that requirement be made on an individual trust basis or will it be administered by the NHS in a fairly easy manner? I can see that, if there were 27 different arrangements alone for the EU before we even start to get into the wider world—we had that debate earlier—it would completely overwhelm some hospitals.

We therefore tabled this amendment because it seems clear that we have to have some support for trusts which require it for accounting costs that are not directly related to treatment. It would also ensure that in those areas where there is substantial demand from overseas visitors using those facilities, the trusts are funded to cater for those numbers with clinical staff. That does not happen at the moment, either.

I move on to the point about the arrangements that exist with the non-EEA countries. There is a guarantee of contributions for a non-EEA incentive scheme where commissioners, the NHS and the department share the risk of non-payment between trusts and commissioners. In light of a no-deal Brexit, when suddenly we would face a considerable amount of new non-EEA arrangements, I wonder whether the Minister can provide a guarantee that that arrangement will continue. I know that it works at the moment, but it is likely to be put under considerable pressure because presumably at that point, without any new reciprocal arrangements in place, hospitals will have to charge anybody who comes from the EEA in the event of a no-deal Brexit—and in the event of no transition agreement, which is what we would expect to happen.

Finally, I will make the point again about administrative costs. The NAO report says:

"When reporting EEA visitors, trusts incurred administrative costs in recording details",

of the card,

"for which they were not previously reimbursed. The Department received the income relating to these patients. When charging visitors from outside the EEA, trusts relied on patients, rather than commissioners, making payments. Difficulty collecting payments meant that trusts collected less than the amount they invoiced".

Clearly, some of this is covered by the guarantee that I have just referred to, which is extremely helpful. But the other worry is that trusts may, frankly, turn a blind eye if they are suddenly deluged with very large quantities of people under the threat of a no-deal Brexit. I look forward to the Minister's response and I beg to move.

Baroness Finlay of Llandaff: I should declare my interest as a past president of the BMA and a current BMA member, because I would like to refer to its brief on this. The BMA has indeed highlighted the potential problem, as the noble Baroness, Lady Brinton, set out, of having 27 reciprocal arrangements all containing different terms. This will inevitably put pressure on front-line NHS staff, who will be expected to be familiar with and administer these different arrangements.

There is an additional problem that the association has highlighted, however: if the 190,000 UK state pensioners who are signed up to the S1 scheme and living in the EU need to return to the UK to receive care, health services will face drastically increased demands and costs. The Nuffield Trust has calculated that if those individuals return to the UK for treatment, that could incur additional costs to health services of between £500 million and £1 billion per annum, and require an additional 900 hospital beds and 1,600 nurses to meet demand. That is quite apart from the additional medical and allied healthcare professional staff, and all the clerical and managerial staff. The potential pressure on services, which are already stretched to bursting point, cannot be ignored.

As the noble Baroness, Lady Brinton, said, the difficulty is in how the money is recouped, where it goes and who can use it, as well as in accounting for it. While we are talking about cost recovery, I shall pick up on general practitioners. It is difficult to know where that money goes and to whom it is reported. If it is the clinical commissioning group, would it be expected to bill the person, who may well have disappeared from the UK by the time any such processes go through? Receptionists are not familiar with billing. The complexity of administering a multiple arrangement scheme cannot be ignored.

My final question goes back to one I have raised previously about the devolved Administrations. Given that there are now different healthcare systems in the four countries of the UK, each administered and managed slightly differently, what discussions have the Government had to date about recouping costs both as they stand and in the event of a large influx of pensioners currently living and receiving treatment abroad?

Baroness Thornton (Lab): My Lords, I knew that the noble Baroness, Lady Brinton, would make a very thorough job of moving this amendment, so I was not just being lazy but was making sure that the Committee got the best person to introduce it. The noble Baroness mentioned the BMA's brief, to which I shall refer. While the amendment refers to NHS trusts, any funding incurred by primary care providers in administration of the new healthcare arrangements should also be met. As a member of a CCG, I think that probably means CCGs. That is quite important.

Baroness Manzoor: My Lords, I am grateful to the noble Baronesses, Lady Thornton, Lady Brinton and Lady Finlay, for tabling Amendment 16 and providing the opportunity to address two important issues: the processes we have in place to recover costs from overseas visitors and how we support the NHS to deliver services to people covered by reciprocal healthcare agreements. As the noble Baroness, Lady Finlay, noted, there is complexity in the system, but this amendment proposes a new obligation upon the Secretary of State for Health to provide sufficient funding to the NHS to administer reciprocal healthcare agreements implemented using the powers in the Bill.

I reassure all noble Lords that the Government are committed to ensuring that the NHS is funded and fit for the future. Through the NHS long-term plan and the historic commitment of an extra £20.5 billion a year, we are working to make sure the NHS is fit for future patients, their families and NHS staff.

The noble Baronesses, Lady Brinton and Lady Finlay, raised two issues. They asked whether there will be 27 different agreements that require implementation. Our intention is to reach agreement with the EU so that there will be one agreement to implement. If agreements are negotiated with individual countries, it will depend on the content of the agreement being implemented, but I stress that we do not need new systems to implement them. We are not expecting costs to be much greater than at present. Every hard-working taxpayer plays a part in supporting our much-loved NHS, so it is only right that overseas visitors also make a contribution to the health service, whether that be individually, through the immigration health surcharge or through their Government reimbursing the treatment costs incurred.

The NHS has been responsible for delivering the current reciprocal healthcare arrangements for as long as they have been in operation and it has been sufficiently resourced to do so. Funding is distributed to NHS providers as part of general allocations. These support all the administrative costs associated with patient care, not just any costs associated with administering reciprocal healthcare agreements. That applies to clinical commissioning groups, which then apply funding to GPs.

We have robust administrative processes in place to recover costs from overseas visitors. These are managed by overseas visitor managers and their teams, who identify whether visitors are chargeable or are directly covered by an existing reciprocal healthcare arrangement.

Perhaps I may further reassure noble Lords that there are benefits for NHS providers who deliver services to those currently covered by EU reciprocal healthcare agreements. NHS providers receive an EHIC incentive payment of 25% of the tariff for the treatment provided to an overseas visitor covered by an EHIC. Trusts can reinvest these incentives in front-line services, meaning that we can continue to protect the most vulnerable in society and ensure that everyone receives urgent care when they need it. This is a scheme that we would certainly want to continue.

The Government have also made significant progress on charging overseas visitors and recouping funds where appropriate. However, as I indicated on the previous amendment, we want to go further—we are not quite there yet. Since 2015, we have increased identified income for the NHS with reciprocal arrangements by 40% and directly charged income has increased by 86% over the same period. Although we are satisfied that we are moving in the right direction, as I said, there is more to be done. That is why we are working with NHS Improvement to drive further improvements in the practice of cost recovery. A bespoke improvement team is working with over 50 NHS trusts to provide on-the-ground support and to share best practice.

I understand and commend the spirit behind this proposed new clause—we all want to ensure the best for our NHS—but it seems that it would replicate existing duties on the Secretary of State for Health. As the noble Baroness is aware, the Secretary of State is under an existing duty to promote a comprehensive health service, available to all who need the support that it provides. This duty encompasses ensuring that the NHS is funded for the services that it provides. Funding to provide treatment for overseas visitors is, and will continue to be, distributed to NHS providers as part of general allocations.

Further, I reassure noble Lords that any future reciprocal healthcare agreements that the UK implements through this Bill will be subject to thorough consideration and will need to take into account the existing duties on the Secretary of State to promote a comprehensive health service available to all who need the support that it provides.

I hope that my explanation has provided further reassurance to noble Lords that the Government are absolutely committed to protecting the NHS, and that the noble Baroness, Lady Brinton, will feel able to withdraw the amendment.

Baroness Brinton: I am grateful to the noble Baronesses, Lady Finlay and Lady Thornton, for their contributions to this brief debate, and indeed to the Minister for her response, even though I am somewhat disappointed by it. The point that all three of us were trying to make is that we are asking not for new processes but for reassurance that the costs will be reimbursed to trusts. As the Minister said, there is a general allocation, and one thing that we have discussed repeatedly since Second Reading is that there is a strong likelihood of substantially more non-EEA-type payments if there is a no-deal Brexit or if there are loads of different reciprocal arrangements that will make life very complex for hospital trusts and primary care providers.

As a brief illustration, currently when a non-EEA patient pays, half of it goes to the commissioner and half goes to the trust. The commissioner then pays half of it back to the trust and so it goes on. It is a complex arrangement. If we suddenly have 27 different arrangements just to cope with life after the EEA or with a no-deal Brexit, I can see that it will be very complex. It would be easy for NHS England—and, indeed, the Government—to miss trusts being unable to cope with the deluge of different arrangements they have to support.

[Baroness Brinton]

At this stage, this is very much a probing amendment. I am happy to withdraw it this evening but I reserve the right to bring it back in the future. I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendments 17 to 19 not moved.

9.15 pm

Amendment 20

Moved by ***Baroness Thornton***

20: After Clause 3, insert the following new Clause—

"Duty to provide information about changes to reciprocal healthcare arrangements

(1) As soon as this Act is passed, the Secretary of State must prepare guidance to assist—

(a) British citizens; and

(b) EEA and Swiss citizens living in the United Kingdom;

in understanding the effect of the withdrawal of the United Kingdom from the European Union on reciprocal access to healthcare, and publish the information on a website.

(2) The Secretary of State must take all reasonable steps to provide a copy of the information to any bodies appearing to the Secretary of State to represent the interests of those who may be significantly affected by changes to reciprocal healthcare arrangements including—

(a) NHS Trusts;

(b) the Royal College of General Practitioners;

(c) British embassies in the European Union; and

(d) other bodies the Secretary of State considers appropriate.

(3) The information must include—

(a) the date on which current reciprocal healthcare arrangements end;

(b) the date on which any new agreement is expected to come into effect;

(c) information about where people can access help and advice about healthcare costs; and

(d) any other information that the Secretary of State considers appropriate.

(4) In making arrangements for the purposes of providing information under this section the Secretary of State must—

(a) have regard to the needs and characteristics, in respect of the provision of information, of persons to whom the information is to be provided; and

(b) consider whether, having regard to those needs and characteristics, it is appropriate to provide any of the information to any of those persons otherwise than in the way in which it would normally be provided."

Baroness Thornton: My Lords, in moving Amendment 20, I will speak also to my Amendment 21 and to Amendment 43, having notified the Minister that I intended do so. These amendments are all concerned with protecting the interests of individual travellers, residents and their families who depend on reciprocal healthcare arrangements and could be affected by the UK leaving the EU without an agreement in place; so all three amendments are about leaving with no deal.

Amendment 20 addresses the duty to provide information, Amendment 21 addresses the issue of costs to British citizens, and Amendment 43 prevents the Secretary of State making regulations on healthcare agreements unless there is a withdrawal agreement with the EU, or the House of Commons has explicitly approved leaving the EU with no deal—the Minister might be familiar with this amendment since it has appeared in other Brexit legislation.

If we crash out, it seems unlikely that the necessary deals with 27 countries to provide reciprocal healthcare payments will be in place; the Minister admitted as much at his briefing, which we attended, and he suggested that we should get health insurance. It might take time to sort out our healthcare, so we have tabled three amendments which we hope will assist this process.

First, we believe that the Government should publicise the changes and provide guidance to people about the impact on their lives, including insurance requirements. That means more than just posting something on the NHS England website. The amendment does what I know that Ministers—and certainly Bill teams—do not like: it puts down a list of places where the changes should be publicised.

Secondly, the Government should have arrangements in place to reimburse British citizens for healthcare costs incurred outside the UK—which would previously have been covered by EU arrangements—for a period of up to six months, until the new healthcare agreements come into effect. This is an obvious, basic protection that should be in place to avoid the risk that our citizens are charged for healthcare because of even two or three weeks of turmoil or churn while agreements are not in place.

Thirdly, Amendment 43 is about how to safeguard reciprocal healthcare in a no-deal situation. It mirrors the amendment that we tabled to the Trade Bill and is about accountability to Parliament. I will be interested to receive the Minister's reaction to these three proposals, which are about protecting people's interests in a no-deal situation. I beg to move.

Lord Lansley (Con): In so far as the noble Baroness has referred to Amendment 43, which we might otherwise reach on Thursday, I completely understand the motivation, which we have seen elsewhere, to make no deal so intolerable a prospect that one does not want to enter into it—I do not want us to do so and neither do the Government.

If we were to do the responsible thing and pass this legislation before 29 March, so that we have it in place, but with such an amendment within it, that would be extremely ill-advised. If there were no memorandum of understanding with other countries, leading to a bilateral agreement, the result may be that even the regulations that are going through the House would not enable the Secretary of State to have the power to pay for healthcare for UK citizens in other European countries. If we are going to give people reassurance—the Government have an obligation to do that and Amendment 20 says we should do that—we can do so only on the basis of the law as it is. If this legislation were to have such a poison pill added to it, I am afraid that it would make it impossible for civil servants to give the degree of reassurance that we should be giving people.

Baroness Brinton: I am grateful that I am able to follow the noble Lord, Lord Lansley, because I think the point is made that this is very much a probing amendment. If the Minister gave reassurances that the contents of the amendment would be the practice followed by the Department of Health and Social Care, many of us would be reassured.

We spoke earlier about kidney patients on dialysis, but let me give another illustration of a family very close to me, who have a two year-old who requires an overnight ventilator. If they want to go anywhere outside the EEA, the cost of medical insurance for a small child on an overnight ventilator is more than the flights for the entire family—so they go to Europe. At the moment, they cannot book their summer holiday because their insurers say that they do not know or understand the arrangements, and of course we have no idea whether there will be any reciprocal arrangements. Families such as this will want access to advice very speedily if we are in the unfortunate position of a no-deal Brexit. By the way, following the collapse of the Malthouse compromise, I gather that the EU has said today that it is much more convinced that there will be a no-deal Brexit. Let us hope that it is wrong.

Although I understand the concerns of the noble Lord, Lord Lansley—the noble Baroness, Lady Thornton, may have different views—it would be good to have reassurance from the Minister that many of the things proposed in these amendments are exactly what the department will do and that it will be able to reassure the House and the wider public in the next few weeks.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): I am very grateful to the noble Baroness, Lady Thornton, for Amendments 20 and 21. As the noble Baroness, Lady Brinton, has just said, I very much hope that I can reassure the Committee on these points. The noble Baroness is absolutely right that within the broader debate on the Bill, where noble Lords have valid concerns, we cannot forget that the Bill is being brought forward to protect individuals. These points were also raised earlier, by the noble Baroness, Lady Finlay, and the noble Lord, Lord Foulkes.

Speaking first to Amendment 20, I wholeheartedly agree with the spirit of the noble Baroness's amendment. It is absolutely right that the Government provide individuals with relevant, timely information relating to their healthcare access after EU exit. The Government have already taken steps to inform individuals of what could happen to reciprocal healthcare in a deal or no-deal scenario. As a matter of course, we will continue to provide up-to-date information to individuals as soon as it becomes available.

The Government have issued advice via GOV.UK and NHS.UK to UK nationals living in the EU, UK residents travelling to the EU and EU nationals living in the UK. The advice provided on these websites explains how the UK is working to maintain reciprocal healthcare arrangements, but this depends on negotiations as they proceed. It also sets out options on how people might access healthcare under local laws in the member state they live in if we do not have a deal or a bilateral agreement in place, and what people can do to prepare, although we are determined that this will not happen. These pages will be updated as information becomes available. Our advice to people travelling abroad must continue to be to purchase travel insurance, which we already recommend, even though I recognise the challenge for those who have long-term conditions—in this debate, I have already expressed the challenge I myself experience.

Baroness Brinton: The Minister may recall that I pointed out at Second Reading that the Liberal Democrats had done some mystery shopping for travel insurance. It is not just about insurance for people who have special medical needs. Most of the insurers approached said they could not yet provide anything, because their insurance amounts would be based on whatever the final outcome is. Most of them, including very large insurers, were not prepared to tell potential travellers that they would cover them at all. The situation is much more serious and affects more than a handful of people with difficult medical conditions.

Baroness Blackwood of North Oxford: I am aware. This is a really challenging point. That is one of the reasons why we are determined to get the powers in the Bill, those in the SI and the best possible reciprocal healthcare arrangements through. That is one of the reasons why I am working so hard to make sure that we can strengthen the Bill as much as possible.

In addition to the point I just made, the Government are in constant dialogue with system partners throughout the health and social care system, including NHS England and NHS trusts, to ensure that the UK is prepared whatever the outcome of EU exit. I know noble Lords just had a debate on this on the previous group of amendments, so I will not take up too much time on it now. Looking to our expat communities in the EU, the DHSC and the FCO are working together to ensure that embassies and consular services can provide individuals with relevant information and support regarding their healthcare entitlements after EU exit, especially those who might need individual and specialised support.

I fully support the spirit of the amendment that the noble Baroness, Lady Thornton, tabled. I will ensure that we continue to take those actions to provide individuals with the information that they need. I hope that she has been reassured by this. If the noble Baroness, Lady Brinton, has any further concerns on this point I would be very happy to meet her and discuss detailed ways in which we can improve the service we are providing, given the situation in which we find ourselves.

Amendment 21 suggests using the Bill to offer financial support for British citizens to help them with healthcare costs should the UK leave the EU without a deal and without other agreements in place. It is important that I am clear about what support the Government can realistically offer, and why we are unable to go quite as far as the noble Baroness proposes.

The Government's intention is to continue current reciprocal healthcare arrangements with member state countries in any scenario as they are now until 2020. However, healthcare for UK nationals who live in or visit other countries is ultimately for the individuals

[Baroness Blackwood of North Oxford]
themselves or foreign authorities. We recognise that the UK can play an important supporting role by brokering reciprocal healthcare agreements, which we very much hope and intend to do. We have made very clear and generous offers to all countries in the EU and EEA, and Switzerland, to maintain reciprocal healthcare arrangements for the transitional period, and we will be negotiating for the period after that. This means maintaining reciprocal healthcare rights for pensioners, workers, students, tourists and other visitors in line with the current arrangements, including, as we have already debated, reimbursement of healthcare costs until 2020. But this depends on decisions by member states. People's access to healthcare could change; we must be honest and open about that. Naturally, there is concern about what this will mean and what should be done. This is an uncertain situation and I very much appreciate that it will be difficult for people. I hope I can be a little bit reassuring about the actions we have already taken.

The 27 EU member states are all countries with universal healthcare coverage. In general, people would have good options for obtaining healthcare, providing they take the appropriate steps. After exit, and should there be no bilateral agreements in place, which we do not expect, the vast majority of UK nationals who live or work in the EU would still have good options for accessing healthcare. Depending on the country, it will generally be possible to access healthcare through legal residency, current or previous employment, joining a social insurance scheme, or contributing a percentage of income, as other residents need to. Less frequently—we have looked into this—people may need to purchase private insurance. People who return to the UK will also be able to use the NHS.

We recognise that this means a change and, in some circumstances, additional expense for UK nationals living abroad. It is to avoid this that we are offering not only to continue existing reciprocal agreements but to consider expanding our reciprocal healthcare arrangements outside the EU.

Speaking directly to the noble Baroness's amendment, the Government will not be able to unilaterally fund healthcare for all UK citizens who live in or visit the EU. There are good reasons for this. It would be a new scheme that would cater for hundreds of thousands of people in up to 30 countries. It would place huge financial and administrative burdens on NHS bodies, assuming they made payments promptly and in-year. The technical challenges, including the risk of fraud, would be considerable. It would make it less likely that individuals would take the steps they need to, even if they were able to. It would undermine our approach with member states in negotiating reciprocal agreements. We do not think that is the right approach, but I reassure the noble Baroness that while these are difficult decisions and we cannot accept her amendment, we are taking important steps in addition to the reciprocal agreement negotiations that I have discussed.

We have mentioned the statutory instruments under the withdrawal Act that, in a no-deal scenario, can fund healthcare for people who are in the middle of treatment on exit day for up to one year. That assumes that the member state is willing to treat them and accept reimbursement; we have been discussing this. They would also enable some residents to recover costs if they are charged.

9.30 pm

The Bill would also give us the power to respond to an unpredictable situation, as we discussed in the debate about Clauses 1 and 4. We will of course provide further detail in coming weeks, when we will be clearer about bilateral agreements and clearer on the need for any further arrangements. I hope that the noble Baroness is satisfied that the Government are doing all they can, and that it would not really be possible to offer the blanket support that she proposes, other than through reciprocal agreements.

Regarding Amendment 43, the noble Baroness will see that the Government have set out a clear prospectus of legislation in order to meet the requirements of reciprocal healthcare in the context of—although not just because of—exiting the EU. The Government have been clear that their priority is to secure a withdrawal agreement with the EU, but we must prepare for all eventualities. I hope that I have been clear that we are seeking to maintain and protect all rights, providing as much certainty and continuity of care as possible, as my noble friend Lord Lansley said. It would not be appropriate to introduce into the Bill a measure which meant that we had a period of uncertainty after exit day; the powers in this Bill are specifically designed to ensure that we will not have any gap in our ability to provide healthcare. Currently the withdrawal deal makes arrangements for reciprocal healthcare to be continued; the SIs allow for a no-deal scenario; and in addition to that we have powers in the Bill to make provision for emergency arrangements. This is a suite of powers which are designed to work together, and the reason the Bill needs to commence on exit day is so that if necessary—if there were a situation in which we did not have reciprocity—we would be able to step in and take action. On that basis, I hope that the noble Baroness feels able to withdraw her amendment..

Baroness Thornton: I thank the Minister for that very comprehensive answer, and thank other noble Lords, including the noble Baroness, Lady Brinton, for speaking up.

These are important questions because people are concerned about what will happen to them and to their families if we do not have an agreement. I am reassured by the answer on Amendment 20; it sounds as though the Government are already having comprehensive discussions. On Amendment 21, I can see that setting up a new system for payments would be very difficult, and I will read what the Minister has said. There and on Amendment 43, I am interested in what the gaps might be, so I will read and consider what she has said. Now that I have spoken to Amendment 43, I will not be moving it as the last amendment in the whole business. With that, I beg leave to withdraw Amendment 20.

Amendment 20 withdrawn.

Amendment 21 not moved.

Clause 4: Data processing

Amendment 22

Moved by ***Lord Patel***

22: Clause 4, page 2, line 29, after "data" insert "related to health"

Lord Patel: My Lords, I shall speak to Amendment 22, in my name and that of the noble Lord, Lord Kakkar, and Amendment 25, which is in my name. Both relate to personal data, and seek assurance from the Government that, whatever processes are put in place, they will respect the need for confidentiality and trust. While I absolutely recognise the value of transferring individual health data when the patient is receiving treatment, and the need to do so, it is also important that the Bill provides powers to protect personal and health data.

Access to personal health data should be limited to healthcare purposes. Currently, the General Data Protection Regulation imposes restrictions on the transfer of data, which we may not have after we leave the EU. A separate issue is the definition of "authorised persons", which, when they gave evidence, both the BMA and the Academy of Medical Royal Colleges referred to as a concern.

I am also unhappy about the mechanisms that will operate for patients to consent to having their data transferred. Amendment 25 refers to Clause 4(6), relating to data processing. It says:

"In this section—'authorised person' means".

Paragraphs (a) to (e) then define who the authorised people might be. Amendment 25, which I tabled only to get an explanation from the Minister, suggests that paragraph (e) should be deleted. It says that,

"any other person authorised, or falling within a description of persons authorised, by regulations made by the Secretary of State for the purposes of this section".

That sounds too wide to me. In this country we have clear protocols and guidelines about who should be transferring patients' data and to whom. It is not to anybody not clearly defined as an authorised person. I beg to move.

Baroness Jolly: My Lords, the NHS in England has a long history and a good record of data governance. In 1996, Fiona Caldicott was called in and asked to look at the whole issue of NHS data. It must be said that the data was not as digital then as it is now. Her review came up with a group of principles—I think there were seven—and that was then followed by Caldicott 2. More recently, there has been another look at NHS data and we are now down to three principles. It is not just the Caldicott guardians. When he was Secretary of State at DCMS, Matt Hancock announced the data ethics framework and then we had GDPR. There is a really rich background of caring for patients' data.

The provisions in the Bill authorising the sharing of data appear wide—that is probably the best way to put it. Clause 4(1) provides:

"An authorised person may process personal data held by the person in connection with any of the person's functions where that person considers it necessary for the purposes of implementing",

the Act. The words,

"that person considers it necessary",

are a very wide formulation for the exercise of a function such as this. They seem designed to make a challenge in court almost impossible.

Among others defined as an authorised person is a "provider of healthcare", so the authority extends beyond the NHS to all organisations that provide NHS care but might not be NHS organisations. So it would include commercial organisations as well as public authorities. Can the Minister confirm this and give an example, to better understand how wide the scope is?

Moreover, it is left to bodies such as the NHS to define for themselves the level of staff who should have this degree of authority. Will the Minister confirm how data is handled with devolved states and within the island of Ireland? How are we intending to communicate clinical data with organisations in the EU, and in the rest of the world, once the Bill has been enacted? Are there issues about shared datasets? We are fairly confident about sharing research data, but clinical data will be absolutely key here.

Baroness Thornton: My Lords, I have an amendment in this group. I support the noble Lord, Lord Patel, and the noble Baroness, Lady Jolly. Clause 4 of the Bill provides the legal basis for processing personal information and data about patients to facilitate patient information and payments for reciprocal healthcare after Brexit—whether as part of an agreement with the EU, an agreement with a country outside the EU or in connection with contingency plans arising from a no-deal scenario. It also seeks to ensure that the key safeguards which should always be at the heart of systems that use and exchange patients' sensitive personal and medical data are in place. The noble Lord, Lord Patel, is right to press this issue. It was almost the first thing that he and I spoke about when we talked about the Bill, which made me look at and ask why he and other noble Lords, particularly those in the medical profession, were very concerned about this.

At Second Reading the Minister acknowledged that there were deep concerns raised by noble Lords on data processing provisions in Clause 4, and promised to address them—but unfortunately she ran out of time on that day. We look forward to her catching up with that. We know that the noble Baroness has special expertise and experience in this field, so I look forward to hearing her talk about how she envisages the necessary robust standards, security and safeguards applying in post-Brexit healthcare deals with the EU and the rest of the world, and how those will be achieved.

In the Commons, my colleagues pressed this matter with the Minister, Stephen Hammond. He gave an assurance that the powers to access personal data would be limited, and committed at the time to provide a briefing. I wanted to raise that with the Minister—my colleagues in the Commons certainly have not received that, but I thought that she might raise it with her colleague and see what the briefing might have said. I am sure that we too would be interested to receive it.

When I raised this issue at Second Reading, I mentioned that I had been in touch with the National Data Guardian for Health and Social Care, who, as we know, has a vital role in ensuring that confidential

[Baroness Thornton]
healthcare data is used and shared appropriately in protecting the high standard of confidentiality. Pursuing that question is whether the Minister has been in touch and sought her guidance on this matter.

Lord O'Shaughnessy (Con): My Lords, this has been an important discussion on an area that is, of course, of growing concern not just for people in Parliament but for the general public. Noble Lords will also know about my interest in this issue; we have had many discussions over the last few years about it. It is critical that we get this right, to allay any fears—because there are fears that attend to the use and movement of data for various purposes.

The noble Baroness, Lady Jolly, makes the point in her amendment about the Caldicott principles and so on. I was pleased from the Government's point of view to be able to bring the National Data Guardian on to a statutory footing, as well as other measures that we took to provide that level of reassurance. My understanding is that these are all part of the scaffolding around the Data Protection Act, which is the GDPR as put into our legislation. They are a way of translating the general provisions of that into healthcare purposes. I ask the Minister to confirm that, because the Bill clearly states that the Data Protection Act is the governing piece of legislation here, it therefore follows that things such as the NDG, the principles and other things apply. They, in effect, derive from that and apply to all aspects of healthcare, including reciprocal healthcare.

Baroness Jolly: We are talking about exchanging health datasets, but in this world we are talking about our EU partners, the EEA and whoever else in the world we make a healthcare arrangement with. Are there mechanisms—this is a question I do not know the answer to—whereby datasets can be standardised so that any method of recording healthcare information that we might use would be recognisable to somebody in the States, Canada or France?

Lord O'Shaughnessy: That is an incredibly important point and it goes to the question that I was about to ask my noble friend. My reading of it is that it will not be possible for us to make reciprocal healthcare arrangements that involve the flow of data with another country unless we deem that country to be adequately complying with the GDPR. That is absolutely right and it is a high bar. It does not just provide a degree of regulatory compliance and standardisation; there are also international healthcare codes that underpin it, as the noble Baroness will know. It would be useful if my noble friend could confirm that, because it is clearly a really important point that will, in a sense, allay some of the fears that have been raised tonight about just how the powers in the Bill, once they extend beyond the European Union, Switzerland, the EEA and so on, might be used.

9.45 pm

Amendment 22, in the name of the noble Lord, Lord Patel, wants to insert "related to health" after "data". Of course, it is completely understandable why he would want that. It becomes slightly problematic because there are certain pieces of information that one would need about a person to reclaim information, or to have an exchange of funding for reciprocal arrangements, that do not necessarily relate to their health. Examples might be their name—that does not relate to their health—or the time they were in a country, to verify the fact that they are who they say they are and so can make a claim. I think that this kind of latitude is covered in the GDPR and that that provides the reassurance that this will not be misused, because we would not be able to strike an agreement with a country that was not applying the same standards to healthcare data—but there is a need for some non-health data to be processed as part of a reciprocal healthcare arrangement. That is why the broader definition is used. Another example might be the names of family members for a child—again to verify a claim.

The final element I want to speak to is that of non-NHS providers. This is rather important, because a number of non-NHS providers provide healthcare on behalf of the health system. It is not just the obvious ones that have been mentioned—I include GPs in that. It might also be private bodies carrying out NHS-funded care. A lot of diagnostic care is carried out by third parties. It might also cover providers of healthcare IT that records data. If we think of such systems as TTP, Cerner, Epic and so on that are used in hospitals, we would clearly want those bodies to be legally able to share that information. Of course, it needs to be connected with the healthcare purpose, but it is important that the Bill allows for that kind of latitude in a variety of ways, as I said. We must be absolutely clear—that is what I am seeking from my noble friend—that because of GDPR, because of the need and demand for adequacy on behalf of another country, a reciprocal partner, we would not be entering into the kind of arrangements that would bring the kinds of concerns that the public and, indeed, parliamentarians would have.

Baroness Manzoor: My Lords, I thank the noble Lords, Lord Patel and Lord Kakkar, even though the latter is not here, for Amendment 22, the noble Baroness, Lady Jolly, and the noble Lord, Lord Clement-Jones, for Amendment 23, the noble Baroness, Lady Thornton, for Amendment 24, and the noble Lord, Lord Patel, for Amendment 25. Each amendment allows me to speak to strict data processing protections in the Bill.

As my noble friend Lord O'Shaughnessy said, data processing is an important element of operating effective complex reciprocal healthcare arrangements, such as the current arrangements we have with the EU. I reassure noble Lords that the Government are committed to the safe, lawful processing of people's data in healthcare. Clause 4 provides a lawful basis for the processing of data in respect of future reciprocal healthcare arrangements that are outside the EU regulations mechanism. Data processing will be permitted only for the limited purposes set out in the Bill.

Under the Bill, personal data can be processed only in accordance with UK data protection law, namely the Data Protection Act 2018 and the general data protection regulation, which will form part of UK

domestic law under the EU withdrawal Act 2018 from exit day. The purpose of including data provision in the Bill is to provide a transparent basis for the processing of personal data for the purposes of funding or arranging healthcare abroad. That is it, my Lords.

On this point, I address Amendment 22, tabled by the noble Lords, Lord Patel and Lord Kakkar, which would limit the scope of personal data processed to data directly related to health. Although I appreciate the sentiment behind the amendment, it would unfortunately undermine the successful operation of reciprocal healthcare arrangements. Personal data is defined in the GDPR as data relating to a living person who can be directly or indirectly identified from that data. Examples include someone's name, date of birth or residential address.

For example, the current European health insurance card scheme allows for UK nationals to access emergency and needs-arising care when travelling, working short-term or studying in the EU. To establish someone's eligibility for an EHIC, we need first to establish that the person is living in the UK on a lawful basis and properly settled. Were persons authorised under the Bill unable to process data other than that strictly related to health, they would be unable to make the checks to ensure that those receiving healthcare abroad were entitled to it. Allowing authorised persons to process non-health-related personal data also ensures that we can prevent misuse arrangements and limit fraudulent activity.

The noble Lord, Lord Kakkar, and others, expressed concern at Second Reading that provisions in the Bill must not open the door to the mishandling of patient data. I believe that this is what Amendment 24, tabled by the noble Baroness, Lady Thornton, is intended to address. I absolutely agree with the sentiment. I should like to set out why we think that it would prevent the successful operation of future reciprocal healthcare arrangements. They are made possible by the close co-operation of different parties and bodies, such as the Department of Health and Social Care, commissioners of Her Majesty's Revenue and Customs, Ministers of the devolved Administrations, healthcare providers and their opposite numbers in other EU and EEA countries. The Bill is about the provision of healthcare. It must include all possible healthcare providers who may provide NHS care in the UK in the list of those with authority to process data for the purposes of implementing arrangements under the Bill—just under this Bill.

It is also worth reflecting on the place of healthcare providers in the current EU arrangements to illustrate the vital role that they play in both the commission and delivery of healthcare abroad. Currently, under the planned treatment route, known as the S2 route, a UK resident may decide to seek planned treatment abroad. As part of the procedure, the UK resident must visit a healthcare provider in the UK to have such treatment authorised. The clinician will provide written evidence that the person has had a full clinical assessment, which must clearly state why the treatment is needed in the person's circumstances and what the clinician considers to be a medically justifiable period within which they should be treated—again, based on their circumstances.

Under existing arrangements, this function can be served only by a medically trained healthcare provider. This paperwork is then passed to NHS England or the comparable authority in the devolved Administration—that answers a point made by the noble Baroness, Lady Finlay—for processing. Many of these persons are provided for by Clause 4(6)(b), which refers to NHS bodies. However, some NHS services in England are provided by non-NHS bodies, as was rightly pointed out by my noble friend Lord O'Shaughnessy. For example, some primary care providers, such as GPs, may not be captured by this list of NHS bodies. However, they could be involved in pre-authorisation for planned treatment and so would need to process data in that regard. Such providers not also being termed "authorised persons" may limit what reciprocal healthcare arrangements we could implement under the Bill; it could even prevent us fully implementing an agreement. Under existing arrangements governed by EU regulations, some private providers in the UK already process patient data, which is perfectly legal and proper. Of course, data protection safeguards apply to private providers too.

To further allay any other fears, I remind your Lordships that this clause contains protections to guard against any misuse of data. The persons who can process data for the purposes of the Bill are limited to "authorised persons"—quite rightly, as the noble Lord, Lord Patel, said. The list of such persons can be amended only by way of statutory instrument; the term cannot just be given automatically to anyone. The Government included a delegated power in Clause 4(6)(e) to amend this list because future arm's-length bodies may need to process personal data to enable reciprocal healthcare arrangements to operate effectively. Amendment 25 in the name of the noble Lord, Lord Patel, would limit that ability. I appreciate that that is out of concern for the safety and security of patient data—a sentiment I share totally—but the amendment would undermine the successful operation of future reciprocal healthcare arrangements.

As the noble Lord knows, the existing reciprocal healthcare arrangements are part of a complex web of systems. They rely on the well-spirited co-operation of a number of parties and bodies, which share accurate and relevant data in a prompt fashion. That extends from patients themselves all the way up to healthcare providers and public sector administrators. In time, public bodies change: they are reformed and refashioned, and functions are transferred between them in consequence. Clause 4(6)(e) gives the Secretary of State powers to respond to such changes.

Again, I assure the Committee that the Government are committed to the safe, lawful and responsible processing of people's data, both now and in future. In doing so, I address Amendment 23 in the names of the noble Baroness, Lady Jolly, and the noble Lord, Lord Clement-Jones, which honourably seeks to include further principles for the safe processing of data in the Bill. As the noble Baroness, Lady Jolly, and my noble friend Lord O'Shaughnessy noted, the Caldicott principles

[Baroness Manzoor]
and the Government's *Data Ethics Framework* are admirable standards to apply to the handling of patient data. Both of these non-legislative frameworks are in line with the Data Protection Act and the GDPR, which are enshrined in the Bill.

As has been said, data processing is an important element of operating effective complex reciprocal healthcare arrangements, like our current arrangements with the EU. Before I move on, I will answer a couple of the questions asked by the noble Baroness, Lady Thornton, about the Commons data briefing. I understand that officials met Julie Cooper MP, although I am not clear about the written briefing. However, I will pass the issue on to the Minister and bring it to his attention.

I have already covered data protection in the devolved Administrations, which would have to apply under both the GDPR and the DPA 2018. Of course, I would be happy to meet noble Lords should they wish to discuss those issues any further. My noble friend Lord O'Shaughnessy is right to say that we cannot enter into reciprocal agreements if the other country does not meet our data protection standards.

In the light of the assurances I have given and the safeguards in place to protect people's information, I hope the noble Lord feels able to withdraw his amendment.

10 pm

Lord Patel: My Lords, I thank the Minister for her response and all noble Lords who have spoken to amendments tabled in this group. As a doctor, I say to the noble Lord, Lord O'Shaughnessy, that I regard the name, address and date of birth of a patient as part of the health record information. When GPs refer a patient to a specialist they will always give the name, address and date of birth. I am seeking assurances that the processes we have in place will maintain the confidence and trust of patients, in particular when their data is transferred.

I think we have made the point. If I am to remain in the good favour of the Chief Whip, I had better sit down because it is exactly 10 o'clock. I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendments 23 to 25 not moved.

Clause 4 agreed.

House resumed.

House adjourned at 10.01 pm.

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