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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
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

Wednesday 26 February 2020

3 pm

Prayers—read by the Lord Bishop of Gloucester.

Royal Assent

3.06 pm

The following Act was given Royal Assent:

Terrorist Offenders (Restriction of Early Release) Act 2020.

Brexit: Financial Assistance for Businesses
Question

3.07 pm

Asked by ***Baroness Ritchie of Downpatrick***

To ask Her Majesty's Government what financial assistance they have provided to businesses in the United Kingdom to deal with the ongoing costs of staff training and administration as a result of the new customs rules brought in due to the United Kingdom's departure from the European Union.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, the Government are committed to supporting businesses in preparing for new customs processes. Since November 2018, HMRC has provided grants to help support traders, hauliers and the customs intermediary sector. This has seen some £34 million set aside to support employee recruitment, customs training and improvements to IT. Earlier this month, the Government announced the extension of the grant programme until 31 January 2021. Approximately £7.5 million of funding is still available.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, I thank the Minister for his Answer. Given the statement from the Secretary of State for Northern Ireland this week that there will not be a regulatory border in the Irish Sea, and that EU Ministers warned the UK Government yesterday that the chance of reaching a trade deal will be damaged unless preparations begin for checks on goods coming into Northern Ireland ports from Great Britain, could he clear up the confusion in an unequivocal manner regarding the regulatory border issue? I understand that the London Port Health Authority has not received any such resources as those that he referred to, and I do not think that ports in Great Britain serving the Northern Ireland ports have either, so what additional resources have been made available to deal with customs preparations in terms of staff training and administration in order to comply with the Ireland/Northern Ireland protocol, as Northern Ireland will still operate under EU rules for agriculture and manufacturing products at the end of the transition period?

Lord Agnew of Oulton: The noble Baroness asked rather a lot of questions there; I will try to answer one or two of them. Northern Ireland will continue to be part of the UK customs territories, and practical information will be required for goods moving from the rest of the UK to Northern Ireland. This will be provided electronically, and the Government will work with the EU to minimise the impact to traders. Through the grant system that I mentioned in my Answer, we have seen 3,000 customs agents trained over the last 18 months, and that process will continue.

Lord Empey (UUP): My Lords, the Minister has effectively conceded that there will be a regulatory border in the Irish Sea, but there is confusion over that because the Prime Minister is saying that there will not be. Either there is or there is not. Will the Minister confirm that any additional costs attributed to administering that will in fact be met by Her Majesty's Government and that businesses will not be disadvantaged in any way?

Lord Agnew of Oulton: My Lords, the negotiation is a dynamic process; we are at the beginning of what will be a very fractious negotiation over the next nine months. I tell those noble Lords with a gentle stomach that what we are seeing today are the opening remarks of the EU: it is going to get a lot hotter over the next nine months, and we will know more clearly probably by the middle of December.

Lord Davies of Oldham: My Lords, I welcome the Minister to his new responsibilities. I remind him that government Finance Ministers do not last much more than a year in the role, so he will not have to put up with too much. I want to make it quite clear that he is reflecting uncertainty and doubt, because that can only be the position that we are all in prior to the negotiations. He must know that the negotiations might even fail to such an extent that no deal at all is struck. Are the Government not in fact just putting hope over practicality when it comes to these issues? Have government answers with regard to Northern Ireland not been quite inadequate on every occasion?

Lord Agnew of Oulton: I thank the noble Lord for his kind and warm words but pessimistic outlook for my tenure in this post; I now have a challenge to be standing here in 13 months' time. We are in a negotiation. I cannot speak for what will or will not happen over the next few months. We have given certainty to businesses. We have said that we will be trading with the rest of the world in the same way as with the EU from 1 January next year. The level of tariffs and frictionality will be revealed over the course of the negotiations.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I welcome the statement made by the Secretary of State concerning no border down the Irish Sea and the assurance of the Prime Minister. Will the Minister assure the House that unfettered and tariff-free access will be maintained for produce between Great Britain and Northern Ireland?

Lord Agnew of Oulton: My Lords, as the Prime Minister's spokesman said a couple of days ago, Britain will comply with the obligations set out in the Northern Ireland protocol but does not see that entailing new checks on goods.

Lord Bruce of Bennachie (LD): My Lords, the Prime Minister has given the impression that he wants to get round the protocol, yet the government website tells businesses to prepare for checks at the border and for the costs of employing people to advise them on how to deal with customs. Indeed, the Institute for Government says there could be a hundredfold increase in the number of checks. Is it not the fact that "taking back control" means a massive increase in red tape, costs and potential delays? Do the businesses of this country not have the right to expect the Government to support them?

Lord Agnew of Oulton: I am not sure if the noble Lord is talking about Northern Ireland or the United Kingdom in general. We have intensively engaged with the 3,000 UK/EU-only high-value traders over the last 18 months—that is, £250,000 or more. They report a high level of readiness; 71% reported themselves ready in October, and that number is going up every month. Yes, there will be frictionality. When we went into the general election, our simple message was "Get Brexit done. Restore sovereignty to this country." I know there are many noble Lords who are not comfortable with that but it is our direction of travel.

Lord Hannay of Chiswick (CB): My Lords, will the Minister recognise that he has indulged in a little bit of selective quotation? He has quite correctly referred to the statement that Northern Ireland remains within the UK customs arrangements, but he has not quoted the statement which is equally in the agreement and says that the customs rules of the European Union will apply to Northern Ireland after the end of the transitional period, as well as during it. Could he just tell us where those rules will be applied, physically and geographically?

Lord Agnew of Oulton: My Lords, the protocol protects the all-Ireland economy. It also makes clear that Northern Ireland is and remains part of the UK's customs territory, and it allows the UK to ensure unfettered market access for goods moving from Northern Ireland and Great Britain. In October, the Prime Minister told the House of Commons that there would be no checks between Great Britain and Northern Ireland but that there would be some light-touch measures. That was reiterated by my right honourable friend the Chancellor of the Duchy of Lancaster, when he too said there would be light-touch administration.

Pre-charge Police Bail: Time Limit

Question

3.15 pm

Tabled by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what plans they have to extend the time limit on pre-charge police bail.

Baroness Kennedy of Cradley (Lab): My Lords, at the request of my noble friend Lord Kennedy of Southwark, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, on 5 February the Government launched a public consultation on proposals as part of our review of pre-charge bail. These proposals include extending the time limit on the initial pre-charge bail period from 28 days to either 60 or 90 days to more accurately reflect how long investigations take in complex cases.

Baroness Kennedy of Cradley: My Lords, whether a person is released on pre-charge bail or is under investigation, the aim is to gather more evidence, often using forensics. This week, the Forensic Science Regulator issued the Government with a stark warning. She stated that failures in forensic science were putting justice at risk, that the service was on a "knife-edge" and that there was a

"a woeful level of compliance"

in digital forensics. So no matter what the Government decide to do after the consultation, which the noble Baroness referred to, closes, it is clear that reform of bail alone is not enough. Does the noble Baroness agree with the regulator's assessment and what will the Government do about the severe lack of investment in forensics, especially digital forensics, which are needed to deliver swift and fair justice?

Baroness Williams of Trafford: I completely agree with the noble Baroness that this is not just about bail versus release under investigation; there is far more to concluding and charging people than just those two things. She referred to forensics and she will know, I hope, that we have put £28 million into increasing forensic capacity. She will also know, I hope, that we fully intend to put the Forensic Science Regulator on to a statutory footing.

Viscount Hailsham (Con): My Lords, I encourage my noble friend to be very cautious about this for two reasons. First, by definition, it is not under judicial supervision. Secondly, extending the time limits would encourage the police to be rather dilatory in their inquiries.

Baroness Williams of Trafford: As I said to the noble Baroness, Lady Kennedy, we fully intend to put this on a statutory footing. RUI has increased following the legislation we passed some two or three years ago, sometimes to more than what bail would have been. We have to look at this area, but I take what my noble friend says.

Lord Paddick (LD): My Lords, when this matter was debated before the Government placed restrictions on police bail, police chiefs, the Police Superintendents' Association and we on these Benches told the Government that these limits and restrictions were unrealistic. As a result, in 2017-18, 46,674 people were released under investigation in London alone, which is the worst of both worlds: allegations hang over the accused indefinitely with no power for the police to impose conditions. When will the Government start to listen to those who know what they are talking about?

Baroness Williams of Trafford: My Lords, I had a feeling that there might be an "I told you so" moment today. The noble Lord is absolutely right: he and others did question the length of time. However, I recall that I was quite clear at the time that we would review this and clearly it is time for review, hence the consultation and our intention to do something about it.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, does the noble Baroness agree that this Question is very relevant to the subject of domestic abuse? She will know about the case of Kay Richardson, who was murdered by her estranged husband in Sunderland in 2018 after he had been released under investigation. He had a history of domestic abuse and she had reported him for rape. Under the previous provisions, he would have been bailed with conditions. The difficulty is that there are no conditions attached to releasing under investigation. There should be a power to release suspects under investigation where necessary with enforceable safe -guarding conditions. Does the Minister agree?

Baroness Williams of Trafford: I totally recognise the point that the noble Lord makes about domestic abuse. Our proposals will ensure that bail is used in most domestic abuse and sexual offences where necessary and proportionate. The noble Lord makes a perfectly valid point.

Lord Patel (CB): My Lords, the House will soon have the opportunity to debate a report on forensic science provision and the criminal justice system that the Science and Technology Committee, which I have the privilege to chair, has produced. It strongly recommends that the regulator should be put on a statutory basis. I know that the noble Baroness has just said that this is the Government's intention, but it was not in the Queen's Speech. When will that legislation be brought forward? Furthermore, forensic science provision, as she knows, is in dire straits, with private providers going bust all the time.

Baroness Williams of Trafford: My Lords, I pre-empted that the noble Lord might, rightly, bring this up. I know that it was not in the Queen's Speech, but it is our intention to bring that legislation forward, and I shall keep him posted on its progress.

Saudi Arabia: Death Penalty

Question

3.21 pm

Asked by ***Baroness Kennedy of The Shaws***

To ask Her Majesty's Government what action they intend to take in response to the report by Baroness Kennedy of The Shaws, *A perverse and ominous enterprise: the death penalty and illegal executions in Saudi Arabia*, published in July 2019.

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Lord Ahmad of Wimbledon) (Con): My Lords, I thank the noble Baroness, Lady Kennedy, for her report. The United Kingdom strongly opposes the use of the death penalty in all circumstances. The former Minister of State for the Middle East and North Africa raised our concerns with the Saudi Deputy Justice Minister earlier this month. In September 2019, the UK was also a signatory to the UN Human Rights Council statement encouraging Saudi Arabia to end its use of the death penalty and to ratify the International Covenant on Civil and Political Rights.

Baroness Kennedy of The Shaws (Lab): I thank the Minister not just for his reply but his personal commitment to international human rights. I tabled this Question because the report, published in July last year, indicated that there had been an acceleration of the use of the death penalty in Saudi Arabia, including mass executions —beheadings—of as many as 37 people at a time, the majority of whom had been involved in a protest and were of the Shia minority. The abuse of human rights in Saudi Arabia should be a real scandal to all of us in this House. I visited Turkey with the rapporteur on extrajudicial killing to hear the tapes of the killing of Jamal Khashoggi, the journalist. We have now had an opaque trial, where it was impossible for the International Bar Association, for example, to have persons present during the trial. We now know that six people have been given the death penalty as a result. Are we inquiring as to what is happening and who those people are? Do we know enough about the outcome of that trial and whether any due process really took place?

Lord Ahmad of Wimbledon: My Lords, first, I am glad that we were finally allowed to take this Oral Question after the publication of the report. I can assure the noble Baroness that, since then, we have been taking quite specific action. She rightly raised the mass execution of 37 men in April 2019; there were a large number from the Shia minority. We clearly expressed our grave concern at that time. Indeed, when I visited the Kingdom of Saudi Arabia, at its request, in my capacity as Human Rights Minister, we raised all issues, including the death penalty. The noble Baroness raised the specific issue of the Khashoggi trial. In that regard, our diplomats on the ground did gain access to the trial and were able to observe it directly. As to what happens next, as the noble Baroness will be aware, there is an appeal process under way for those people who were given the death penalty in that regard, and there is little for me to add as it is an ongoing process. On the general point about the use of the death penalty, for minorities but also for minors, we continue to raise the issue regularly with the Kingdom of Saudi Arabia.

Lord Collins of Highbury (Lab): My Lords, as I have remarked before, the noble Lord has been in his post for some considerable time. Last May, after the executions, he talked about progress being made and positive engagement. Of course, underpinning these executions are further human rights abuses; it is not simply executions. Can the Minister tell us, with his positive engagement, what progress is really being made, and, if progress is not sufficient, will the Government use the powers they have to impose selective sanctions against those responsible for these human rights abuses?

Lord Ahmad of Wimbledon: The noble Lord refers to my time in post, and I am delighted to return to the Dispatch Box. My noble friend from the Treasury has just left the Chamber, but I am sure he will be reassured

[LORD AHMAD OF WIMBLEDON]
by the fact that longevity in office is perhaps—as I look toward my noble friend Lady Williams—a trademark of Ministers in your Lordships' House.

On whether progress is being made, in July 2018 the Kingdom of Saudi Arabia passed a codifying law on the age of criminal majority at 18 for some crimes within sharia law and capping the punishment for crimes committed by minors to 10 years' imprisonment, so we have seen specific progress in this regard. There are exceptions to this on issues of national security. On action taken, particularly against people alleged to have been involved in the Khashoggi murder, I assure the noble Lord that we have taken action. I am delighted that my noble friend the Minister of State from the Home Office is here. The Home Office did act and we took action against a number of individuals in that respect.

Lord Campbell of Pittenweem (LD): My Lords, I have given informal notice to the Minister that I wish to ask a question about arms exports to Saudi Arabia. Does he recall that on 26 September there were Statements in both Houses on behalf of the Government to admit a breach of an undertaking given to the High Court on 20 June that there would be no export licences granted to Saudi Arabia for military equipment that might be used in Yemen, and that there would be a fully independent inquiry? Why have the results of that inquiry not yet been published—if not for the courtesy of the House, for that of the High Court?

Lord Ahmad of Wimbledon: My Lords, I do indeed recall that, and I have followed it up with colleagues at the Department for International Trade. I will come back to the noble Lord on the specific issue of the inquiry. I can reassure him that, since the review of that decision and the decision on the three conditions—one in particular that went against the Government—there have been no new arms licences issued to the Kingdom of Saudi Arabia.

Baroness Whitaker (Lab): My Lords, is the Minister aware that I spoke in support of this report at the United Nations in Geneva? A whole audience unanimously agreed that only Governments could shift the Saudi Arabians' atrocious use of the death penalty. Some of the people under sentence of death are students who took part in a demonstration; that is all they did. Although I commend Her Majesty's Government for their efforts so far, what further efforts are they making to ensure that all the other Governments who care about human rights can make a concerted front against the Saudi Government on this matter?

Lord Ahmad of Wimbledon: The noble Baroness raises an important point. Collaborative efforts on matters of foreign policy and on issues such as the death penalty do have an impact; we have therefore made a collective effort. I alluded earlier to the efforts the United Kingdom Government have made at the Human Rights Council, and we were pleased to support Australia on the broad concerns raised about human rights in Saudi Arabia. I add to an earlier point made to the noble Lord, Lord Collins, that we are seeing change and positive steps are being taken, as I saw when I visited. Notwithstanding that engagement, I assure the noble Baroness and your Lordships' House that we continue to make an issue of a moratorium on the death penalty—as a first step, perhaps, to its prohibition—not just to the Kingdom of Saudi Arabia but elsewhere in the world. Our strategic alliances are important and allow us to make that case forcefully.

Lord Berkeley (Lab): My Lords, for 10 or 20 years we have been hearing Ministers say that they have made representations to Saudi Arabia, and nothing happens. The Minister just said it is very important that we keep our strategic alliance going, so would it be wrong to suggest that if Saudi Arabia did not have oil and did not buy so many of our arms we would be declaring it a pariah state by now?

Lord Ahmad of Wimbledon: My Lords, the noble Lord, Lord Collins, talked about my longevity in office: I was not here 12 or 15 years ago, as the noble Lord may know. On his general point, while we hope for better progress, progress is being made. Although small steps are being taken in the human rights space, we have seen progress on the issue of gender and an easing of restrictions on the ground, particularly in places such as Riyadh. Can more progress be made? Of course. While we continue to raise these issues, the fact that the Kingdom of Saudi Arabia is a strategic partner helps us make this case, and I assure the noble Lord that we will continue to do so.

Wuhan Coronavirus: Tourism
Question

3.30 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what assessment they have made of the impact Wuhan coronavirus is having on United Kingdom tourism.

Lord Lee of Trafford (LD): I beg leave to ask the Question in my name on the Order Paper and declare an interest as chairman of the Association of Leading Visitor Attractions.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government are working very closely with the tourism industry to monitor the impact of Covid-19 on the sector. VisitBritain has chaired two meetings of the Tourism Industry Emergency Response Group and has been providing daily updates to industry members since 27 January. The Minister for Tourism chaired the industry council just this Monday, where the Deputy Chief Medical Officer was present to discuss these issues with the industry, and the Government continue to monitor the situation closely.

Lord Lee of Trafford: My Lords, while the health issues are obviously paramount, global travel is increasingly being disrupted and restricted. UK tourism is already being seriously affected. Flights between China and Europe are down 37%. The chief executive of Walpole, the luxury trade body, believes that there has been a 70% downturn in Chinese visitor spend and many

visitor attractions, hotels and restaurants are being hit. Particularly badly hit are the 20-plus members of UKinbound, whose businesses are totally dependent on the Chinese market. I urge the Government to encourage banks to be lenient and understanding with affected businesses and, more importantly, to consider deferring VAT payments to ease liquidity pressures on companies, particularly if the various problems persist for any length of time.

Baroness Barran: The noble Lord is right to point out the challenges to certain sectors of the tourism industry. As for working more closely with the banks on the impact of Covid-19, the virus is obviously impacting businesses across many industries, of which tourism is an important one, and the Government are working very closely with the financial services sector to ensure that the economy can negotiate this period. The Government do not have any plans to introduce a blanket deferral of VAT payments as a result of Covid-19 but, if our businesses are struggling as a result of the virus, HMRC's "time to pay" arrangements allow customers with viable businesses more flexibility over their payment periods.

Lord Hayward (Con): My Lords, one key aspect of tourism is international sports tournaments—the Six Nations, European football tournaments and the like. Are the Government giving any guidance on the handling of sports events, where of course large numbers of people will be congregating, many of whom will naturally and inevitably be coming from abroad to watch the matches?

Baroness Barran: I thank my noble friend for his question. In everything that we are doing, we are being guided by the Chief Medical Officer in trying to strike a balance between the safety of the public, which is obviously our pre-eminent goal, and making sure that events can take place. There are no rugby events, I understand, scheduled for this weekend. Future scheduling will be based on the best advice at the time. This is a rapidly evolving situation and work is being done on guidance in relation to mass gatherings.

Lord Clark of Windermere (Lab): My Lords, does the Minister realise that the cessation of Chinese tourists coming to the Lake District is having a massive effect? But, bearing in mind that there are 19 million visitors to the Lake District and a local population of 40,000, should not the Government be thinking that there will be other dangers like this to the tourist industry that happen overseas? The industry itself should be working with government to think how it can be long-term viable.

Baroness Barran: As I tried to explain in answer to the noble Lord, Lord Lee, the Minister for Tourism is working closely with the industry and the Government. As the noble Lord, Lord Clark, will be aware, we recently announced a tourism deal to meet a number of the issues that he rightly raised.

Lord Stevenson of Balmacara (Lab): My Lords, the noble Baroness mentioned the work that VisitBritain is doing to try to understand better what the impact will be of this awful situation. I looked at its website this morning and noticed that it was still suggesting that there will be an increase in overseas visitors this year of some 2.9% and a growth in income from £25 billion to £26.6 billion. Does she have current figures to share with the House? Are there any plans that are not just reliant on hope, such as suggesting staycations and other ways in which we might increase the volume of traffic to those who have to suffer disbenefit, from internal resources?

Baroness Barran: Obviously, VisitBritain is responsible for the data on its website. I asked the same questions of officials that the noble Lord put to me. Rightly, the view is that there are many moving parts to this and that trying to come up with a number is probably not helpful. What is helpful is to be in constant communication with the sector, listening and engaging with it, and working across government, which is what we are doing.

Lord Foster of Bath (LD): My Lords, we have heard of the difficulties faced by the tourism industry being made worse by coronavirus. Does the noble Baroness accept that we could help the industry by doing as other European countries have done and reducing VAT on accommodation and attractions, thereby giving some £5 billion over 10 years to the Treasury, increasing our trade balance by £23 billion and creating 120,000 jobs? Does she agree with those figures and what has her department done to try to persuade the Treasury of the merit of the case, so that we can help our tourism industry?

Baroness Barran: I am sorry to disappoint the noble Lord, but I am not aware of any plans to review VAT on tourism at the moment.

Office for Science Quality Assessment Bill [HL]

First Reading

3.37 pm

A Bill to establish an Office for Science Quality Assessment within the National Audit Office; and to authorise the Comptroller and Auditor-General to assess any research used as a basis of published policy by a public department.

The Bill was introduced by Lord Lilley, read a first time and ordered to be printed.

Fisheries Bill [HL]

Order of Consideration Motion

3.38 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That it be an instruction to the Committee of the Whole House to which the Fisheries Bill [HL] has been committed that they consider the bill in the following order:

Clauses 1 to 8; Schedule 1; Clauses 9 to 13; Schedule 2; Clauses 14 to 18; Schedule 3; Clauses 19 to 22; Schedule 4; Clauses 23 to 27; Schedule 5; Clauses 28 to 33; Schedule 6; Clause 34 ; Schedule 7;

[BARONESS BLOOMFIELD OF HINTON WALDRIST]
Clauses 35 to 42; Schedule 8; Clauses 43 and 44; Schedule 9; Clause 45; Schedule 10; Clauses 46 to 51; Title.

Motion agreed.

NHS Funding Bill *(Money Bill)*

Second Reading (and remaining stages)

3.38 pm

Moved by ***Lord Bethell***

That the Bill be now read a second time.

Lord Bethell (Con): My Lords, the NHS is the top priority of the British people and this Government. The NHS itself has a long-term plan to transform services in this country and to ensure that it continues to deliver world-class care for everyone while transforming itself into a sustainable service fit to face the challenges of the 21st century.

To deliver this plan, the NHS has told us how much funding it needs, and this Government are providing it—£33.9 billion extra a year by 2024. Through this Bill, we will provide the NHS with the financial certainty of a fully costed financial settlement over the next four years. Let me be clear about those numbers. This Bill will guarantee that the NHS budget will rise from £121 billion in 2019-20 to £148 billion in 2023-24.

This is the first time any Government have placed such a commitment to public services in legislation. By putting this commitment into law, the Bill removes any political uncertainty around the level of funding for the NHS. In doing so, it gives the NHS the stability it needs to plan for how to deliver the long-term plan over the next four years. This multiyear funding settlement means the NHS is no longer confined to planning on an inefficient annual cycle in which long-term interests can become obscured by short-term uncertainties about future funding.

Instead, this Bill means that the NHS can make investments now, confident that it will have the money it said it needs in future. This is better not just for patients, who will continue to get a world-class service fit for the 21st century, or for the workforce, who can focus on what they do best—delivering clinical excellence—but for taxpayers. It is not just me saying it; this is what the NHS is saying. Sir Simon Stevens said:

"we can now face the next five years with renewed certainty. This … settlement provides the funding we need to shape a long-term plan for key improvements in cancer, mental health and other critical services."

By bringing forward this legislation, the Government are giving an ironclad guarantee to protect this NHS funding. It creates a double-lock commitment that places a legal duty on both the Secretary of State and the Treasury to uphold this minimum level of NHS revenue funding over the next four years. This point is very important: the legislation explicitly states that the Bill establishes a floor, not a ceiling, for how much we spend on our most vital and valued public service.

I will give noble Lords some examples of what this money will be spent on. The financial stability will give the NHS the space to invest in innovative technology and harness digital revolutions, to move services into the community so that people are treated in the right place at the right time, and to work together to design modern, integrated health services.

During the engagement with noble Lords, and in the other place, there was, quite rightly, significant interest in particular budget items. The area of most concern was undoubtedly mental health funding, which came up time and again. Within this financial settlement, spending on mental health will rise by an additional £2.3 billion by 2023-24, meaning it will increase faster than spending on physical health, which represents a significant step in moving towards proper parity of esteem. This historic level of investment in mental health will ensure that the Government can drive forward one of the most ambitious mental health reform programmes anywhere in Europe.

This funding will improve access to evidence-based and meaningful care for 370,000 additional adults by 2023-24. This will include, for example, adults with eating disorders, people with complex mental health difficulties who are diagnosed with personality disorders, and people with mental health rehabilitation needs.

This funding will deliver our commitment that 345,000 additional children and young people will be able to access mental health services and school-based mental health support teams by 2023-24. This will mean that by 2023-24 there will be a comprehensive offer for 0 to 25 year-olds that reaches across mental health services for children and young people and adults. Access standards for children and young people's eating disorder services will be maintained, and there will be 24/7 mental health crisis care provision for children and young people in general hospitals and the community in every area of the country. We are not there yet, but this Government recognise that our mental health and our physical health must be seen on an equal footing. They are working hard to ensure that mental health is treated as seriously as physical health.

Let me give some other ideas of what else the funding in this Bill will deliver. It will help to create 50 million more GP appointments each year so that we can reduce the time people have to wait to see a GP. It will pay for new cancer screening programmes and faster diagnosis so that we can save the lives of 55,000 more people with cancer by 2030. It will pay for the prevention, detection and treatment of cardiovascular disease so that we can prevent 150,000 strokes and heart attacks by 2030.

This funding will help us to create more services in the community, closer to home, with pharmacies playing a much bigger role. It will allow the NHS to invest in innovative technology such as genomics and artificial intelligence, to create more precise, more personalised and more effective treatments. It will also allow the NHS to upgrade outdated technology to save time for staff and save the lives of patients. Above all, the record funding in the Bill will allow everyone in the NHS to work together to make long-term decisions about how the health system should be organised and

delivered—not tied to what we have done in the past, necessarily, but driven by a clear view of what the NHS must do in the future.

Let me say a few words about funding outside the scope of the Bill. This £33.9 billion commitment is for NHS England's revenue spending only. It is important to remember that, in addition to this funding, we have made a number of commitments that are outside the scope of the Bill, including on training and capital. On training, we made a clear commitment in our manifesto to deliver 50,000 more nurses. The latest figures show that the NHS now has a record number of registered nurses, midwives, nursing associates and nurses in training. But the truth is that we need more. We need not only the right number of nurses, but for those nurses to have the right skills, as nursing increasingly becomes a high-skilled and highly technical role.

So, from this September, we will give every student nurse a free, non-repayable training grant worth at least £5,000 each year to recruit more people into nursing. We are also expanding the routes into nursing with more nursing associates and apprentices, making it easier to become a fully registered nurse. We are also prioritising the care of our nursing staff to encourage more of them to stay in the NHS for longer. This new training package to get more nurses into the NHS is in addition to the funding contained in this Bill. We have purposefully not included training in the Bill, as the Government are working with NHS England and HEE to identify and develop a number of programmes to deliver doctors and the 50,000 new nurses. It would be premature to legislate for the cost before we have completed that work.

The NHS also needs more money for capital investment. Better NHS infrastructure is a major priority for the Government. Modern buildings with cutting-edge facilities and equipment are essential to delivering the NHS transformation we want to see over the next decade—40 new hospitals across the country, £2.7 billion for the first six hospitals alone, £850 million for 20 hospital upgrades and £450 million for new scanners and the latest AI technology. This is just to get on with those infrastructure schemes that have already been given the green light; there will be more. More capital funding will be allocated as plans are developed and costed. We do not want to include it in this Bill before the plans have been fully worked out. There will therefore be additional funding for areas that are not covered by this Bill, including public health and social care; they will be dealt with at future fiscal events.

This is unlikely to be last word on the NHS that this House will have this year. We are considering the NHS's legislative asks around the long-term plan and will respond in due course. We will, of course, be discussing the NHS regularly in debates and Questions.

However, for now, we have this short and straightforward Bill. It can be summed up in a single word: certainty. It offers certainty to the NHS, to its 1.4 million hard-working staff and to the country—that the NHS will have the level of funding it said it needs over the next four years to deliver the long-term plan.

We have an ambitious long-term plan that will allow us not only to meet the needs of today but to rise to the challenges of tomorrow. The key to that is delivering the investment that the NHS has said that it needs to deliver the plan. That is why I am proud to commend the Bill to the House, and I beg to move.

3.50 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister and welcome the opportunity to take part in this Second Reading debate. I declare my membership of the GMC, trusteeship of the Royal College of Ophthalmologists and presidency of GS1.

Extra funding for the NHS is always welcome. The Minister was confident that the Bill would give the NHS long-term certainty and all the money that it needs to implement the NHS plan—indeed, he said that it has been given all the money that it asked for. I just remind him that most people in the NHS understand and are clear that the amount of resources promised is nowhere near what is required. When he said that the NHS was satisfied that the money was sufficient he meant NHS England. I remind him that NHS England is a wholly owned quango accountable to him and his ministerial colleagues. The idea that it speaks for the NHS is taking quango-land fiction a little too far.

The Bill is certainly a departure—setting out the allocation to the NHS up to the 2023-24 financial year—but the suspicion is that it is little more than a political gimmick that is by no means sufficient for the needs of the NHS. There is no legal or government financial rule requirement for such legislation; it has never been done before. I am at a loss to understand why the Government have done it, because, as the Minister implied, it is quite clear that the Government will be forced during this four-year period to put more money in to shore up the deficits that will inevitably be run up by the NHS.

Our debate of two weeks ago on the performance of the NHS told its own story. Despite the heroic efforts of staff, 18.3% of people attending A&E in January spent more than four hours there from arrival to admission—the worst performance of any January since records began. The target on treatment within 18 weeks has not been met for at least four years. Other targets are missed consistently. We know that rationing is on the increase, and there are many other failings in ambulance services, mental health services and services for people with learning disabilities.

Clearly, many factors are at play in this, but when we align austerity with workforce shortages—the estimate is of a 100,000 FTE shortage at the moment—1.4 million people with an unmet social care need and a complete failure to factor in a growing elderly population, it is little wonder that the NHS is reeling under the pressure. The settlement of 3.4% growth per annum over a four-year period is certainly less than the 4% that most commentators have argued is needed—I actually think it needs more. I remind the Minister that the right reverend Prelate the Bishop of London—a former Chief Nursing Officer—said in our debate on the Queen's Speech that the additional funding was not a bonanza and would serve only to stabilise NHS services and pay off deficits.

On deficits, NHS Providers trusts reported a combined deficit of £827 million and clinical commissioning groups a deficit of £150 million in the last financial year. The National Audit Office recently warned that

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trusts are becoming increasingly reliant on short-term measures, including one-off savings, to meet yearly financial targets. Clearly, many trusts in financial difficulty are increasingly relying on short-term loans from the Minister's department, which, the NAO says in its recent report, are effectively being treated as income by these organisations, which have run up a level of unsustainable debt that reached £10.9 billion in March 2019. The NAO says that those trusts are very unlikely to meet any of that debt. Could the Minister say what is to happen to it?

The Bill is notable for what it does not include. The Minister acknowledged this. Little wonder that NHS leaders wrote to the *Times* at the beginning of this month, pointing out that the funding does not include areas crucial to the Government's election promise of providing more nurses, hospitals and GP appointments. The NHS is facing a massive workforce crisis. The funding does not cover the education and training budget to help with recruitment and retention, nor does it offer any relief for public health and social care services that help keep people healthy and independent. The new migration policy announced this week, which excludes care workers as "lower-skilled", simply adds more pressure to the social care system.

I have listened twice to the Home Office Minister's response in your Lordships' House. She blithely washes her hands of the problem, quoting the Migration Advisory Committee, which says that the care sector's problem should be solved by the sector investing in making jobs in social care worth while. Have your Lordships ever heard such nonsense? How on earth, with the resources available, can the social care sector invest more in training and paying staff? At the end of this year, we will have an absolute crisis in the care sector unless, as I suspect, the Home Office is forced to reverse this ludicrous policy of excluding people coming to this country to help our care sector.

The Minister mentioned capital. The NHS was formed in 1948; 14% of its buildings are older than it is. He talked about the new hospitals. The backlog of maintenance is about £6.5 billion. The NAO produced a report that warned that the Government's real story on capital is that in the past five years they have transferred £4.3 billion from capital to revenue to shore up the everyday finances of the NHS. The Minister is pinning his hopes on the NHS long-term plan to transform everything and make the NHS cope with the extra demand it faces. Excuse me for being a little cynical, but the NHS long-term plan is a reiteration of every plan that I have seen for the NHS in the last 30 years. It is based on the fiction that services produced outside hospitals will miraculously reduce the demand in those hospitals. Anyone who knows anything about the NHS knows that this is complete bunkum and that the Government have no chance whatever of getting anywhere near the targets that the plan produces. We will be carrying on the short-term funding crisis that we have seen over many years.

I am very glad to see the noble Lord, Lord Patel, in his place. One of the best reports on health in the last few years was that of his Select Committee on the Long-Term Sustainability of the NHS. It highlighted what he, and those working in the NHS and adult social care, described as a "culture of short-termism", with the Minister's department and front-line services absorbed by day-to-day struggles. Little has changed since then. I strongly support that committee's recommendation on the establishment of an office for health and care sustainability to look at likely funding and workforce requirements up to 20 years ahead. Like the Office for Budget Responsibility, it would give authoritative advice to the public, Ministers and the NHS. Ministers would still set the budget, and answer to Parliament for it, but it would allow for a much longer-term workforce and financial plan for the NHS, taking account of the demographic pressures that we face over the next 30 years. Would it lead to more resources coming into health and social care? Nothing is certain, but it would set the context in which the country could come to a sensible decision about how much it will be prepared to pay for health and social care.

The Government's decision to legislate with the Bill for the next four years is, on the face of it, to fund an unnecessary political gesture. Legislation clearly is not required and the Government will never be able to stick to these figures when the pressures come incessantly into the system. If, in time, it came to be a building block towards a long-term sustainable future, the Bill would be of no little significance. So far, there is precious little sign of that.

4.01 pm

Baroness Tyler of Enfield (LD): My Lords, I am pleased to contribute to this Second Reading debate, and—as it is my first opportunity to do so—I welcome the Minister to his new role. I look forward to working with him.

This Bill sets out the current long-term funding settlement for the NHS, as set out in the *Long Term Plan* published last year. While I welcome the fact that the Government have provided a long-term funding settlement to provide some of the certainty we have heard about, the key question is not whether legislation is needed—frankly, it is not necessary for the Government to commit themselves in primary legislation to something that is already well within their powers—but whether the funding allocation for NHS England increasing to £148.5 billion by 2024 is sufficient to meet a decade of NHS underfunding, to respond to an ageing population and to meet the plan's commitments to raise standards in healthcare.

As alluded to by the noble Lord, Lord Hunt, and like many external commentators, I note that the King's Fund, Nuffield Trust and Health Foundation have all said that an increase of at least 4% is required to modernise the NHS and improve standards. In big picture terms, the overriding concern about this Bill is that it does not apply to the whole healthcare budget. As has already been said, NHS England does not operate in isolation, and to improve the health of the population, it is essential that new funding is accompanied by equivalent and sustainable investment in public health, social care and capital funding. Failure to invest now will simply increase the strain on the NHS and store up problems for the future.

I will focus the rest of my remarks on mental health funding, which the Minister focused on in his introductory speech. It was a positive step forward that the long-term

plan placed a considerably stronger focus on mental health services, with a commitment that funding for mental health services would grow at a faster rate than the overall NHS budget, increasing by at least £2.3 billion per year by 2024. That is an important figure, which I will come back to. For far too long, people with mental health problems have had to put up with second class services, with too many people struggling to access treatment and support. Decades of underfunding and neglect mean that services are too often delivered in sub-standard and sometimes dangerous facilities and buildings, and there are significant shortages in the mental health workforce.

With that as the overall context, I of course welcome the commitment that funding for mental health services will grow faster than the overall NHS budget and that funding for children's services will increase faster than total mental health spending per se. However, we must not underestimate the challenge of ensuring that money earmarked for mental health services reaches the front line. This is the crux of the matter that I want to talk about. Although the additional funding for mental health is ring-fenced in the long-term plan, it is unclear how this will work in practice. We need much greater clarity from the Government about how they plan to guarantee that this money is spent on front-line mental health services. Frankly, it is impossible to gauge this from the data currently available. I will say a few more words about this.

During the Commons stages of the Bill, a cross-party group of MPs supported amendments to require the Secretary of State to report to Parliament every year on whether the money received by mental health services was taking us closer to achieving parity of esteem. These amendments were not accepted by the Government—sadly, from my perspective—and, as this is a money Bill, we are of course unable to table any amendments here.

I was particularly enthusiastic about the amendment tabled by my honourable friend Munira Wilson MP, which would have required the Secretary of State to lay before Parliament an annual report on spending on child and adolescent mental health services. In my view, this would have done a lot to strengthen much-needed transparency and accountability in this area. However, to try to remain positive, I noted in *Hansard* that the Minister replying, Edward Argar, expressed some sympathy with the sentiment behind the amendment and agreed to meet Munira Wilson and other colleagues to discuss further what could be done to improve the reporting on children's mental health services. I look forward to hearing the outcome of that meeting and hope that the Minister in this House will make a commitment that he will report back to noble Lords on what happens in those discussions.

I want to explain briefly why I think that the CAMHS expenditure is so important. When you analyse it at a national level, it all looks pretty okay; it looks like it is going in the right direction. But this masks continued and really worrying inconsistencies in reporting by CCGs, which prevent parliamentarians and researchers being confident in the figures published at local level. For example, 34 CCGs reported spending less on services for children and young people combined, including on eating disorders services, in 2018-19 compared to the previous years, with nine of those areas having reported spending cuts of at least 27%. This is hardly in line with the public commitment to spend more in this area. I also find it baffling that CCGs which are reporting spending cuts in the dashboard are simultaneously getting a tick to say that they have met the mental health investment standard. I am really perplexed by how this is happening and, if the Minister can shed any light on this, I shall be really grateful.

Something that I have been calling for for some time now is a separate children and young people's mental health investment standard with a dashboard, so that we can get a more detailed breakdown on the way money is being spent on services for children's mental health, ranging from preventive to crisis care. In the same way that the mental health dashboard reports on whether each CCG has met the mental health investment standard, it should also report separately on whether each CCG has increased the proportion it is spending on children and young people's mental health. In addition, if any CCG fails to increase the amount it spends, I really feel that it should provide a public explanation of the reason. Speaking personally, I would also like to see sanctions applied to CCGs which do not provide a satisfactory explanation.

There are a couple of other areas which I would like to cover briefly. One is the workforce. Mental health has one of the most serious workforce shortages in any part of the NHS, and securing and retaining the right workforce is probably the biggest barrier to delivering the Government's commitments to improve mental health care. We know at the moment that, to meet the promises already made for mental health and to reduce vacancies and cover requirements, we need about 4,500 additional consultant psychiatrists for 2029.

Where are these people going to come from? The recent census by the Royal College of Psychiatrists showed that the rate of unfilled NHS consultant psychiatrist posts had doubled in the last six years and that one in 10 posts is vacant. Despite the shortage of doctors, our medical schools operate under a strict admissions cap, often turning away highly qualified and ambitious students. We need to double the number of medical school places by 2029 to train enough consultants to fill the roles already promised. I would like to see places allocated in particular to schools that have a plan in place to encourage students to choose psychiatry.

Substantial investment in expanding the workforce is urgently required and I eagerly await the publication of the *NHS People Plan*, which, I hope, will set out how the Government plan to address these shortages. It is vital that the Government use the opportunity of the forthcoming Budget to commit to additional investment to support the recruitment and training of mental health staff.

Finally, on capital funding—this has already been alluded to—the review of the Mental Health Act found that mental health facilities where patients are admitted are often the most out of date in the NHS estate. At times, they have more in common with prisons than hospitals. There are badly designed, dilapidated buildings with poor facilities, which all contribute to a sense of containment and make it difficult for patients to be

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effectively engaged in therapeutic activities. I was particularly taken with what the review said about how inappropriate it was that we still use dormitory provision in mental health wards for people who have been sectioned under the Mental Health Act. It just does not seem right at all.

The Minister alluded to the fact that the Government have taken some steps to address capital funding issues, including announcing plans to build 40 new hospitals through the health infrastructure plan. However, so far, mental health has been almost totally overlooked in these discussions, despite the review's findings. Therefore, I again call on the Government to use the 2020 Budget to set out a major, multiyear capital investment programme to modernise the mental health estate and bring it into the 21st century.

To recap, the Government must do more to ensure that the additional funding in the Bill leads to sustained investment in mental health in every local area in England, to address the shortages in the workforce and to commit to much-needed capital investment.

4.12 pm

Baroness Finlay of Llandaff (CB): My Lords, I, too, congratulate the Minister on his new position and declare my interests as a past president of the BMA, a fellow of various medical royal colleges, and vice-president of Hospice UK and Marie Curie.

Yesterday, a letter went to the Prime Minister from the medical royal colleges and faculties and the Royal College of Midwives and the Royal College of Nursing, urging him to

"accept the recommendations of the report *Health Equity in England: The Marmot Review 10 years on*, and to go a little further."

They announced that they

"are coming together to establish the Inequalities in Health Alliance"

and

"will be asking other organisations across the UK to join … particularly those representing social services and local authorities in all four nations."

They went on to point out that

"The report published today by the Institute for Health Equity and commissioned by the Health Foundation, says life expectancy has stalled for the first time in at least 120 years. We are sure you know that there is a 15-20-year difference in healthy life expectancy between some of the new seats represented by the Conservatives, and others that your party has traditionally held. These disparities directly impact on NHS services, with emergency attendances doubling in the areas of lowest life expectancy."

The letter goes on to say that it is essential that the

"government works with the devolved administrations".

It points out that health is not in isolation and that

"earning a living wage is linked to healthy life expectancy"

and that

"Poverty has the most impact on infant and child health"

and therefore that needs to be focused on too.

The co-signatories to that letter—a full page of them—make the point clearly that looking at health in isolation is not adequate. Although we all welcome the funding that will be coming forward and the fact that it will go to the devolved nations, the problem is that it will be made on a population rather than a needs basis. The funding needs to be according to needs-based consequentials. Taking Wales as an example—I declare an interest as somebody who lives and works there—we have a population that is iller, older and poorer. It matches the north-east of England and is now reaping the disbenefit of all that happened prior to devolution, with the problems of poverty, industrial closure, and so on.

Wales, like the north-east of England, has been heavily impacted by welfare cuts. It now has protected combined spending on health and social care that is 11% higher than in England, working out at £3,051 per head of population, and there is a policy to protect social care. I urge the Minister and the Government to abandon the phrase that social care workers are "low skilled". They are not; they are low-paid. They are very highly skilled. It is the skilled social care worker who will avoid a hospital admission and sound the alarm before a problem arises; and when it comes to people with mental health problems, learning difficulties and so, I defy anyone in this House to claim that they will be any better than a skilled care worker at managing a crisis in the community. It is very difficult work. However, there is no protected spend in the Bill for population health and, as the Minister has said, there is nothing on public health, but change will occur only through public health initiatives.

In Wales, we are tackling alcohol-related harms by bringing in minimum unit pricing on 1 March. I declare my role as chair of the Commission on Alcohol Harm. Minimum unit pricing is already in place in Scotland. We also have the Well-being of Future Generations (Wales) Act 2015 and are trying to reverse our heritage of really poor health and lack of health gains in our population. However, in Wales, as in other less wealthy parts of the UK, we have until now been quite dependent on Objective 1 funding and the European Social Fund, particularly for the third sector. That money needs to be replaced. I urge the Government to recognise that not only is there a requirement for needs-based funding but they have a duty to replace the funding that has now been lost.

As I have said, across England the royal colleges are calling for social care to immediately receive better—and, indeed, sustainable—funding. This will alleviate the pressures caused by delays in transfers to care. There is no reason why people should be discharged late in the day. There is a fair amount of evidence that if people are discharged from hospital in the morning with a care package in place, the result is a lower number of readmissions and better long-term outcomes. Other than the fact that the system is completely gummed up and log-jammed, there is certainly no excuse for discharging people to their homes in the evening or during the night without adequate care being in place. There has to be integration between the sectors at every level, with efficiency built in, and that requires a new financial settlement for social care and finding a long-term sustainable solution to providing care and support for people in England. That will probably be one of the greatest challenges for England, Wales and Scotland in the future.

Years of underfunding in social care have meant that thousands of older people have failed to receive adequate funding for their care. Delays in transfers to care will continue, resulting in the accumulating backlog arriving in A&E. As the noble Lord, Lord Hunt of

Kings Heath, has pointed out, the figures for A&E are worse than ever. That is through no fault of the A&E departments at all. In December, fewer than 80% of patients were admitted, transferred or discharged within four hours. This was a record-breaking monthly low and the 53rd consecutive month that the 95% target was not met. As well as 200,000 more people waiting more than four hours to be admitted this winter compared with the same point last winter, there were nearly 200,000 waiting more than four hours in trolley beds in corridors this winter, 56,000 more than this time last year. The number of trolley waits is almost six times more than last winter. These figures alone demonstrate the logjam that exists across the whole system.

Will the Minister, having announced that this is not a ceiling, confirm that the money to go for training and workforce, the money to go specifically to public health, and other funding will continue to be distributed as well to the devolved nations? As well as it being calculated on a population basis and the old Barnett formula, there should be a needs assessment, taking into account the sophisticated data that is now available from the Marmot review and similar reviews, so that the spending is actually targeted at the areas of greatest need.

4.21 pm

Baroness Penn (Con): My Lords, I declare an interest as vice-chair of the Specialised Healthcare Alliance, and shall endeavour to keep my remarks—like the Bill—brief. Having been part of the process that negotiated the funding that we are legislating for today, I felt compelled to speak. It took many months to reach agreement on what was to become the longest and largest funding increase in the NHS's history, so I wholeheartedly welcome the contents of the Bill.

I would, however, like to make two points. First, as has been said in the Chamber today and as was acknowledged at the time, the job was not finished. Understandably, perhaps, the Treasury felt considerable consternation at announcing such a large fiscal commitment outside of a formal fiscal event. Therefore, a number of items were left on the to-do list for a later date: capital; education and training budgets; public health delivery; and social care funding and reform.

The Minister said that it might be premature to include those in this Bill, but I say to him gently that we have had several formal fiscal events since this spending was announced over 18 months ago. There have been welcome steps in these areas, but ultimately they remain unresolved. I will not ask the Minister to preview what is in next month's Budget or the spending review later this year but I hope that the Government will use them as an opportunity to provide for long-term, multiyear commitments in these outstanding areas. If they do not, we will continue to face situations such as with the public health grant allocation, where providers do not know their financial position, with just over a month to go before the start of the financial year. Can the Minister tell the House when the allocations for that grant will be confirmed? Only if we invest in prevention, capital and workforce on a long-term basis will we create the capacity in the system for the extra money in this Bill to actually improve services and outcomes for patients.

The second area I wanted to touch on is mental health. During the discussions about the funding settlement provided for in the Bill, I had a specific aim: to ensure that the money and the long-term plan that accompanied it reflected in a meaningful way the priority the Government gave to improving mental health services. Too often the refrain on mental health was that, while all the work across different government departments and across society, from tackling stigma to improving workplaces and schools, was welcome, it would not shift the dial while mental health services were underfunded and overpressured.

I do not pretend that the funding we are voting on today solves that problem, but there were two important steps in the right direction, as has already been noted: first, that mental health funding would increase as a proportion of overall health funding in each and every year, and secondly, and importantly, that this commitment would be traceable and auditable. Alongside that funding, though, the Government committed to reform and in particular to updating the Mental Health Act, which dates back to 1983. Although I support the Bill, it is also, as the House of Lords Library politely puts it,

"an example of the Government committing in primary legislation to an action which is already within its power."

In contrast, there are few areas of legislation that so directly impact the lives of individuals as the Mental Health Act, and it is overdue for reform. I therefore hope the Minister is able to reassure me that the time spent on this Bill has not been at the expense of producing the White Paper and drafting the legislation needed to implement the recommendations in Sir Simon Wessely's excellent review of the Mental Health Act.

I was pleased to receive a Written Answer from the former Minister. I took heart that the White Paper would be published not merely "in due course" but in the next few months, although I am not sure where that sits in the hierarchy of government timings compared with "shortly". If I am able to tempt the Minister to go even further today and specify a month by which we can expect that White Paper to appear, my support for the Bill will be even more fulsome than it already is.

4.25 pm

Lord Kakkar (CB): My Lords, I join in congratulating the Minister on the way in which he has introduced this Second Reading. Clearly it is to be welcomed that there is clarity on the financial settlement attending the delivery of the NHS in England over the years remaining in this Parliament. I declare my interest as chairman of UCLPartners and chairman of the King's Fund.

This is not the first time that a Government have committed substantial additional funding for the delivery of the NHS. On previous occasions when these commitments have been made, the regrettable fact has been that the performance associated with the additional funding has been uneven. This demonstrates that additional funding in itself is not the absolute answer to all the issues that face the long-term sustainability of the NHS.

Clearly, additional funding is critical; as we have already heard in this debate, the funding that has currently been guaranteed will play an important role

[LORD KAKKAR]
in ensuring the medium-term sustainability of the delivery of important services. However, the reality is that one must be certain that the environment—the structural solution for the NHS to which this additional funding is going to be delivered—is entirely appropriate. The noble Lord, Lord Hunt of Kings Heath, has identified that the long-term plan in itself identifies a number of opportunities by which sustainability for the NHS can be achieved.

Much of the long-term plan is predicated on the concept that integrated care is now essential if the delivery of health services is to be sustainable. The NHS long-term plan identifies three important integrations: between primary and secondary care; between physical and mental healthcare; and between healthcare and social care. In providing the long-term plan, the NHS has also made suggestions with regard to legislative change that might be required to ensure that the disposition of the additional funding, and indeed the delivery of the plan itself, is going to be improved. I know the Government have received those legislative suggestions, but they have yet to respond to them. In opening the debate, the Minister made reference to that and to the fact that further legislation may come before your Lordships' House in due course in this Parliament to deal with those questions.

One important suggestion is of course a merger of NHS England and NHS Improvement. I wonder whether Her Majesty's Government have found themselves in a position to take a view on that matter. Clearly it is at the heart of whether the system for the delivery of healthcare is as effectively constructed as it needs to be to ensure that this vital additional funding is applied in the most effective and efficient fashion.

Additionally, suggestions have been made that commissioners and providers may come together in joint decision-making committees such that, at a local level, the disposition of this additional funding is applied in such a way that the integration of services is achieved effectively and that this funding provides maximum benefit, both in individual patient care and the management of local populations. Do Her Majesty's Government believe that joint decision-making committees, created on a voluntary basis, will have sufficient influence and power at a local level to drive forward the appropriate integration of services such that the delivery of care achieves the benefits that we very much hope will be available to patients and to local populations?

The noble Lord, Lord Hunt of Kings Heath, made another very important observation earlier, which relates to the report on the long-term sustainability of health and social care from your Lordships' ad hoc committee chaired by my noble friend Lord Patel. It is a very important observation that this Bill, which is laying out in statute guaranteed funding for the NHS over multiple years for the first time, could form the basis—the foundation—for a first step towards that broader, long-term sustainability for the NHS. Your Lordships' committee report made a number of important recommendations. Some of those have already been adopted by Her Majesty's Government in a number of different ways, so clearly that report has had impact and is influential in the debate with regard to the long-term sustainability of the NHS. It should be taken as a very important observation that the presentation to this Parliament of this Bill in itself is important but could provide for a longer-term approach to the sustainability of the NHS, dealing not only with financial questions, as this Bill does, but with the important structural issues that will need to be addressed if repeated increases in funding can be applied in the most effective fashion to achieve the goals and objectives that we all strongly support.

4.32 pm

Lord Bradley (Lab): My Lords, I begin by declaring my health interests as given in the register. I would like to contribute to this Second Reading debate by discussing NHS funding and by raising, in particular, the crucial issue of mental health and other complex needs funding, which the Minister and other noble Lords have recognised.

During the debate on the Queen's Speech, I suggested that, as well as enshrining

"in law the National Health Service's multiyear funding settlement",

it would

"also be appropriate to enshrine in law the commitment to achieve parity of esteem and equality of access between mental health and physical health expenditure over the same funding period, rather than merely retaining it as an aspiration in the NHS mandate".—[*Official Report,* 9/1/20; col. 384.]

Clearly, this suggestion found no favour with the Government, but it is worth making the case again today for significant additional investment in mental health and related needs.

Let us consider some of the reasons why this is so important—for example, children and adolescent mental health services, or CAMHS. Currently, on average, children and young people visit their GP three times before they get a referral for a specialist assessment, and then have to wait more than six months for treatment to start. Children are reaching crisis point before getting the support they need, and the number of children attending accident and emergency departments because of their mental health, in a situation of crisis, is increasing year on year. Similarly, suicidal children as young as 12 are having to wait more than two weeks for beds in mental health units to start their treatment, despite the risk to their own lives.

As Justin Madders MP, our health spokesperson in the other place, identified in the Commons debate on this Bill, three out of four children with mental health conditions do not get the support they need. Over 130,000 referrals to specialist services are turned down because, as demand increases, thresholds for access to care rise. Appallingly, 400,000 children and young people with mental health conditions are not receiving any professional help at all. We know that mental health conditions in adults often begin in childhood, so the failure to adequately invest in CAMHS will end up costing the NHS far more in the long run.

We know that mental health represents about 23% of the total disease burden on the NHS, but a mere 11% of the NHS budget is spent on mental health; and only 15% of that 11% is spent on child and adolescent services. It is clearly welcome that the NHS long-term plan made a specific commitment to add a further £2.3 billion to the mental health budget by 2023-24, but as the Institute for Public Policy Research has

pointed out, to achieve parity of esteem for mental health services, funding for those services needs to grow by 5.5% on average over the next decade. The NHS planned to spend £12.2 billion on mental health funding in 2019, but the IPPR estimates that this needs to reach £16.1 billion in 2023-24 and £23.9 billion in 2030-31. So, what is the Minister's view on this apparent huge shortfall in investment in the mental health budget?

Of course, not all mental health and related services are funded by the NHS. As the Centre for Mental Health has noted, significant elements of mental health support for people of all ages come from outside the NHS, predominantly through local government. The largest part of this derives from adult social care, but there are important contributions from public health—for example, drug and alcohol services, suicide prevention and smoking cessation programmes. While it is accepted that NHS funding is projected to rise over the next five years, social care has only one year's funding agreed to date, and public health services are yet to receive information on next year's public health grant. This will clearly exacerbate the severe problems in a wide range of support services for people with many complex needs. Do the Government recognise the fragility of this situation and will they announce a robust funding settlement for social care in the Budget in two weeks' time?

This fragility is further evidenced by the state of the workforce, as we have heard. There were a staggering 8,000 mental health nursing vacancies in England in the third quarter of 2018-19, with vacancies continuing to rise. One in 10 consultant psychiatric posts is vacant, as we have heard, rising to a dreadful one in six in child and adolescent mental health services, according to the Royal College of Psychiatrists. These figures underline the huge challenge to recruit the nurses to meet the massive needs and demands of the service. I welcome the decision to offer maintenance grants to people in nurse training from September. This will help to attract applicants, but universities such as Salford, where I am pro-chancellor, and NHS employers will still struggle to recruit, train and, crucially, retain the large numbers of additional mental health staff required over the next five years, especially, as we have heard, after the end of the transition period following exit from the European Union. The Prime Minister has committed to recruiting 50,000 more nurses across the NHS, so can the Minister confirm today how many of those will be specifically for mental health and related services?

I have two further points. The first is about speech and language therapy. From my work with the development and rollout of liaison and diversion services, and given that core services now cover 100% of the country, I recognise the value of speech and language therapists. I certainly hope that, with the additional NHS investment, they will form a key part of the further enhancement of liaison and diversion services. More generally, as the Royal College of Speech and Language Therapists has made clear, it is hoped that, alongside reform proposals in the NHS long-term plan, this Bill will help to ensure the provision of adequate services for people with communication difficulties and swallowing needs. As it points out, there are many such people in the United Kingdom. In fact, 20% of the adult population experience communication difficulties at some point in their lives, and more than 10% of children and young people have long-term communication needs.

In areas of social disadvantage, around 50% of children start school with delayed language and other identified communication needs. People with a range of conditions will also have swallowing needs. These include people who have had a stroke and those who live with various cancers or neurological conditions, such as dementia, Parkinson's disease, multiple sclerosis and motor neurone disease, as well as those with learning disabilities and mental health problems. It is clear that speech and language therapists play a crucial role in supporting these people, their families, friends and carers, and the other professionals who work alongside them. It is therefore essential that the appropriate level of speech and language therapy be commissioned out of the extra funding in this Bill, so that those people's needs are identified and met.

Finally, on capital funding, as we have heard, this Bill enshrines in law only revenue funding, but huge amounts of capital are required to address such major problems as maintenance and repair backlogs in the NHS estate and replacement of out-of-date equipment. The Government have committed to 40 new hospitals but amazingly, only six of these have been given the green light to proceed. One of the remaining 34 schemes —which I understand is "oven ready"—is North Manchester General Hospital, now part of the Manchester NHS hospital trust, in whose area I live. This hospital rebuild is desperately needed to meet the huge healthcare needs of the population of that area. When the Minister responds, will he tell me exactly when this hospital development will finally be given the green light to proceed as the seventh of the Government's 40 committed schemes? Will he also give me the assurance I seek that the investment identified in this Bill will genuinely lead to parity of esteem and equality of access for some of the most vulnerable people in the country, who are suffering mental health conditions or have other serious complex needs?

4.43 pm

Lord Low of Dalston (CB): My Lords, the Bill commits the Government to increase funding for the NHS by £33.9 billion in cash terms by 2023-24, with NHS England spending increasing to £148.5 billion by 2024. This is the first time that a multiyear funding settlement for the NHS has been enshrined in law. It also provides a long-term settlement to underpin the commitments set out in the *NHS Long Term Plan*. This is an important element of the Government's programme and should clearly be supported. But, while the additional funding for the NHS is to be welcomed, this will be adequate only if social care is also properly funded. If funding for social care is inadequate, knock-on effects impacting on the health service will be felt. Indeed, the *NHS Long Term Plan* clearly states that

"the wellbeing of older people and the pressures on the NHS are … linked to how well social care is functioning."

When agreeing the NHS funding settlement, the Government therefore committed to ensuring that adult social care funding is such that it does not

[Lord Low of Dalston]
impose additional pressure on the NHS over the next five years. While the additional £1.5 billion promised for social care in the recent spending round for 2020-21 is welcome, this is the minimum needed to keep the adult social care system afloat this year. Indeed, it is questionable whether it is even that. Not all this funding is guaranteed for adult social care. Local authority funding has not kept pace with demographic pressures. Indeed, cuts in local authority funding have been a principal focus for cuts in public expenditure.

Looking ahead, there is a large funding gap to be bridged if the system is to be improved on a sustainable basis. Only last year, the House of Lords Economic Affairs Committee estimated that improving care quality and addressing unmet need alone would require an additional £8.1 billion in 2020-21. Without specific commitments to fixing the crisis in social care, spending on the NHS will be severely undermined. There is thus strong support for an amendment to the Bill requiring the Secretary of State to report annually on whether the allocation to adult social care is enough to avoid negative impacts on the NHS. As it is, following a decade of underfunding, the commitment in the Bill falls short of what is needed to respond to an ageing population and drive NHS standards up. The increase is 3.3%, despite the King's Fund, the Nuffield Trust and the Health Foundation all stating that an increase of at least 4% is required to modernise the NHS and improve standards.

Age UK has two key concerns regarding the Bill. The first is that it does not apply to the whole of the healthcare budget. NHS England does not operate in isolation, and to improve the health of the population it is essential that new funding is accompanied by equivalent and sustainable investment in public health, social care and capital. Failing to invest now will increase the strain on the NHS and store up problems for the future. The second concern is that unless robust commitments are made to investment in the workforce, the funding provided in the Bill will be similarly undermined.

When it comes to improving population health, prevention is better than cure. Analysis by the Centre for Health Economics has found that spending on the public health grant is up to four times more cost effective than spending on the NHS. By investing in preventive services, it is possible to decrease the incidence of many common conditions that affect people in later life and reduce the burden on the NHS. The broken social care system harms everyone, not just those with an unmet need for social care. Delayed discharges from hospital due to a lack of social care costs our NHS an eye-watering £500 every minute. To help the NHS, the Government must secure the immediate future of care by investing to shore up the broken system and by setting out a long-term, sustainable solution.

Despite the importance of prevention, public health grant funding for prevention services from this April has not yet been announced. This means that providers are unable to plan, and some are even having to put staff on notice of redundancy as they are unsure whether contracts will be renewed. This uncertainty comes on top of historical funding cuts. Funding to local authorities for the public health grant has been cut by £700 million in real terms between 2015-16 and 2019-20, putting essential services for older people at risk. Areas with the greatest need have been worst hit, as was confirmed by Sir Michael Marmot just yesterday. Cuts to the public health grant have been six times larger in the poorest areas than in the wealthiest. Meanwhile, the 10 most deprived areas have shouldered 15% of the reductions to the public health grant. These cuts risk exacerbating the difference in healthy life expectancy between people living in the most affluent and those living in the most deprived areas, which already stands at 19 years. They also place the Government's grand challenge on healthy ageing, which aims to improve healthy life expectancy by five years and reduce health inequalities, at significant risk.

If we want to improve public health, investment in the NHS alone is not sufficient. The Government must provide sustainable funding to the public health grant and develop a comprehensive strategy that lays out how it will improve public health for older people. It will additionally not be possible to fulfil the commitments laid out in the *NHS Long Term Plan* or make the most of the new funding provided by the Bill without urgent investment in the workforce. One in 11 vacancies in the NHS is currently unfilled. Last year, £5.5 billion was spent on temporary staff to cover vacancies and other short-term absences. If current trends continue, there will be a shortfall of 250,000 staff in the NHS by 2030.

4.52 pm

Lord Willis of Knaresborough (LD): My Lords, I shall start my brief contribution on a positive note about the Bill. It is the first time for a considerable number of years that we have a Government who recognise that the NHS requires both additional and stable funding. That is something that the whole House should welcome.

However, the Bill is designed mainly for a political audience. It is certainly not the comprehensive framework for funding a world-class, integrated, 21st-century healthcare system that many across the Chamber would have liked to see. If it had been, it would have reflected the House of Lords report, *The Long-term Sustainability of the NHS and Adult Social Care* which has been mentioned on a number of occasions; four of us in the Chamber were members of the superb committee of the noble Lord, Lord Patel. Its report was a fundamental look at the way in which we should look for an integrated system, rather than try to find little ad hoc solutions.

The NHS does not, as the Bill implies, operate in a silo but is impacted by other interdependent factors, as many Peers have said. Capital adult social care costs, the challenge of educating and training a workforce and the application of ground-breaking technologies are just a number of the factors that determine health outcomes but do not feature in the Bill. As the Secretary of State and the Minister rightly said, this is only a floor, not a ceiling. They have also said that other proposals are afoot to deal with some of those issues, and we await with interest their arrival. However, having listened to a number of desperate pleas—and they are desperate pleas—about the future of mental

health services, I will caution the House. Simply believing that we can add X number of mental health nurses, psychiatrists or consultants just like that is absolute nonsense. We need a totally different, radical approach to how we staff our health and care services.

I digress slightly, but 18 months ago I did a report for Health Education England on the mental health workforce in the future, 10 years ahead. I looked in particular at psychiatrists and psychologists and found that our universities are producing about 150,000 graduates a year with a psychology qualification. We produce 1,500 people with a psychology PhD, and about 3% of them go into the health service—yet we have spent all that money training them. When we ask, "Why don't you—?", the response is, "I'm sorry, that's a different department. We can't do that." If the Minister takes nothing else from my speech, I urge him to think outside the box on this.

My main purpose in speaking in this debate is to raise an issue that has not been raised by others: medical research in the NHS, which is absolutely fundamental to 21st-century healthcare. I accept that Governments of all persuasions, from the Labour Government in 2006 and the Cooksey report right through to the current Government, have increasingly spent resources on health research. I declare interests as the chair of the Yorkshire and Humber Applied Research Collaboration and of the national Genomics Education Programme, and acknowledge my recent chairmanship of the Association of Medical Research Charities.

This Bill, with its provisions for stable, long-term funding increases, is an opportune moment for us to look at the potential of embedding research into the very fabric of the NHS, as intended by the Health and Social Care Act 2012. The amendment from the noble Lord, Lord Patel, said research should be a fundamental element of all activities in the NHS, yet that seems to have gone by the way.

I am delighted that we are getting a commitment of £33.9 billion a year by 2024. Whether it needs to be in legislation is doubtful, but I like that commitment. However, it goes nowhere to meeting the Government's own contribution—pledged under Prime Minister May—to the long-term plan. The long-term plan committed to playing its full part in helping patients and the UK economy realise the benefits of research, as laid out in the Government's *Life Sciences Industrial Strategy*. It also committed to incorporating key actions from the life sciences sector deals to make research and innovation one of the central drivers for progressing care quality and outcomes. Improving health outcomes for patients and the public will not be realised without further research and innovation. The pipeline of innovation is dependent on research taking place upstream as well as at the bedside.

Recognising the potential of research to lead to earlier diagnoses, more effective treatments and faster recoveries, the long-term plan—for all its faults, and I accept the very strident comment from the noble Lord, Lord Hunt, that every Government over the last 40 or 50 years have contributed to this—made a range of specific commitments: for example, to increase public participation in research and to sequence the genomes of 500,000 individuals by 2024. The latter offers particular hope for those with rare genetic conditions and opens a door to individualised, personalised medicine.

By embedding research, trusts can make even more progress in improving patient care and outcomes by implementing interventions that research has shown to be effective and decommissioning those that have proven ineffective. Taking out those things that do not work is an equally effective way of not only delivering high-quality care but tailoring it specifically to patient needs.

Patients and the public tell us that they want opportunities to be involved in research. Some 77% of those involved in Wellcome's public attitudes survey last year said that they wanted their medical records to be used for medical research. Studies also suggest that engagement in research improves the job satisfaction of healthcare professionals, which in turn boosts morale, helps reduce burnout, improves retention and has direct implications on the heavy financial pressures on many hospital trusts.

By research, I do not necessarily mean pointy-headed people in white coats. Research is now conducted by midwives, nurses, pharmacists, primary care and public health practitioners, medical associate professionals, allied health professionals and others. In the nursing standards, which we completed only 18 months ago, it is now a requirement for student nurses to be involved in research methods as part of their undergraduate training. The people who work with patients on a day-to-day basis, by their bedside, are the best people to spot things that need improvement.

For research to take place, sustainability of funding is required. Industry and charities are willing to contribute—and do so—but it requires the taxpayer to take the lead, and this is not always the case at present. This gives me an opportunity to commend to the House the work of the charitable sector, in particular AMRC, its umbrella champion chaired by my noble friend Lord Sharkey. In 2017-18, AMRC members, which include the Wellcome Trust, the British Heart Foundation and other major charities, contributed £1.4 billion to medical research in the UK. Some 31% of non-commercial research in the NHS—more than is contributed by the Medical Research Council or the NIHR—comes from the charitable sector. In the same year, charities recruited over 200,000 people into more than 1,300 clinical studies.

The prize for translating research into patient outcomes is huge. Today, the UK is regarded as world leading in translating research dollars into health outcomes, and this must be supported and mainstreamed. The opportunity that health research brings to lower costs and to produce satisfaction for professionals working in the service and better patient outcomes is clearly a no-brainer and ought to be part and parcel of this settlement, so we are not left waiting for some fictional figure which might arrive down the road.

5.02 pm

Lord Warner (CB): My Lords, I found this Bill slightly bizarre. I have been around government for about 50 years and I have never seen a Government come to Parliament and ask it to direct two government

[LORD WARNER]
departments to lay particular estimates four financial years ahead. That is a rather unusual practice, so I start from the same position of incredulity as the noble Lord, Lord Hunt of Kings Heath. We ex-Health Ministers tend to be a sceptical set of fellows.

The figures in the Bill have a spurious precision, given that they are based on a cash figure for 2024 that was agreed with NHS England only—nobody else—in the autumn of 2018. I will come back to the issue of inflation-proofing.

There are many legitimate questions that we ought to be able to ask as part of scrutinising this unusual Bill—questions of interest to patients, taxpayers and the NHS itself. But I am told by the clerks that, because the Speaker of the Commons has labelled this a money Bill, we cannot do this through amendments at Committee or other stages. All we can today is pose some questions drawing on the excellent briefing provided by the BMA, NHS Providers, Mind and others. I also support the gentle chiding of the Minister by the noble Baroness, Lady Penn. I hope that does not get her into trouble with her Front Bench.

First, the sums set out in the Bill are 2018 cash figures with no provision for inflation-proofing. Do the Government really think there will be no inflation over the next four years, or will our old friend "improved efficiency" be brought in at some point to balance the books? Perhaps the Minister could explain why the Bill includes no provision for inflation-proofing the cash figures?

Secondly, as the Minister acknowledged, the figures make no provision for capital expenditure. Where is the money for the Prime Minister's 40 new hospitals or the 20 hospital upgrades promised last summer? When will the NHS capital budgets for these four years be made public? Why are they not set out in the Bill? Why are there no figures at all on capital in the Bill, or is there really no agreed capital budget for the NHS 10-year plan? In my experience, new hospitals usually have additional revenue costs, so can the Minister say whether the revenue figures in this Bill cover the extra revenue that will arise from the capital programmes for new and upgraded hospitals?

Thirdly, the Government's immediate two predecessors had a poor track record on protecting capital expenditure, as the National Audit Office has pointed out. Between 2014-15 and 2018-19, £4.3 billion was transferred from the capital budget to revenue with the result that there is now a maintenance backlog of £6.5 billion. Will the Minister clarify whether the maintenance backlog, in whole or in part, is to be funded from the revenue figures in the Bill?

Fourthly, what is to happen to the so-called short-term loans that the department has made to NHS trusts in financial difficulty? The NAO has said that such loans stood at £10.9 billion at March 2019. If they had to pay back the loans, some of the trusts would be insolvent. Will trusts with loans be required to pay them back, in whole or in part, from the revenue funds in the Bill, or will the Government write off the loans or reschedule them over a longer period than that covered by the Bill? Will new loans be available to trusts which get into financial difficulty during the period covered by the Bill?

Fifthly, as the Minister acknowledged and others have mentioned, there is no provision in the Bill's figures for public health—an area that has consistently had its funding cut over the past decade. Michael Marmot has repeatedly shown that austerity has halted rising longevity and that health inequalities have increased over the past decade in deprived areas, especially among women. When will we know the matching revenue figures for public health and whether they can be agreed on a multiyear basis?

Sixthly—there are not many more—can we be confident that a lot of this new NHS revenue money will not be spent on keeping elderly people unnecessarily longer in expensive acute hospitals because of a decade's, and continuing, scandalous neglect of adult social care services by a succession of Governments? Over the period covered by this Bill, we know from work done by the Institute for Fiscal Studies that, on present plans, there is likely to be a real-terms gap in adult social care funding compared with service levels in 2010 of about £8 billion. Will the Government plug this historic gap alongside any new funding system for adult social care? If they do not, the NHS will continue to pick up some of the tab for underfunded social care from the extra revenue funding in this Bill. If the Minister cannot answer my questions today, I should be grateful if he wrote to me, because it would save me putting down Parliamentary Questions.

This Bill has more holes in it than a Swiss cheese, but I will resist the temptation to identify more. However, I want to ensure that there is government and NHS accountability for showing the spending increases for areas of service that have historically been neglected. I describe these as Cinderella services, such as mental health, community health, public health and children's services. I would have liked to move amendments requiring Ministers to report to Parliament every six months on the spending and staffing progress in these historically neglected areas. Alas, that is not possible, but how will Parliament be kept informed of progress in these neglected areas? If we do not tackle them better than we have in the past, the NHS long-term plan simply will fail.

Finally, I want to raise the issue of whether the funding in this Bill will deliver the first part of the 10-year plan. In my time as a Health Minister, between 2003 and 2007, we were increasing NHS revenue spending by at least 6% a year to make good the historical neglect of the NHS in the 1990s. That rate of increase was pretty generous and could not be sustained, but if you neglect institutions such as the NHS for a long period and do not make good their historical neglect with a spurt of generosity, you will fail to put them back on an even keel. The figures in this Bill provide cash increases of little over 3% a year after a decade of neglect. This is almost certainly not enough to repair the damage and deliver the NHS sustainability set out in *The Long-term Sustainability of the NHS and Adult Social Care,* which others have mentioned, the report by a Select Committee of this House of which I was proud to be a member.

I fear that the Government are deluding themselves, the public and the NHS if they think that the funding proposed in this Bill is anything like adequate to fix the damage done to the NHS over the past decade.

5.11 pm

Lord Young of Norwood Green (Lab): My Lords, I was going to welcome the long-term funding, but now that my noble friends have suggested I should be cynical, sceptical or chiding, perhaps I will tone down that enthusiasm. Nevertheless, I want to comment on the commitment to build 40 new hospitals. I hope that, regarding the procurement contract, the Minister can assure us that we have learned lessons from the Carillion failure. If not, there could be more disasters in the making.

The Library briefing document states that Mr Hancock stressed that the sums in the Bill were

"the minimum levels of funding, but actual spending could be more: he said they would 'set a floor, but not a ceiling.' He then listed some of the services which would be provided with the additional funds".

I noted the reference to "more GP appointments" and thought that was to be welcomed, but the challenge, as a number of noble Lords have said, is whether we can recruit and train the new doctors and retain the doctors we have. The early retirements are a worrying indicator.

I welcome the Minister's point about restoring the nurses training bursary. One might question why we took it away in the first place, given the huge number of vacancies, and what I regard as the shame of continually having to poach both nurses and doctors from overseas countries that badly need them too.

In talking about building new hospitals, perhaps the Minister can say something about the state of many GP surgeries, which require investment. If they do not get it, they cannot provide the additional service needed, which puts further strain on A&E. In a previous debate, I cited the problem my own local practice had. Here, I should declare an interest as a member of the patient care committee. New hospitals have to be staffed, as do existing ones. The figures have been quoted; I do not want to go over them again. However, I do want to refer—unsurprisingly, as an apprenticeship ambassador—to a couple of briefings I have received. One is from Unison, which quotes some interesting stats. It did a survey and 54% of trusts found that 80% of the money paid into the apprenticeship levy

"was unspent as at May 2019. For these trusts alone, that amounted to £200 million of unspent funds."

Those funds are starting to expire and if they are not spent in the two-year period, they go back into the system—to the Treasury, at worst—or they may be invested in other apprenticeship levies. It is worrying because of the huge number of vacancies in the NHS, and because the Government have said that 5,000 of the 50,000 more nurses they promised by 2023-24 will come from degree apprenticeships.

I suggest to the Minister—I do not wish to convey only bad news—that there is an example of good practice. A briefing from NHS England described an interesting collaborative approach, involving three trusts in the Gloucestershire area, to recruiting and procuring assistant practitioner apprenticeships. They had different requirements—people for mental health care, for acute care and for community care; all vitally important. By working collaboratively, they have made significant use of the apprenticeship levy. My plea to the Minister is that he should try to spread best practice. That will be a continuing theme of my contribution today.

The Library briefing mentioned an issue which the Secretary of State has committed to and which has already been referred to by the noble Lord, Lord Willis: investments in innovative technology. The NHS's record in introducing new technology is not good. As I have mentioned in a previous debate, when I spoke to a registrar in an A&E department, he protested that he still cannot electronically transfer patient notes from one hospital to another. One starts to despair—we are talking about much more advanced innovative practice, but we still have not mastered some of the basics. So there are some easy hits in that regard.

I concur with my noble friend Lord Bradley on the issue of children's mental health. I should declare a personal interest—I have a granddaughter who needs a lot of care. Her family have had to wait a long time to get anything at all, which has had an impact on them. It is not just about the huge impact the child, their education and future; it is the family who must struggle with the repercussions. This underlines the importance of spending on mental health, which a number of noble Lords have referred to.

My next point was covered by the noble Lord, Lord Warner. We might argue with the noble Baroness, Lady Penn, about who has spent most. That the previous Labour Government did spend a huge amount of money is a legitimate point to make. We reduced waiting lists and made some significant improvements. I do not want to carp about it, except to say that one thing everyone in your Lordships' House can agree on is that, when we are spending these large sums of money, we want to get the best bang for our buck, to use that cliché.

I was really interested in a comment made, I think, by the noble Lord, Lord Willis. I had never thought about the role of all NHS staff in providing research. He made a really interesting point. There is a lot of knowledge, experience and good practice out there, which needs to be considered if you are going to spend these significant sums of money. Can the Minister say how the Government are going to spread best practice? Have they adopted this as a necessary strategy? I wish them well, because the view that we need this to succeed for the future of the National Health Service crosses all boundaries in this House.

5.20 pm

Baroness Hollins (CB): My Lords, I remind the House of my presidency of the Royal College of Occupational Therapists, and my other interests in the register. The Royal College of Occupational Therapists and several other charities have published the *Community Rehabilitation: Live Well for Longer* report and are calling for improved community rehabilitation for everyone who needs it. I was therefore very pleased that the Minister spoke of the Government's commitment to treat people in the right place at the right time, with investment being made in integrated care locally. This is

[BARONESS HOLLINS]
essential to improve rehabilitation for both physical and mental health long-term conditions and to avoid unnecessary admissions.

One area of the NHS funding settlement that has been widely welcomed is the commitment to increase overall spending on mental health by at least £2.3 billion by 2023-24. I will focus my remarks on this area. This is backed up by a commitment that every local clinical commissioning group will increase the amount it spends on mental health every year. As a psychiatrist, of course I welcome this increase in spending on mental health. However, as a specialist in learning disability, I am concerned that there seems to be no similar commitment to increase funding for helping this group of patients or for research in this area.

The Government announced that they spent £12.5 billion on combined mental health, dementia and learning disability services in England in 2018-19. However, the commitment to increase year-on-year spend seems to apply only to mental health. Could the Minister clarify this? In fact, it is impossible to know how much local areas are spending on dementia and learning disability because they publish only combined figures. I would welcome some guidance on the action being taken to ensure investment in learning disability and dementia. We cannot see the breakdown, but we know that NHS England has access to more detailed figures. Every CCG is audited by NHS England to make sure it has met the mental health investment standard—the rule that says that each CCG must increase how much it spends on mental health every year. Here is the conundrum.

The Royal College of Psychiatrists provided a helpful briefing for this Second Reading and highlighted that all 195 CCGs were confirmed as having met the mental health investment standard. That sounds really good, but is it not then rather confusing to learn that, last year, 32 CCGs—16.4% of the total number—reported that they had reduced how much they spent on combined mental health, learning disability and dementia services? I emphasise that every one was told that it had met the mental health investment standard. It appears that they must have achieved this by significantly cutting how much they spent on learning disability and dementia. Could the Minister confirm whether this is the case, or whether there is any other reason for a cut in overall spending?

The long-term plan commits the NHS to increasing investment in intensive, crisis and forensic community support for people with a learning disability and to take action to tackle the causes of morbidity and preventable deaths in people with a learning disability and autistic people. I declare my chairmanship of the oversight panel to review the care of people in this group, who are being detained in segregation under the Mental Health Act, often because of a lack of integrated community services.

The Royal College of Psychiatrists has called on the Government to require every CCG to publish a detailed breakdown of how much it spends on each of mental health, learning disability and dementia services so that the public can have a better understanding of what is happening. Will the Minister agree to look into to this? I particularly appreciated the comments of the noble Lord, Lord Willis, about the number of psychology graduates and simply comment that much more could and must be done to enable these graduates to get the further training they need to be able to work in healthcare.

5.25 pm

Baroness Brinton (LD): My Lords, I thank the noble Baroness, Lady Blackwood—the predecessor of the noble Lord, Lord Bethell—and the honourable Edward Argar for the helpful meeting we had just before Recess to discuss the Bill. I also extend my thanks to the noble Baroness, Lady Blackwood, for her services as Health Minister to this House. She will be sorely missed. I congratulate the noble Lord on continuing in this role.

I echo the thanks that other noble Lords have expressed to all the organisations which have sent us excellent briefings. Given that this is a Bill of one and a half pages, we have received probably a few telephone directories'—if they still existed—worth of briefings. It has been fascinating to hear the debate in your Lordships' House today and to hear the same themes again and again from all sides of the House.

The Liberal Democrats will not oppose the Bill, although, we believe that, along with many others, it is not the panacea to health and social care that both the Prime Minister and Matt Hancock have been leading people to believe. I point out that the Bill does not seem to take account of any Barnett consequentials or social inequality issues, as has been raised by noble Lords. I hope that the Minister will be able to reassure the House that if there is extra funding for England, that should also be reflected in the devolved countries. There really needs to be a redistribution in terms of need as well. We absolutely understand that that has gone badly wrong in recent years.

Other noble Lords have already given a great deal of evidence on the current financial crises faced by different parts of the NHS, but it is worth briefly reiterating some of the headlines. We have heard that the revenue will increase from £120 billion in this financial year to £127 billion for the year we are about to start, and then increase further to £148.5 billion in 2023-24. Last year, NHS England's long-term plan set out how it will deliver services over the next decade. I think I probably was not alone, when I read that plan last year, in thinking, "My goodness, they certainly know to squeeze every last penny out of the NHS to try to deliver those services." We see what is happening at the moment with the pressures on the NHS. It is struggling—for the very good reason that this funding is not enough.

Others have argued that there is no need for this Bill at all as there is no need to enshrine NHS funding in law as an item separate from the Budget. That Theresa May and then Boris Johnson have felt that this was necessary speaks more, frankly, about the lack of public trust in the Government to deliver what many people believe that the NHS needs to survive. It is their beloved NHS and they want it to survive.

As others have said, the elephant in the room in this Bill is the lack of any clarity about the funding of social care. Most experts and non-experts alike recognise

that some of the most severe pressures on the NHS are because of the total crisis in social care funding, brought about by severe, sustained and repeated cuts in the revenue grants to local authorities.

The Bill provides an average increase of only 3.4% year -on-year in funding. As other noble Lords have mentioned, the King's Fund and many others who have written to noble Lords have said that the NHS needs a minimum of 4% per annum to restore the NHS key performance measures and to start to take account of demographic change, which will impact more on the health service and social care than perhaps any other part of public spending.

It was interesting listening to the noble Baroness, Lady Penn, and I will gently chide her, as she has chided her own side, by reminding her about it being the largest cash settlement in the NHS's history. Full Fact, an independent organisation, found that, while that is correct in cash terms, after inflation the rise is £20.5 billion, which was exceeded by a £24 billion real-terms increase between 2004-05 and 2009-10. Therefore, the comments from the Labour Benches today are absolutely on the money—it is about the money. If people believe that is more money but then discover that there is not, they will become very angry very quickly.

Therefore, the question for the Government is: will the increase in funding that they are putting into law bring about the changes that our NHS and social care system needs? I use that phrase repeatedly because the department decided to extend its name to the Department of Health and Social Care—despite the fact that the crisis in social care is because all the funding is in a different department and is not only not accessible but regarded in a completely different way.

A&E waiting times continue to increase. We have already heard that achievement of the four-hour standard target dropped to below 80% for the first time since the target was introduced. Is that what is behind the Government's discussions about abandoning some of the health targets? We explored that in the debate introduced by the noble Lord, Lord Hunt, a couple of weeks ago. I remain concerned that losing some of those targets and identifying new things that are not targets but something else will change the focus of work. There is a place for performance targets in the public sector. They should not change things for the bad, and I believe that they have changed them for the good. If these and other targets are being missed, that demonstrates that there is a problem in the NHS, not a problem with the targets.

Workforce problems persist across the NHS, with one in 11 vacancies being unfilled. The noble Baroness, Lady Finlay, reminded us of the health implications of social inequalities, especially poverty. At Second Reading in another place, the Secretary of State talked about the priorities for the new funding: more GP appointments; new cancer screening and faster diagnosis; prevention, detection and treatment of cardiovascular disease; and investment in innovative technologies, such as genomics and artificial intelligence. Many noble Lords who have spoken today have touched on most of those points. However, if something is not a priority and the money provided for it is not sufficient, we have to worry. The priorities say nothing about mental health, social care or public health.

In recent days, we have heard from a number of organisations that have pointed to the problems with each of the privileged priority areas marked for special treatment, so even they think that what is being provided is not enough. We have heard from noble Lords that in order to deliver more GP appointments, we need more GPs. However, it takes time to train them and at the moment the problem is that they cannot be recruited. They are training as doctors then going elsewhere. It is almost like the discussions that we had four or five years ago about the reasons people could not be attracted into A&E work in hospitals. It was because it was perceived to be a difficult place to work, and primary care is now facing that too. We also need better clinical support services, including community nurses, especially on overnight shifts—a point that I will come back to in a moment—to support GP services.

Noble Lords have discussed the fundamental problem of recruitment and retention of doctors, including GPs, especially with the history of funding hospitals and secondary care over and above primary care. We all know that this will take a decade to resolve. However, it has been made significantly worse because EU and other national doctors are leaving primary care due to the hostile environment. They feel that they are no longer welcome to work in the United Kingdom. Salary bands alone will not make the UK an attractive place to work, so this Government will have to do considerably more to encourage recruitment from abroad. We will need that if we are to at least temporarily stop the problems that we have at the moment.

On cancer services, Cancer Research UK has pointed out that

"no allowances are made within this for the growing cost of staff required to run the NHS."

How do we think cancer services are going to be run? It says:

"This is a significant oversight, and as pressure piles up on existing overworked NHS staff, patients are being let down."

Much of what it says is echoed by those who work in cardiovascular services, and we should also be clear about what is needed to help social care survive. I thank the noble Lord, Lord Low, for his comments on that, and I am particularly grateful for the briefing from the MS Society. It reminds us that local authority funding has not kept pace with demographic pressures. For adult social care it is not just a not-inflation cost; it is cutting services off at the knees. Although the additional £1.5 billion promised at the recent spending round for 2021 is useful, experts believe that that is the minimum needed to keep the social care system going.

Looking ahead, there is a large funding gap to improve the system on a sustainable basis. Last year, as has been mentioned, the House of Lords Economic Affairs Committee estimated that improving care quality and addressing unmet need alone would require £8.1 billion in 2021. There is a big difference between £1.5 billion and just over £8 billion. The MS Society puts it in very human terms: one in three people living with multiple sclerosis is not getting the support they

[Baroness Brinton]
need to complete essential daily activities such as washing, dressing, eating or moving around the house safely.

It is worth remembering that the *NHS Long Term Plan* clearly states:

"Both the wellbeing of older people and pressures on the NHS are also linked to how well social care is functioning. When agreeing the NHS' funding settlement the government therefore committed to ensure that adult social care funding is such that it does not impose any additional pressure on the NHS over the coming five years."

Does the Minister believe that the amount allocated to adult social care is sufficient to avoid a negative impact on NHS constitutional standards? Does he believe that the amount allocated to adult social care is sufficient for local authorities to meet their duties as set out in the Care Act 2014? Given that we are told that the Treasury has asked all departments to prepare for 5% cuts, can the Minister confirm that the local authority grant for the next four years will have not only zero cuts but large and sustained growth for social care, public health and other parts of local authority budgets that impact on the health of the nation?

Investments in genomics and artificial intelligence—and other research, as we have heard from the noble Lord, Lord Willis—are important because we must constantly improve our health system and use technology and research to maintain much of our leading edge, not just in research but in treatment techniques.

It is disappointing not to see mental health services as a priority. How the Government can talk about parity of esteem without funding it seems somewhat astonishing. Sir Norman Lamb and the Liberal Democrats in coalition persuaded the Conservatives that we should talk about parity of esteem for mental health. Will the Minister tell us what that equates to in money terms? I will not repeat the arguments made by many noble Lords during this debate about the problems with CCGs cooking the books. There is no other phrase for it: they cook the books. If they can get a tick for delivering on mental health, and yet we know that the money is being diverted, that is a lacuna in the system and it needs to be plugged swiftly. What extra funding will the Government provide for mental health services and how will they insist that CCGs deliver it and are accountable, not just in some annual report but as the year progresses, to make sure that it is spent on mental health services?

I turn to another area that CCGs have been working on: services for children with serious medical conditions. CCGs have cut the support and care required for these children over the last two years to the point at which there are virtually no medical respite care centres left for children on ventilators who require PEGs for feeding. Actually, they have also cut community nursing services at weekends and overnight. It does not affect just children; they also serve people with cancer and other illnesses. If you have a feeding tube that comes out in the night, the only thing you can do is go to A&E. That is ridiculous. Sending someone to A&E, particularly if they are in a home, costs far more than having a regular night-service system of community health services; but CCGs can do it, so they do.

I have a long list—but I will not go through it because time will not let me—of the other services that need to be considered. I have made the point about children; others are musculoskeletal services, occupational therapy and physiotherapy. They are all struggling because they are not seen as a priority.

I began by talking about the lack of trust in the Government to fund the NHS at a level that would deliver real and sustained growth in services. On the Lib Dem Benches in both Houses, we will hold the Government to two comments made by Matt Hancock at Second Reading. First, he said:

"The legislation explicitly states that the Bill establishes a floor, not a ceiling, for how much we spend on … the day-to-day running costs of the NHS."—[*Official Report*, Commons, 27/1/20; col. 564.]

Later he said:

"I can guarantee that the mental health funding will be ring-fenced."—[*Official Report*, Commons 27/1/20; col. 568.]

We stand at a crossroads in NHS funding. The Bill starts to make provision for increased funding but is by no means enough to provide the growth needed to bring services back to previous levels; nor does it take account of demographic change. All of this is without any of the other pressures that noble Lords have described—what happens if we have a further coronavirus problem?—and obviously the Bill does not tackle the issues in social care, public health and other key services. If these are not funded urgently and properly, the Bill will be nothing more than a temporary sticking plaster on an arterial bleed. I look forward to the Minister's response.

5.40 pm

Baroness Thornton (Lab): My Lords, I start by reporting to the House again that I am a lay member of my local CCG, as in the register of interests. I also put on record my thanks to the noble Baroness, Lady Blackwood, for her time as a Minister and for the briefing that she gave us before the break.

It is my job to wind up this debate from these Benches, and I appreciate that it is the job of the noble Lord, Lord Bethell, to do so as the Government's spokesperson. However, I have to say that as far as we can tell there has never been a major health Bill Second Reading in your Lordships' House that was not answered by a Health Minister. We all know how competent the noble Lord is—

Earl Attlee (Con): Does the noble Baroness agree that my noble friend answers for Her Majesty's Government and is a Minister of the Crown?

Baroness Thornton: I would just note that the noble Earl, who is an expert in procedure, was not actually in the debate that we have just had. We all know how competent the noble Lord, Lord Bethell, is at the Dispatch Box, but the Government put health at the centre of their programme. I think that it is not respectful to this House not to have a Health Minister in their place, and I look forward to there being one. If that is the noble Lord, Lord Bethell, that would be brilliant for him—I just want to put that on the record.

We have had some excellent contributions today. We are quite correct to use this opportunity to hold the Government to account, even if we cannot amend

the Bill. As the noble Baroness, Lady Brinton, said, we have had many briefings asking us to pose questions during this debate, many of which have been reflected in the contributions that we have heard.

This is a short Bill, but I have to say that, even by the standards of some of the very daft legislation that we have seen from the Conservatives over the past few years, the NHS Funding Bill, all stages of which will be debated on your Lordships' House today, is rather strange. We know that Boris Johnson, the Prime Minister, struggles to trust himself to carry out the things that he promised before and during the general election. In this case, it is the promise to increase NHS funding by £33 billion before the end of 2023-24—a promise that of course, as the noble Baroness, Lady Penn, said, was made in 2018 by his predecessor. To ensure that the Prime Minister meets his commitment, we have what my honourable friend Jonathan Ashworth has already said in the other place is a political gimmick: he has decided to put it on the statute book. Frankly, given Mr Johnson's ongoing proximity to obeying the law and to the truth, that is probably no guarantee of anything at all.

In addition, with the proposed legislation designated as a money Bill, Peers will be unable to send any amendments back to the House of Commons for consideration. That is frustrating as the Bill, originally announced by Theresa May back in June 2018, contains, as many noble Lords have said, many serious problems and flaws. We agree with the King's Fund, the Nuffield Trust and the Health Foundation that an increase of at least 4% is required to modernise and improve standards in the NHS, and that the 3.4% that this funding proposal brings might just about keep the show on the road. Indeed, as many other noble Lords have said, given that inflation is set to be higher than initially anticipated, the increase will be of even less value.

The Government's proposals, as noble Lords have said, omit some very important factors. The Bill does not apply to the whole of the healthcare budget, and the exceptions mean it will not deliver, I believe, the transformation that the Government—and, indeed, all of us—desire. If the new funding is not accompanied by equivalent and sustainable investment in public health—we have had a discussion this afternoon that they do not even know what their budget is for the coming year in public health, which really makes their life impossible—social care and capital investment, the strains on the NHS will increase, storing up further problems for the future. Indeed, as many other noble Lords have said, the Bill does not address workforce, education and training.

Several noble Lords outlined the challenges that the NHS faces right now, so I will not repeat the issues about waiting times and trolley waits increasing, the 4.42 million people waiting for elective treatment and the delays of hospitalisation, often due to the lack of social care provision. Indeed, after this debate we will be discussing how we can deal with what might become a pandemic. We hope that it will not, but it adds to the serious challenges facing the NHS.

The British Medical Association is calling for a comprehensive spending plan that increases total health spending by at least 4.1% per year in real terms to address the gap between the funding of current services and future demand, and to put the NHS on a sustainable long-term footing. This equates to an extra £9.5 billion a year by 2023-24. What is the Minister's view on that? I think the noble Lord, Lord Low, and the noble Baroness, Lady Brinton, together hit the nail on the head about social care, so I do not think I can add to that, except to echo that it has to be properly funded, otherwise this funding will not work. The strain on the NHS from the inadequacies of our social care system will ensure that it will not work. That, to me, seems to be a matter of the greatest urgency.

I am looking at capital investment. The NAO has reported that £4.3 billion was transferred from the capital budget to the revenue budget in the NHS between 2014-15 and 2018-19. The impact of these transfers can now be seen in an estimated backlog of maintenance of £6.5 billion. This affects patient care and safety: it means that there is water running down walls, so the wards cannot be used; it is a disruption of clinical services; and it means that the kit that people are using is outdated and, therefore, they have to be referred on because the X-rays and the MRI scans are not adequate. The Government's stated aim of delivering the long-term plan will not be achievable without urgent and sustained investment in these areas through another multiyear settlement.

The Bill does not address staffing, as many other noble Lords have said. There are now over 106,000 vacancies across the NHS in England and no allowance seems to have been made for the growing cost of recruitment and retention of staff at every level, so the NHS people plan needs to be published urgently so that we can see how the Government intend to deliver on their commitment to support with the additional resources. As other noble Lords have said, Macmillan Cancer Support and Cancer Research UK say that adding 50,000 general nurses will not solve the crisis in the cancer workforce. Cancer Research UK says that the increase completely fails to address the significant and growing problem there is in the diagnostic workforce.

I turn to mental health. My noble friend Lord Bradley explained the urgent priorities there, particularly in children's mental health services. As other noble Lords have said, mental illness represents up to 23% of the total burden of ill health in the UK but only 11% of the NHS budgets. So the Government will ensure the delivery of effective spending on mental health only if, as the noble Baroness, Lady Brinton, said, we have detailed breakdowns for each CCG, including separate figures for mental health investment and assessment, spending on learning disability and spending on dementia services.

In conclusion, I agree with my noble friend Lord Hunt about short-termism. Would the Minister care to look at the report from the noble Lord, Lord Patel, and its recommendations and proposals about short-termism and take them into account when discussing how to proceed with the long-term plan?

This week, we saw the launch of the Marmot 10-year review of health inequalities. As the noble Baroness, Lady Finlay, said, it makes very dismal and serious reading. It also shows the context in which our NHS is struggling to meet the appalling health inequalities

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facing the UK. As noble Lords have said, for the first decade in 100 years, life expectancy has failed to increase. As Sir Michael Marmot says:

"Put simply, if health has stopped improving it is a sign that society has stopped improving."

The report points a finger at the all-too-familiar social and economic conditions that have increased health inequalities, which are now quite literally a matter of life and death. The NHS Funding Bill therefore should feed into a more general discussion about creating a fairer society and improving people's well-being—and, by doing so, should help to improve the health of the whole population.

5.50 pm

Lord Bethell: My Lords, I join those who have paid tribute to the work of my noble friend Lady Blackwood, my predecessor at the Dispatch Box, who made an invaluable contribution to the Department of Health and Social Care and is very sorely missed. I also thank the noble Baroness, Lady Thornton, for offering to join my campaign team. It is an offer that I am very happy to accept.

I was warned by the Chief Whip not to say that this was a vintage House of Lords debate and the House of Lords at its best, because it is hackneyed—but it is true. This has been a terrific debate, very highly informed and very challenging. There have been an enormous number of challenges in this debate—far too many for me to get through all of them—but I will try my best. Forgive me if I rattle through things a little.

I reassure the House that the NHS is the top priority of the British people, as a number of noble Lords have rightly pointed out, and of this Government. I know that there may be cynicism about the long-term plan that is being discussed today and about the Bill. The numbers that have been put forward in the Bill came from the NHS itself. The Bill enshrines those numbers in law. It is not a gimmick, and it is not Swiss cheese, as one noble Lord put it.

Lord Warner: I think most of us thought that these numbers came from NHS England, not the wider NHS. Can the Minister clarify that?

Lord Bethell: I am happy to accept that clarification. The noble Lord is exactly right: the numbers are from NHS England and they apply in that way.

To go back to Swiss cheese, the Bill is an ironclad guarantee to protect NHS funding. We are giving the NHS the certainty it needs to invest now for the long term. I thank the noble Lord, Lord Hunt, who put his finger on it. He spoke about the culture of short-termism and rightly mentioned—as did other noble Lords—the excellent report of the noble Lord, Lord Patel, on long-term sustainability. The natural human instinct to mitigate and to hedge when finances and money are uncertain has been remarked on in this debate. It is an entirely human instinct. The Government want to remove that uncertainty and to send a really clear signal to the system. We want to remove any sense of political risk about finance, so that decision-makers in the health system can make the best possible plans without looking over their shoulders to the finance director. They can instead be brave and make the best decisions possible and, in that way, implement the long-term plan in the most efficient way possible.

Where I have a difference of opinion with the noble Lord, Lord Hunt, is in his scepticism that reducing demand for hospital care is not possible. This Government believe that prevention is better than cure. That is why we are placing huge emphasis on community services, primary care and supporting people to live in the community, which reduces the number of people looking for acute care. We are investing in GPs and in urgent care centres to ensure that people are treated in the right place and at the right time.

I will talk first about the Bill in its essence. A number of Peers, including the noble Lord, Lord Hunt, have remarked that it is not enough money. I remind noble Lords that the plan comes from NHS England and that the Bill does not limit the amount of funding that we put into the NHS. Instead, it sets out a budget that must be at least what we have committed to. I reassure the noble Baroness, Lady Brinton, that this is not a cap. That is laid out clearly in Clause 1, which states:

"In making an allotment to the health service in England for each financial year specified in the table, the Secretary of State must allot an amount that is at least the amount specified in relation to that financial year."

I will now tackle a few points of detail. The noble Baroness, Lady Thornton, asked about transfers from capital to revenue. We have said that such transfers were a short-term measure and are being phased out. Furthermore, the Treasury operates strict conditions on transferring between capital and revenue budgets. This is not a blanket ban. Sometimes technical adjustments between capital and revenue are needed for operational reasons, but these are a temporary measure.

The noble Lords, Lord Hunt and Lord Warner, asked about trust debt. We totally recognise that the stock of debt has grown and in recent years has become a significant financial challenge. We are working with NHS England and NHS Improvement to agree a framework of bringing provider debt down to an affordable level. We look to establish a new financing framework for 2020-21 that complements the NHS long-term plan.

The noble Baroness, Lady Finlay, was 100% right to raise the challenge of health inequality. We were all chastened by the Marmot review, which told uncomfortable truths. We completely accept the right to a long life. This Government are not ducking the challenge of health inequality. In fact, when we talk about levelling up, what could be a more vivid and valued form of levelling up than health equality? That is why we have put so much emphasis on laying down concrete commitments to these financial numbers and laying out, to the best of our ability, a long-term plan for the NHS.

The noble Lord, Lord Warner, asked a marathon six questions, which I will not be able to answer in their entirety. I will just tackle the question of cash not being index-linked and numbered. The NHS budget, like many other departmental settlements, is always set out in cash terms. This is essentially to deliver certainty. Experience has taught us that every time inflation goes up or down, budgets need to be reopened

and confusion reigns. Furthermore, we as a House should remember that we are proposing a floor, not a ceiling; this is the kind of clear reassurance that has been asked for by the system.

I reassure the noble Baroness, Lady Brinton, that additional spending on the NHS in England absolutely leads to an increase in funding for the devolved Administrations through the Barnett formula—£7 billion for the Scottish Government from 2019-20 to 2023-24; £4 billion for the Welsh Government; and £2.3 billion for the Northern Ireland Executive. We will undertake a spending review later this year and will publish multiyear Barnett-based block grants for the devolved Administrations shortly afterwards.

Many noble Lords asked about the capital budget and quite reasonably asked why the Bill is about only revenue, not capital. The Bill is very much about protecting the record revenue spending for NHS England. However, we all know and totally acknowledge the requirement for capital investment. The Government have already made significant commitments: 40 new hospitals, with £2.7 billion for the first six; a further £2 billion capital spending, including £850 million for the first 20 hospital upgrades; and so on. I reassure the noble Lord, Lord Warner, and others, that further decisions about NHS capital will be made at a fiscal event in the very near future.

I note the comments of the noble Baroness, Lady Tyler, about the mental health estate and the use of wards. I reassure the House, and the noble Baroness in particular, that her arguments have been heard loud and clear. The Government recognise that the mental health estate is not satisfactory and are looking at ways to modernise these out-of-date buildings and arrangements.

The noble Lord, Lord Young, made a plea for GP surgeries. This resonates with me personally. The patient experience of arriving at a GP surgery is essential. Time and again, from my own experience, from what I know of human nature and from what I hear from patients, it is an unhappy one. In particular, the role of the receptionist at the GP surgery is unfortunate. I feel enormously for front-line professionals who have to deal with triage and the awkward conversations that take place. Something must be done to rethink the way we present ourselves to patients and that initial interface through the receptionist: a patient-first modernisation will be important.

Lord Bradley: Going back to the Minister's comment about further capital announcements at an event in the very near future, will that allow the department to release the cash for the seventh hospital, North Manchester General?

Lord Bethell: The noble Lord asks a very good question. The answer is not in my mega briefing pack, but I will be very glad to get back to him if I find an answer.

The noble Lords, Lord Hunt and Lord Warner, asked, quite rightly, about maintenance, which is brought up during every hospital visit I make. We recognise the challenge that maintenance presents to the existing estate and the Government have recognised the need for further capital investment in the NHS by announcing, over the summer of 2019, a £1.8 billion increase in NHS capital spending, including £850 million for 20 more hospital upgrades. We know that more capital funding will be needed and this will be dealt with in the near future.

The noble Lord, Lord Bradley, asked about capital for North Manchester General Hospital and the prospects for a green light for the project. As part of our health infrastructure plan, 21 new-build projects across 34 hospitals are receiving £100 million seed funding to help plan their schemes and move on to the next stage. I am delighted that Manchester NHS will benefit from £4.6 million seed funding to help plan and redevelop North Manchester General Hospital.

I move from the Bill to the central thrust of the debate, which was not about the Bill itself, but about what was not in it. I start with mental health, because Peer after Peer addressed this subject. I reassure the House that spending on mental health in the NHS long-term plan is an absolutely massive priority for the Government. This historic level of investment—£2.3 billion by 2023-24—will ensure that this Government can drive forward one of the most ambitious mental health reform programmes anywhere in Europe. It will ensure that 380,000 more people per year will have access to psychological therapies; that 370,000 adults and older adults with severe mental illness can access better support; and that 345,000 children and young people will be able to access services.

I cannot say exactly how many of the nurses that we will recruit will be mental health nurses. That data is not available, but I can say that we are transforming community-based mental health support so that more people can be treated closer to home. We are ensuring that the NHS is delivering the commitment to increasing investment in mental health provision. As a result, we have required all clinical commissioning groups to meet the mental health investment standard. The noble Baroness, Lady Hollins, had some detailed and significant questions about how the mental health investment standard was being applied. Rather than try to give a half answer now, I suggest that we meet to discuss her data in detail. I should be glad to understand more about her concerns.

Baroness Hollins: I am grateful to the noble Lord for his response. He mentioned increased access to mental health services for many more people but, in my experience, people with learning disabilities and autism are often left out of those services and seen as requiring something different, whereas they need to be included in all services. Can he confirm and reassure me that that is the case in, for example, psychological therapies?

Lord Bethell: The noble Baroness makes an important point and her work in this area is well known. It would be, however, slightly outside the remit of the Bill to go into that in great detail. I do not have the answer she is looking for but should be glad to meet her to discuss this important matter. I share her concerns and my interests in the area are entirely aligned with hers.

My noble friend Lady Penn put us all on the rack regarding the mental health White Paper. I would very much like to give her the absolute date and concrete publication arrangements for it but that is slightly

[LORD BETHELL]
beyond me. However, I reassure her that it will be within the next few months; spring is the hoped-for arrival time.

Baroness Penn: Can the Minister define when spring ends and summer begins?

Lord Bethell: My noble friend asks a question of such philosophical Whitehall subtlety that it is way beyond my pay grade to provide a clear, etymological answer to that. However, I reassure her that the matter is an enormous priority, and when I go back to the department I will lean on it hard to deliver this important publication.

The commentaries of my noble friend Lady Penn and the noble Baroness, Lady Tyler, on the visibility of spending on children's mental health was important. The Government are 100% aligned on this. I noted the Minister of State from another place standing at the Bar, nodding with agreement while those words were being said. I know that a meeting has been agreed on this matter and a date is in the diary, I believe for next week, and I very much look forward to the outcome. I reassure the House that this question of visibility and publication is taken ex3tremely seriously.

The noble Baroness, Lady Tyler, asked about the mental health investment standard. CCGs are required to increase investment in mental health, as discussed earlier. All CCGs are on track to meet that standard, as the noble Baroness, Lady Hollins, rightly pointed out in 2019-20. I suggested in my previous speech that it would be premature to legislate for specific aspects in the Bill and capital will be considered in other fiscal events.

The noble Lord, Lord Bradley, spoke movingly about children's mental health. I reassure the House that, in addition to increased mental health funding, we are implementing a progressive programme of transformational change for children and young people's mental health services. This will include incentivising every school or college to identify and train a senior lead for mental health, creating new school and college-based mental health support teams, and piloting a four-week waiting time for children and young people's specialised services.

The noble Lord, Lord Hunt, the noble Baroness, Lady Finlay, and others brought up the sensitive subject of adult social care. Fixing that long-term issue is one of the great challenges that this Government have taken to their shoulders. The reassurance I can give noble Lords is a political one. There are many complex questions to address, but our pledge as a Government has been clear: everybody will have safety and security, and nobody will be forced to sell their home to pay for care. Delivering on this promise will require an enormous amount of stakeholder engagement and political bridge-building, and we are embarking on that important process.

The noble Baroness, Lady Finlay, was quite right to say that social care workers are wrongly described as low skilled. I entirely agree with her sentiments; they are low paid but highly valued.

I am running out of time and have a few more points to make. I will jump to the conclusion and say that the Government take this Bill very seriously. The execution of the money involved in the Bill is also taken very seriously. There have been a number of exciting, important ideas about how that money should be spent from the noble Lords, Lord Willis and Lord Kakkar, among others.

We made our commitment in the manifesto and the Queen's Speech to enshrine record NHS funding in law. We are delivering on that commitment and putting the NHS on a secure and stable footing for the future. The NHS belongs to us all, and this Government are backing that idea. I commend this Bill to the House.

Lord Warner: Before the Minister sits down, I have a question. I have been digesting his answer to me on inflation-proofing. Is he saying one way or the other whether these figures will be inflation-proofed annually, with the passage of time? Two-thirds of NHS costs are pay, and there will presumably be some pay increases. What is the Government's position on inflation-proofing these figures?

Lord Bethell: It is the convention in the Treasury to express spending commitments in cash terms. That is the convention of government and how this Bill is expressed. It is not the commitment of government to uprate these figures necessarily according to inflation. They are adjusted for all the potential inflation that may happen. That said, if unexpected events happen or pressures are great, there is the opening and the capacity to increase spending if necessary.

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time, and passed.

Wuhan Coronavirus
Statement

6.13 pm

Lord Bethell (Con): My Lords, with the leave of the House, I shall now repeat a Statement made today by my right honourable friend Matt Hancock, the Secretary of State for the Department of Health and Social Care. The Statement is as follows:

"Mr Speaker, with your permission, I would like to update the House on the Covid-19 coronavirus. As of this morning, 7,132 people in the UK have been tested for the virus. So far, 13 people in the UK have tested positive, of whom eight are now discharged from hospital. We expect more cases here.

As planned, 115 people left supported isolation at Kents Hill Park in Milton Keynes on 23 February. All tested negative for Covid-19. On Saturday, 32 people from the 'Diamond Princess' cruise ship were repatriated and taken to Arrowe Park, where they will remain in supported isolation. Four of those have tested positive and been transferred to specialist centres. British tourists are currently being quarantined in a hotel in Tenerife and the Foreign Office is in contact with them.

We have a clear, four-part plan to respond to the outbreak of this disease: contain, delay, research and mitigate. We are taking all necessary measures to minimise the risk to the public. We have put in place enhanced monitoring measures at UK airports and health information is available at all international airports, ports and international train stations. We have established

a supported isolation facility at Heathrow to cater for international passengers who are tested, and to maximise infection control and free up NHS resources. The NHS is testing a very large number of people who have travelled back from affected countries, the vast majority of whom test negative.

In the past few days, we have published guidance for schools, employers, first responders, social care and the travel industry on how to handle suspected cases. If anyone has been in contact with a suspected case in a childcare or educational setting, no special measures are required while test results are awaited. There is no need to close the school or send other students or staff home. Once the results arrive, those who test negative will be advised individually about returning to education. In most cases, closure of the childcare or education setting will be unnecessary, but this will be a local decision based on various factors, including professional advice. Schools should be guided by the advice on GOV.UK and contact their regional school commissioner in case of queries.

In the coming days, we will roll out a wider public information campaign. While the Government and the NHS have plans in place for all eventualities, everyone can play their part. To reiterate, our advice is for everyone to take sensible precautions such as using tissues and washing their hands more.

Yesterday, we updated our advice to returning travellers from northern Italy, defined as anywhere north of, but not including, Pisa and Florence, as well as Vietnam, Cambodia, Laos and Myanmar. Those returning from Iran, the lockdown areas in northern Italy and special care zones in South Korea should self-isolate and call NHS 111, even if they have no symptoms.

We are working closely with the World Health Organization, the G7 and the wider international community to ensure that we are ready for all eventualities. We are co-ordinating research efforts with international partners. Our approach has at all times been guided by the Chief Medical Officer, working on the basis of the best possible scientific advice. The public can be assured that we have a clear plan to contain, delay, research and mitigate and that we are working methodically through each step to keep the public safe. I commend this Statement to the House."

My Lords, that concludes the Statement.

6.18 pm

Baroness Thornton (Lab): My Lords, I thank the noble Lord for repeating the Statement. The challenge the Government face—as we all do—is that this is a very fast-moving situation. If noble Lords look at their BBC newsfeed, they will find that coronavirus is now spreading faster outside China, according to the World Health Organization—that was reported literally 15 or 20 minutes ago. Our thoughts are with those who have been diagnosed with the virus in the UK, across Europe and elsewhere, and those in quarantine. I place on record our thanks to the NHS and public health service staff.

I understand the approach the that the Government have taken to the quarantine arrangements. There has been a significant spread of the virus across the continent, including cases in Austria, Croatia and Switzerland. As the noble Lord said, a hotel in Tenerife is in lockdown after a guest tested positive. What support is being offered to British nationals in this hotel? Will flights from northern Italy be stopped? Will there be any additional screening of flights from other European cities with confirmed outbreaks? Can the Minister clarify the travel advice for passengers to and from these areas? I know of several people who intended to fly to Italy and have now cancelled their flights.

Several schools in England and Northern Ireland seem to have shut down completely for a week to carry out a "deep clean" after students and teachers returned from skiing trips in northern Italy over the half term. The Minister has given us some information about the advice to schools. How will it be enforced, or are we leaving it to local organisations, councils and school and academy boards to take those decisions?

I am sure that noble Lords will already have noticed that the oil company, Chevron, has asked 300 traders at its Canary Wharf headquarters to stay at home after an unwell employee was tested for the virus, having reported flu-like symptoms. They are awaiting results.

I want to ask a question about capacity. We have just had a debate in which many noble Lords talked about that issue. According to the NHS's weekly winter statistics, bed occupancy in England is at 94.8%—way above the target considered to be safe. If this virus was to spread rapidly in the UK, how would the Government free up bed space in hospitals, which are currently mostly full?

Public Health England has announced today that tests for the virus are being increased, to include people displaying flu-like symptoms, at 11 hospitals and 100 GP surgeries across the UK. Up to now, people were tested only if they displayed symptoms having recently returned from one of the countries where there has been an outbreak, including China, South Korea and northern Italy. This action seems contrary to previous advice given to patients, which was not to go to GPs or A&Es but to self-isolate. I would like some further clarity on that issue.

On behalf of the Official Opposition, we thank all our NHS staff. We also thank the Government and hope that they will continue to keep us fully informed, as they have done hitherto.

Baroness Brinton (LD): From the Liberal Democrat Benches, I start by echoing the Labour Party's thanks to the NHS, staff at the Department of Health and Social Care and other public bodies, and all the staff, clinical and non-clinical, working around the clock both in the UK and abroad in the FCO in countries where there are cases and UK citizens. I think that we all accept that this is a major continuing crisis. It is one thing for something to happen for two or three weeks, but we are now two months into this, and it is clearly continuing to increase.

I emailed the noble Lord, Lord Bethel, with some questions on the basis that we were all working here for some hours immediately before the Statement, and I hope that advance notice of them was helpful. Dr David Nabarro from the World Health Organization spoke on the "Today" programme this morning about the WHO's overnight warning that the world must prepare

[BARONESS BRINTON]
for a potential coronavirus pandemic and that the WHO is beginning to be concerned that the outbreak could be "Disease X", for which they have been preparing for many years. I also thank the World Health Organization and its staff, who are doing a brilliant job that is invisible to most countries—I shall return to that in one of my questions.

In previous Statements on coronavirus, I have asked other Ministers to explain why UK health advice always seems to be one step behind that of a couple of other countries—I refer specifically to CDC. I will give a personal illustration. I am due to go to Naples at the tail end of next week. I suffer from a long-term condition for which I take medication that suppresses my immune system. As a result, I come into that category of vulnerable people who need to think carefully, yet when I look at the World Health Organization website, the government website and the NHS website, I can find very little of clarity about what I should do as somebody in that condition. However, the CDC website is very clear.

So I ask again, as I have done repeatedly: what advice are the Government and the NHS giving to people regarded as being in a vulnerable position? My previous comment was about people so described who might live in and around Brighton when the cases surfaced there—what should they do and where would they get their advice from? Perhaps I am "asking for a friend", but what is the position for people going to a country defined by the CDC at alert level 2? I think the UK is at that level, but we do not call it that. The CDC's advice, in its key points box at the top, is very clear:

"Older adults and those with chronic medical conditions should consider postponing non-essential travel."

I have seen it, and that is fine. I am sure that other professional travellers will be looking at it, but many people planning holidays will not know where to turn. They would normally go to the FCO website or the NHS website, and it is just not clear on those. In the Statement, the Minister referred to a public communications plan. Are there plans to set out exactly what people need to do? Will part of this communications plan be to make clearer, as the CDC website does, all the different stages and what ordinary people need to do to think about things?

Picking up the point about the Tenerife hotel, have lessons been learned from the cruise ship in Japan about keeping a lot of people in close quarters? Can we be reassured that UK and other citizens who are going to be in this hotel for two weeks will not end up in the same position as the many hundreds on the cruise ship who have now been diagnosed with coronavirus?

Talking of updates, Ireland has just postponed the Ireland v Italy Six Nations rugby match that was due to be played in Dublin, because of the coronavirus virus outbreak. So the Irish Government are already beginning to think that travel plans ought to be reconsidered.

My final question arose from noticing, when using the toilets in this place, that there are now very helpful posters reminding us about the 12 steps of hand washing. Suddenly, in the last two days, hand sanitisers have appeared. That is great; it is wonderful. But what will the Government's advice be to the general public about personal hygiene such as hand washing and using alcohol hand sanitisers? The World Health Organization's frequently asked questions and myth-busters pages are very good. I struggle to find anything as accessible in the UK. Most of the BBC report referred to by the noble Baroness, Lady Thornton, was taken from the WHO pages. So let us not reinvent the wheel but talk to people to ensure that they understand where we are.

I want to end on the same note as the noble Baroness. I thank the many hundreds, if not thousands, of people working to keep our country safe.

Lord Bethell: My Lords, I too express my profound thanks to NHS staff and the ancillary workers who support our clinical efforts: the bus drivers, the hotel staff and the deep-cleaning staff, who all have done so much already to help contain this virus in the UK. I especially thank the Chief Medical Officer, whose excellent advice has guided all our decision-making to date and will continue to be the most important guidance we can have.

There were two questions about the Tenerife hotel. I start by thanking the Spanish authorities. The practicalities are that the Foreign Office is in charge of handling arrangements for British citizens overseas, so questions about managing flights and cancelled services are questions for the Foreign Office. I understand that the Spanish authorities are flying specialist medical staff to Tenerife, because Tenerife has relatively limited health arrangements. A considerable effort is being made to ensure that all nationalities, including British holidaymakers who are in the hotel, have the best possible health provision.

On changing travel advice, we are going to be living through a period over the next few months when travel advice is fluid and changes on a week-by-week basis. The Foreign and Commonwealth Office issues travel advice—it is not for the Department of Health to do that—but my advice is to keep close to the advice. The travel advice of all countries will not always be aligned, but the World Health Organization has, to date, played an important, positive and constructive role in seeking to co-ordinate a response to the pandemic. We in Britain will move from a situation where containment is the priority to one where that is no longer practical, and the advice we give on travel will reflect that transition when it happens.

The noble Baroness, Lady Thornton, asked about the advice given to schools and, with characteristic thoughtfulness, she answered her own question. The current arrangement is that local schools, governors and authorities should make arrangements for themselves. As the epidemic progresses, that decision may need to be reviewed but, at present, it seems reasonable, proportionate and what parents want.

The noble Baroness also asked about capacity within the NHS, and it must be on everyone's mind that the NHS does not have infinite capacity and it will not be possible to find a hospital bed for everyone affected by the virus. There will be considerable pressure put on the system, but I reassure the House that, over the years,

considerable planning has already gone into making arrangements for this pressure and that the safety of the workforce and patients is paramount.

There are considerable measures that individuals can take to support themselves, and Ministers will be emphasising until they are blue in the face the importance of hand washing and self-isolation. These are important behavioural changes that we will seek to communicate to the British people over the next few weeks. In answer to the noble Baroness, Lady Brinton, we are planning and developing a massive communications campaign on how to protect people, particularly vulnerable people, in our population. At present, we are ensuring that people know how to protect themselves, highlighting the importance of staying at home if you feel unwell, and of regular hand hygiene. The needs and special arrangements of those with immune issues, which the noble Baroness rightly pointed out, will also be an important part of that campaign, and plans are well developed for launching it shortly.

A question was asked on the arrangements for travellers to China and, if I understood the question correctly, there is a distinction between those who travel to high-risk areas and those who travel to risk areas. If you travel to a high-risk area such as Wuhan, or one of the sanctioned areas in north Italy, on your return you are asked to immediately self-isolate. However, if you travel to China or Italy more broadly, you are asked to self-isolate if you start to display symptoms of a virus. That is the distinction noble Lords can have in their minds, and which will be communicated to the public more widely.

The noble Baroness, Lady Brinton, asked some detailed questions. I am grateful to her for forwarding them, and I will answer them in detail. She asked about the World Health Organization and its preparation for declaring a potential pandemic. The UK is prepared, and delivering plans for, a potential coronavirus pandemic. The plans are advanced and in place. Any new disease could be considered a “Disease X”. Current information and planning is based on what we call a “reasonable worst-case scenario”.

The noble Baroness asked about advice to travellers and rightly brought up the excellent CDC website. She mentioned CDC category 2 countries, particularly Iran and Italy, whose approaches seem to be different to that of the UK. The Foreign and Commonwealth Office already advises against all but essential travel to Iran. There are 10 small towns in Lombardy and one in Veneto which have been isolated by the Italian authorities. The health page on the Foreign and Commonwealth Office travel advice website has been updated with information on the coronavirus outbreak.

Lastly, the noble Baroness, Lady Brinton, asked about advice to the general population on personal hygiene and noted, quite rightly, the spread of hand-washing advertising and sanitisers in this House. There is very comprehensive advice on this on the NHS website. It can be accessed directly from the NHS homepage by searching for “Covid-19”. There are also answers to common questions, such as: are face masks useful for preventing coronavirus?

We are also aware of the dangers of fake news and a team is working on combating the misleading and wrongful advice that might stem from that.

6.35 pm

Lord Campbell-Savours (Lab): My Lords, I have half a lung following surgery for a tumour and COPD on the residual lobes. I am over 70 and therefore form part of the group of thousands—potentially hundreds of thousands—who are at particular risk from this virus. When the virus reaches London in conditions of a pandemic, and perhaps even before, I am likely to withdraw from the House for a period of time. For vulnerable groups, advice to wash hands, use tissues and self-isolate is totally and utterly inadequate. Those in vulnerable groups risk loss of life and are entitled to far more detailed information. With that in mind, will Ministers reply individually and in detail to each of the many questions that I, following consultation, shall be asking either in the House or by way of correspondence? There are a large number of questions that vulnerable groups will want answered. Could the answers be distributed more widely? Be of no doubt: in the absence of detailed advice, lives will be lost.

Lord Bethell: The noble Lord, Lord Campbell-Savours, makes his point extremely well. I cannot believe that there is anyone in this House who does not have a relative, friend or loved one who is in the same situation. When we look closely at this virus, it causes enormous anxiety. It is part of the Government’s role to ensure not only that information is provided and distributed effectively and energetically, in the way he described, but that this is done in a reasonable, paced way that does not create panic and alarm. The Government lean towards early action on the virus, pre-empting issues and having the right information, data and measures in place. That has been the philosophy of our response from the very beginning. The communications that he described, as did the noble Baroness, Lady Brinton, are exactly the kind of materials that we are working on right now. They will be distributed with the energy and determination that he described.

Lord Cormack (Con): My Lords, we know that there are adequate quarantine facilities in the Wirral and Milton Keynes, but can my noble friend assure the House that the Government have provisional plans in many other parts of the country, in case we have a repeat of having to fly back large numbers of people and put them together for a fortnight or thereabouts? There is real concern on this issue and I would be grateful for reassurance.

Lord Bethell: My noble friend is quite right that the quarantine arrangements at Arrowe Park have worked extremely well. This has meant that Britain has been one of the more advanced countries in handling this period of containment. I pay tribute to those involved at Arrowe Park and at Heathrow and Gatwick for handling those flights. It would be misleading of me to stand at the Dispatch Box and suggest that quarantine arrangements are going to be possible ad infinitum for everyone returning from an at-risk area. There will be a moment—as has already happened in Italy—where the containment of the virus in this country will no longer be possible and we will move on to a new phase. Quarantine has worked well so far but it is not, on its own, going to be the solution to this problem.

Baroness Finlay of Llandaff (CB): My Lords, I add a note of congratulations to all the public health people, to Public Health England, Public Health Wales, staff across the UK and health board staff at every level. They have rapidly changed the way that they are working in order to undertake close planning. Can the Minister confirm that we are producing enough testing kits to be able to roll out more testing in the community across the whole of the UK? Has additional budget been put aside to ensure that health service personnel have all they need and to allow additional isolation facilities to be used, if necessary, for very sick patients who would be taken in isolation to NHS units?

Lord Bethell: I reassure the House that there is an enormously energetic effort being put into testing kits. The testing arrangements to date have worked well. There is a 24 to 48-hour turnaround for testing. Work is being put into a dramatic increase in the number of tests necessary. Energetic work is being conducted by commercial organisations into smaller, portable testing kits—the size of this Dispatch Box—that could be put in wards to have an immediate turnaround for testing. This will greatly facilitate the management of this epidemic. I salute those involved in the 24/7 race to produce new technology and large numbers of these testing kits. Like the noble Baroness, Lady Finlay, I have warm words for Public Health England, which has done a fantastic job. I cannot remember the third thing that she asked.

Lord Patel (CB): My Lords, I beg the House's indulgence because I know the convention is that a Back-Bencher should ask a quick question and sit down but in this case I cannot do that.

I have absolute confidence in our ability to try to contain this virus but, having said that, it will depend on how the virus behaves. As yet, we do not know its behaviour. Most of the cases hitherto reported are from areas where there have already been cases and are not new cases. A pandemic has not been declared yet but we may be at the knife edge. If it is declared, the advice will change, as will the way of screening people.

In this situation, containment is the first phase of stopping the virus spreading. It is like a fire, which can last only as long as there is kindling available. It will infect as many people as it possibly can. Possibly four out of five people in our country will be infected and maybe 2% will die. The noble Baroness, Lady Brinton, is right. The Government need to provide clear guidance for those who are high risk. Hitherto, the deaths reported throughout the world have been of older, vulnerable immunocompromised people, not children or young, healthy adults.

I hope the Government have a strategy. I have absolute confidence in our advisers Professor Chris Whitty—the CMO—Professor Sir Jeremy Farrar and Professor Peter Piot, who I know are the world experts in containment of pandemics. However, the Government need to be more stringent in the advice they are giving to the general public on the value of things such as handwashing, using tissues and, importantly, self-isolating. When the numbers involved get bigger, that is when the risk is that people will not self-isolate and take that advice. The Government need to be more stringent about that.

Lord Bethell: The noble Lord, Lord Patel, has expressed it all very well and with infinitely more authority and knowledge than I could have done. He has described very well the dilemma facing policymakers, because we simply do not know the behaviours of the virus. We do not know exactly how infectious it will be; we do not know which demographics it will target; and we do not necessarily know how mortal it will be. We hope for the best but are planning for the absolute worst. The noble Lord is right: the clear guidance for high-risk groups is critical. As I have already mentioned, there is a plan for a substantial awareness campaign, but its effectiveness will rely on the saliency of the subject matter. At this stage of the cycle, the British public are not necessarily tuned into the risk or at the point where they are seeking to address their behaviours, although I suspect that that moment is approaching very quickly. I reassure the House that all the preparations have been put in place. The creative is incredibly impressive and the detail is being thought through, and I believe that the impact will be profound.

Lord Davies of Stamford (Lab): One hypothesis on which people are working is that this disease started with bats. Is there a possibility that other species of mammal or perhaps birds could be infected or could be carriers, possibly including domestic or farm animals, or are our veterinary authorities confident that that cannot be the case?

Lord Bethell: The noble Lord asks a perfectly fair question but I am not a qualified virologist. Certainly, I do not know the answer to that and I am not sure that even the virologists are certain about it at the moment, but it will be investigated.

Lord Patel: The reason I suggested that it came from bats is that there is an 85% genomic match in the sequencing of the viruses affecting humans and bats. On the other hand, the sequencing of the virus in pangolins is showing virtually a 100% match. However, it will not come to farm animals—they are not bothered by this virus—so chickens and sheep will not be affected.

Viscount Younger of Leckie (Con): It is unusual to have that kind of interruption. Perhaps I may ask that Peers ask short questions to allow more Back-Benchers to intervene.

Baroness Hamwee (LD): My Lords, perhaps I may follow up the points about both capacity and testing. Noble Lords might have heard Nick Robinson on the "Today" programme this morning describe his experience. Having come back from abroad, he contacted 111 and was advised to go to his local hospital, where, as he described it, he was extremely well treated. However, it involved huge resources. A nurse, booted and suited, as it were, came out to him in the car park and escorted him through the hospital and so on. As he commented, that simply cannot be replicated many times. Can the Minister reassure the House about the capacity for testing of that type? Happily, Nick Robinson was okay.

Lord Bethell: The noble Baroness, Lady Hamwee, has put it very well. Testing is absolutely critical to the correct treatment of this virus. There is a race on to

find cheap, easily applied and speedy testing arrangements. That will help us avoid the kinds of complex arrangements that Nick Robinson vividly described. The NHS is proceeding incredibly energetically. Financial arrangements are not holding back any of the work that is being done, and resources are being thrown at that in a very big way.

Lord Borwick (Con): My Lords, my noble friend has spoken a lot about the tests. Can he give us an estimate of their accuracy? Is there a large number of false negatives or false positives in the test results?

Lord Bethell: My noble friend asks a very reasonable question. It raises the issue of heat tests at airports—which I know that he did not ask about—which is a subject of concern. Certainly, temperature tests provide a large number of false positives, and that is why they have not been applied at British airports. However, the saliva tests being used in clinical conditions at the moment are thought to be very reliable indeed, and the number of false positives is very low.

Baroness Bennett of Manor Castle (GP): My Lords, I echo the thanks from all sides of the House to the medical and administrative staff. We need to acknowledge that at the moment, most of them are not, of course, at risk; but it is very stressful just thinking that you might be, and that stress needs to be acknowledged. The Statement referred to working closely with the WHO, the G7 and the wider international community. There was no specific reference to working closely with the EU regime of communicable disease control, which is co-ordinated by the European Centre for Disease Prevention and Control in Stockholm. That oversees the early warning and response system and the emergency mechanism for the approval of pandemic medicines by the European Medicines Agency.

My understanding is that we are still part of the EWRS system, but we do not have any say in the decision-making. At the end of this year, when the transition period ends, we will fall out of that system unless special arrangements are made. I understand that Switzerland, which is not part of the medical countermeasures rapid approval procedure for testing, treatment and vaccines, has applied for special access to that system. Have we also applied for special access to it? How are we working with our EU neighbours, who have a very sophisticated system? What will the situation be in less than a year's time?

Lord Bethell: The noble Baroness asks a detailed question on an important part of our response. British scientists have done an enormous amount to investigate an antidote to the virus; £20 million has been put into research into those arrangements. We are absolutely at the forefront of trying to find some kind of antidote. The regulatory arrangements for that are not in my brief, so I cannot answer her question directly. I reassure the House that British scientists are absolutely working hard; they are well resourced, and any regulatory arrangements that are needed to find the right medicines for this virus will be put into place.

Lord O'Shaughnessy (Con): My Lords, I thank my noble friend for the authoritative way he has given this Statement and provided reassurance to the House. I join other noble Lords in recognising the efforts of many health and non-health staff in dealing with this, not just in the UK but abroad.

I want to ask a specific question about the advice being given to schools. The Statement said that schools should refer, if they are unsure, to regional schools commissioners. He will know that such commissioners were not set up to provide public health advice but to supervise the structure of the school system. What access are they getting to advice from Public Health England and its equivalents across the UK to make sure that they are getting the right advice, and not closing when they should not close or opening when they should not open? I declare my interest in and involvement in schools as a concerned parent.

Lord Bethell: My noble friend asks a characteristically detailed question. There has been a huge hunger on the part of schools over the last few days for more accurate information about how to respond. As a result, the Department for Education has put in place a regular email directly to the schools themselves—to headmasters and governors. This is currently planned to happen weekly, but that will change as events progress. The email refers to the provision of further information on the DfE website. Arrangements for hotlines and follow-up information are being put in place.

Lord Kakkar (CB): My Lords, I draw attention to my entry in the register of interests. The Minister, in repeating the Statement, identified the four-part plan, of which the third part is research and co-ordination with international partners. Can he reassure the House that mechanisms are in place for the early adoption, at pace and scale, throughout the NHS of any innovations in diagnosis, prevention and treatment that could have a profound impact in reducing the overall burden of this disease?

Lord Bethell: The noble Lord is right to emphasise this point. The clinical treatment of the virus is in part through the medicine itself. We have to be realistic about whether a medical solution to the virus will be found before the peak epidemic. One is instinctively optimistic that such a thing can happen, but it cannot be guaranteed. However, there are also the procedures and arrangements for nursing and looking after patients as they go through the cycle of the virus, and such best practice is absolutely the priority of the Chief Medical Officer. Arrangements have been put in place to spread that best practice through the trusts and CCGs that provide front-line care.

Baroness McIntosh of Hudnall (Lab): My Lords, I was listening closely to the noble Lord, Lord Patel, when he was asking his question earlier. If I heard him rightly, he said that if this becomes a pandemic, four out of five people in this country might become infected. That is a very alarming number, not just because four out of five people will get ill but because of the impact on all kinds of social and other activities, including economic ones. Do the Government themselves recognise that figure as a likely outcome in a pandemic situation? Is any information currently available about the immunity, either short-term or long-term, that may or may not be conferred on those who have already succumbed to the virus?

Lord Bethell: The noble Lady is correct, inasmuch as we should be prepared for and able to envisage the possibility that the virus may spread through a large proportion of the country. The Government are looking at all possible scenarios. However, I do not recognise the numbers that the noble Lord, Lord Patel, has provided, and the Government are not yet providing forecasts for the virus. Certainly the worst-case situation could be of the order that she describes, but that estimate is not based on scientific forecasting.

On the question of our arrangements for the possible impact, that is difficult to predict because we do not know the speed with which it would spread through the population. Creating some kind of herd immunity, whereby a large proportion of the population has had the virus and is therefore inoculated, is clearly the objective—well, not the objective; rather, it is one of the results of the virus passing through, as flu viruses do regularly. It is expected that it will be a one-off experience, so herd immunity will actually provide resistance to future visits by the virus.

Police and Crime Commissioner Elections (Amendment) Order

Motion to Approve

6.58 pm

Moved by ***Lord True***

That the draft Order laid before the House on 14 January be approved.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, in coming to the Dispatch Box for the first time to answer for the Cabinet Office, if the House will allow me, I want to place on record my appreciation of my noble friend Lord Young of Cookham. His charm, urbanity and liberal mind won the affection of everyone in the House, and in doing business his openness, intelligence and sense of duty won the respect of the House. If I can do half as good a job as he did, I will have tried to serve the House well.

The health of our democracy depends on elections being accessible and fair for voters and those seeking election. Last February, an important step forward was taken towards ensuring disabled candidates standing elections share a level playing field and are treated fairly. The election expenses exclusion order made sure that expenses incurred as a result of a candidate's disability would no longer count towards their limit on election spending when taking part in UK-wide elections, including parliamentary general elections.

This instrument will prevent disability-related expenses having to be counted as part of a disabled candidate's election spending limit in a police and crime commissioner election. PCCs should be as reflective as possible of the diverse communities that they serve and to whom they are accountable. We must make sure that the process of standing in any election does not itself unfairly impact upon disabled people and make them less likely to stand for election.

That is why, through this instrument, we are seeking to help remove one potential barrier that might prevent disabled people running to be a police and crime commissioner and represent their community. The instrument will insert disability-related expenses into Part 2 of Schedule 7 to the Police and Crime Commissioner Elections Order 2012, which set out the general exclusions from the spending limits of candidates standing at PCC elections. The result will be that reasonably incurred disability-related expenditure will not form part of a disabled candidate's expenses and will therefore not contribute to their spending limits.

The instrument also brings forward changes to election forms so that they are clearer to voters about when a PCC has been given the power to undertake fire and rescue authority functions, which currently applies in only four authorities. This will make sure that, in most places, all relevant election forms better inform voters about the scope of the functions of the PCC being elected.

We have consulted on this instrument with the Electoral Commission, there has been cross-government collaboration between the departments involved and all the consulted stakeholders have been supportive of the proposals. The Parliamentary Parties Panel has also been informed that the changes are being brought forward. It is a panel that, as noble Lords will know, meets on a quarterly basis to discuss electoral issues, consisting of representatives of each of the parties that have two or more MPs. We believe it is vital that the instrument is in place as soon as possible so that these changes are effective during the preparations for and the build-up to the PCC elections, which next come on 7 May. That is why the instrument will come into force the day after it is made.

The Electoral Commission released guidance in January of this year for the upcoming May PCC elections that included information on the exemption being brought forward today. This should ensure that candidates can take note of the exemption in reasonable time before the election.

By providing a more level playing field for disabled people standing for PCC elections, and giving voters clearer information about what powers they are voting a PCC candidate to take on, this instrument builds on the wider work the Government are undertaking to support our democracy and make elections more accessible to voters and candidates alike. The changes may seem a little administrative and technical in nature, but I am sure noble Lords will agree that their application in the real world for local democracy will be actual and tangible, and I know that they will be appreciated by some people. I commend this instrument to the House.

Lord Rennard (LD): My Lords, I welcome the noble Lord, Lord True, to his position as Minister. I am sure we will have some humorous debates. I am sure they will be lively and I fear that some of them will be very controversial, but this evening's debate is not really a controversial one, because I am sure that nobody in this House will think that anyone who is disadvantaged by disability should have to bear the additional costs of personal expenses arising from their disability counting against any limit on campaign expenditure.

I am not sure it is really enough to say that, if they have these additional costs, they should not count against the limit if they have the funds. The question really is: how could they be helped to have the funds to

make sure that they can compete on a level playing field? My first question to the Minister in his new position is: what is the Government's current attitude towards helping disabled candidates stand for election? We have experience of the Access to Elected Office Fund and the EnAble Fund, but I understand that, after 31 March, there will be no funding from a government source to help disabled people to stand in these or any future elections.

Overall, as the Minister outlined, the changes proposed to election regulations are really common sense, but the need to make these minor changes highlights the way that we need to codify and modernise all our election laws, as recommended by the Law Commissions some years ago. What can he tell us about the Government's current attitude towards codifying and modernising the whole range of election laws? The Law Commissions have done much of the work on this; they say that there are so many different pieces of legislation and there have been so many new elections since that legislation was drafted that we need to look at this issue as a whole, instead of, as I fear we will, looking at each individual bit of legislation. The danger will be that, as we look at each individual bit of legislation and potential reforms, the accusation may be made in this House that legislation is brought forward for particular parts of election law that favour a particular party that is in government and not parties that are not in government. Surely it would be better to follow the advice of the Law Commissions and look at all our election law in the round, codify it properly, modernise it and make sure we proceed on a fair basis.

Lord Campbell-Savours (Lab): My Lords, I welcome the noble Lord to his place. I have watched him on the Back Benches over a number of years and wondered when his day would come; it has finally come and I congratulate him.

Article 2(3) of the order

"adds to that list of matters reasonably incurred expenditure by or on behalf of a disabled candidate that is reasonably attributable to the candidate's disability."

I understand that, in law, the word "reasonable" is very expensive and can lead to court cases, contests and arguments with officials about what constitutes reasonableness. I wonder whether we can have some explanation. To give an example, who will decide what is reasonable? Could it be that, if a person is in receipt of a benefit relating to disability, that in itself would lead to a qualification? Could it be simply a personal statement, where somebody says, "I am disabled", or a doctor's note saying that the person is sufficiently disabled? The word "reasonable" always worries me when I see it in law and I just wonder if we can hear a little more. We have a former Lord Chancellor here who smiles when I suggest that it is an expensive word—perhaps he would like to intervene to tell us what he believes would be the construct in this particular case.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I welcome the noble Lord, Lord True, to the Dispatch Box today. I congratulate him on his appointment and I wish him well with his new responsibilities. I look forward to the many debates we will have over the coming weeks and months. I also very much agree with his comments about the noble Lord, Lord Young of Cookham, who I enjoyed working with very much and who is always worth listening to.

I have no issue whatever with the order before us today. A number of points have been raised, which I support, and I look forward to the noble Lord's response. It is right that we ensure that candidates with a disability are able to stand for election so that we can ensure that our elected officials and officers reflect the people that they represent. I am very happy to support the order to ensure that expenditure related to a candidate's disability does not come out of the election expenditure limit.

I follow on from the point that the noble Lord, Lord Rennard, made. I have mentioned it many times before and, every time, the noble Lord, Lord Young of Cookham, would agree with me. I would say, "Our election law is not fit for purpose," and he would say, "I agree entirely." We had a number of meetings—the noble Lords, Lord Tyler and Lord Rennard, and my noble friend Lady Kennedy all came along—and discussed these things. Everyone agrees that our election law is not fit for purpose and we have to sort it out.

One good thing about the election result is that this Government have been in office now for four or five years. They are not worried about what is going on at the other end, so they have plenty of time to look at this properly. We have to sort out election law; it is not fit for purpose. It was created for analogue elections; we now have digital elections, and we really must sort this out. I implore the noble Lord, when he goes back to his officials in the Cabinet Office, to tell his colleagues that they should use the fact that they have a majority in the other place to make sure that we can quickly, but also calmly, get to a situation where we can revise our electoral law to ensure that when people are elected, the law around the elections is fit for purpose and does what it is supposed to do. Having said that, I fully support the order before the House today.

Lord True: My Lords, I thank noble Lords for their kind comments. Having heard the noble Lord, Lord Rennard, say that we may be having some controversial and lively debates in the future, perhaps I should fix those comments in aspic so that I can save them and later bring them out of the fridge. But I respect tremendously each of the noble Lords who spoke, and I am very grateful for their comments.

On the EnAble Fund and its continuation, there is a point that the political parties have to accept their own responsibility to encourage disabled candidates to stand, as parties do. In terms of helping disabled people, every part of society has its contribution to make, and that must include political parties. The EnAble Fund was designed as an interim measure to allow political parties time to put in place support themselves. We are not reiterating the fact that political parties have a place. The Government are considering what support they might provide to succeed the current EnAble Fund, which I acknowledge is running out. The disability unit is currently considering options in connection with the national strategy for disabled people, which is due to be published later this year, so I can give the noble Lord some encouragement on that.

[LORD TRUE]
But I reiterate that this applies to all political parties, and that they all deserve praise for what they are doing to encourage disabled candidates.

In the general points made by the noble Lords, Lord Rennard and Lord Kennedy of Southwark—who was elected a councillor on the same day as I was in 1986; we have tramped our parallel ways while serving our parties since then, and it is very nice to see him opposite—they both asked more broadly about what the Government were going to do to deal with electoral law. On my first outing at the Dispatch Box, I am not going to rise as a trout to those particular flies, but I will take note of what both noble Lords said and will take that back to colleagues.

On the question that the noble Lord, Lord Campbell-Savours, raised about the word "reasonable", I am not going to tread too far into that area for obvious reasons, having spent some years throwing darts at the person on the Front Bench from behind. With a former Lord Chancellor behind, I am not going to have a long go at it. But it is true that the draft order does not define what a "reasonable" election expense is. There is an argument that trying to provide an exhaustive list of such expenses would potentially narrow the scope of application and could exclude some disability-related expenses that have not been listed.

The order gives some examples of the kind of thing that might be applied, but the Government want to ensure that the order exempts all—I must not use the "r" word that the noble Lord mentioned—disability election expenses that it can. I can give him further details of how the system actually works, but there is, first of all, a process of examination of the case and, secondly, obviously anybody who infringes electoral law in any form faces the risk of penalties thereafter. There is a balance, in that there is a right of confidentiality: some people wish to have some confidence about their disability and that also has to be taken into account. The reason there is no list of particular cases is that if something were inadvertently omitted it would be excluded from scope. I hope that that answers the question of the noble Lord, and if he would like any more information, I am sure we could provide it. If there are no more questions, I will thank noble Lords who have taken part.

The Government appreciate the unity on this matter. The instrument makes an important if small change to the electoral system. It can only be a good thing for local democratic representation and accountability: we all want to see more participation in that. Having made those points and tried to answer the questions, and having acknowledged the kindly comments, I commend the order to the House.

Motion agreed.

House adjourned at 7.16 pm.

Grand Committee

Wednesday 26 February 2020

Pension Schemes Bill [HL]

Committee (2nd Day)

3.45 pm

Relevant documents: 4th Report from the Delegated Powers Committee and 2nd Report from the Constitution Committee

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, good afternoon. I remind the Committee that, in the event of a Division in the Chamber, the Committee will adjourn at the sound of the Division Bell and resume after 10 minutes.

Clause 109: Duty to give notices and statements to the Regulator in respect of certain events

Amendment 27

Moved by **Lord Vaux of Harrowden**

27: Clause 109, page 95, line 15, at end insert—

"( ) In particular, the declaration of a dividend by the employer is a notifiable event for the purposes of subsection (1) if—

(a) the value of the assets of the scheme is less than the amount of the liabilities of the scheme,

(b) the amount of the dividend exceeds the annual deficit repair contribution, and

(c) the amount of the annual deficit repair contribution is less than 20% of the difference between the value of the assets of the scheme and the amount of the liabilities of the scheme."

Lord Vaux of Harrowden (CB): My Lords, I hope that this was worth the wait.

Clause 109 allows the Government to prescribe certain events as notifiable events, which must be notified to the regulator in advance of their happening, along with an explanation of how any impact of such an event to the detriment of the scheme is to be mitigated.

Let me start with some general points. Clause 109 is very vague. It does not describe what such notifiable events will be, leaving them to be prescribed at a future date—more delegated powers, if you like. The government briefing paper indicates that they intend such events to include:

"(1) Sale of a material proportion of the business or assets of a scheme employer … (2) Granting of security on a debt to give it priority over debt to the scheme."

We discussed at length on Monday the level of delegated powers in this Bill, and this is basically another one. However, in the other cases, the delegated powers are there partly because the Government have not yet formulated what they want to do with those regulations or because some consultation is still to take place. Here, the Government know what they intend to do, so I respectfully suggest to the Minister that it would be better if these details could appear on the face of the Bill.

On the specifics of my Amendment 27, the amendment would add the payment of dividends as a notifiable event in certain circumstances. As I have mentioned, the Government intend to make the granting of security in preference to debts to a pension fund notifiable. Granting such security is simply committing to paying money out of the company that cannot then be used to fund the pension deficit, so I confess that I am rather at a loss to understand how this is materially different from paying an excessive dividend, which is the actual payment of money out of a sponsoring company that cannot then be used to pay down a fund deficit. Indeed, paying an excessive dividend is probably worse—once the money is gone, it is gone—yet it is intended that granting a security will be notifiable whereas paying an excessive dividend will not.

There are plenty of examples from the past where companies with large pension deficits failed after paying out excessive amounts to shareholders—Carillion and BHS being just the latest high-profile examples. This is not a theoretical risk; it has happened in the past and will likely happen again, unless we do something about it. We will all be open to criticism if we miss this opportunity to take action to prevent such looting in the future.

The Government argue that stopping a company from paying dividends might damage the company and therefore damage the pension scheme, and I agree. Preventing the payment of reasonable dividends could increase the cost of capital, make raising future finance more difficult and even destabilise the company, all of which would increase the pension fund risk. For most well-run companies with a clear deficit reduction plan, a reasonable dividend will do no material harm, and we should note that most dividends end up in pension funds anyway.

For this reason, while I fully support the intentions behind Amendment 84 in the name of the noble Lord, Lord Balfe, I think that we probably need to find a more balanced way to deal with the very real risk of excessive dividends. This is especially the case in the light of the increased penalties in the Bill. If trustees are asked to approve every dividend, they may simply decide that it is not worth their personal risk to approve any dividend.

As things stand at present, the regulator will not know about excessive dividends until after they have been paid, and even then the onus is on the regulator to spot them. Once paid, it is too late: money is gone and damage is done. It must therefore make sense for the regulator to be notified of excessive dividends in advance, when there is still the opportunity to do something about them.

Amendment 27 attempts to find a balance: it will not prevent normal, reasonable dividends that add no material risk to a pension scheme. It makes dividends notifiable in advance to the regulator, along with an explanation of how any risk would be mitigated, in certain limited circumstances. In defining those, I have tried to apply the concept that the regulator stated in its *Annual Funding Statement March 2019*, in which it raised concern about excessive dividends:

"Where dividends and other shareholder distributions exceed DRCs"—

[Lord Vaux of Harrowden]
deficit reduction contributions—

"we expect a strong funding target and recovery plans to be relatively short".

Amendment 27 attempts to encapsulate that into the Bill. Dividends will be notifiable in advance if they do not meet the expectation stated by the regulator, if the fund is in deficit, if the dividend is greater than the deficit reduction contribution, and if the deficit repair period is more than five years. Other dividends would not need to be notified. As well as reducing the risk of excessive dividends, this might also have the additional benign effect of encouraging companies that want to pay larger dividends to reduce their deficits to avoid having to make notifications.

I am very open to discussion around alternative approaches to find the right balance. For example, one could potentially add other shareholder distributions, as opposed to just dividends, and the question of whether deficit repair period of five years is right is moot. But I believe strongly that we must take this opportunity to prevent future looting by shareholders of companies with pension scheme deficits. I hope that noble Lords and the Minister will agree that Amendment 27 represents a reasonable balance between, on the one hand, restricting a company's ability to carry on normal business activities such as paying reasonable dividends and, on the other, reducing the possibility of another Carillion or BHS occurring. I hope that the Minister is able to consider it seriously. I beg to move.

Lord Balfe (Con): My Lords, I apologise for not being here at Second Reading or at the beginning on Monday. The first absence was because I was in hospital; on Monday, I was also speaking in the other debate and so I was hopping between the two.

I have two amendments down, of which Amendment 84 is the first. It is in no way against the sentiment of the noble Lord, Lord Vaux—I obviously did not know that his amendment was going down. Amendment 84 constitutes 50% of a Private Member's Bill that I tabled at the beginning of this Session—it is a straight take from that. I declare my interest as the president of the British Airline Pilots Association.

My amendment aims to deal with the problem that a lot of trade unionists perceive and has been expressed already—the Philip Green, BHS and Carillion problem. People who have worked very hard and built up pension entitlements see employers favouring dividends to shareholders over looking after the pension scheme that they have agreed to run for the people working for the company. In what one might call a rather crude way, because I did not know where to draw the line, I thought that the simplest thing would be to say that all dividends should be passed by the regulator.

Of course, we then come up against the fact that a number of trustee boards are effectively controlled by the companies. I therefore also put in that the Pensions Regulator would have an independent role anyway, because it would have to approve the dividends. Even if the trustees said, "We think that this is a jolly good thing", the regulator might then say, "Yes, we agree", or "No, we do not". The Pensions Regulator would have a second look at it.

I will be the first to admit that this is not the most skilfully drafted amendment to set the world on fire, but it was put down for the purposes of generating a debate about a problem that needs addressing. That problem is the one already mentioned, of BHS and Carillion; in other words, the problem of irresponsible companies dealing—as many of those working for them would see it—in improper ways with the pension schemes.

There is a bit of danger that people—not in this Room, I am sure, but in society—will say, "Oh, the pension scheme doesn't matter". The pension scheme is the forgone wages of the workers; it is not something ethereal or charitable, or an extra on top. This is money that the company has agreed to pay to workers in return for the number of years that they work. It is their money, and companies should not be allowed to behave recklessly with it. That is what is behind this amendment.

As such, I commend it for noble Lords' consideration, although I would be extremely surprised if the Minister were to get up and say, "Oh yes, that's what we want", and accepts it all.

Lord Sharkey (LD): I would be surprised as well.

My Lords, I support the thinking behind both these amendments. I congratulate the noble Lords, Lord Vaux and Lord Balfe, on the excellent way in which they have been introduced. Both amendments allow timely discussion of what is a large, widespread and probably growing problem.

After the publication of TPR's annual funding review in March 2019, the *Investment & Pensions Europe* magazine reported that TPR had

"vowed to engage with a number of schemes this year if recovery periods were considered to be 'unacceptably long', and warned trustee boards to expect communications in the coming months. … Consultancy firm Hymans Robertson estimated that one in five FTSE 350 companies with DB schemes were at risk of intervention from TPR."

That is an alarmingly large number.

To understand what TPR means by "communications", it helps to look at what TPR in its annual funding review states as the three key principles behind its expectations. The first is:

"Where dividends and other shareholder distributions exceed DRCs, we expect a strong funding target and recovery plans to be relatively short."

The second is:

"If the employer is … weak"

or tending to weak,

"we expect DRCs to be larger than shareholder distributions unless the recovery plan is short and the funding target is strong."

The third is:

"If the employer is weak and unable to support the scheme, we expect … shareholder distributions to have ceased."

These are all fine principles—in principle. The real question is how, or whether, they are in fact working. How many FTSE 350 companies has TPR intervened on in the last 12 months, and on how many occasions has it advised against or prevented shareholder distributions? Perhaps the Minister could give us an assessment of TPR's success in applying its three key principles.

Both amendments in this group offer a simpler and different approach to restrictions on shareholder distributions, but in contrasting strengths. Both have

the merit, it seems to me, of making responsible behaviour by employers more likely, and that is no small thing if there are 70 FTSE 350 companies out there needing effective intervention to protect employees' pension rights. I look forward to the Minister's response.

Lord Flight (Con): My Lords, I think we all understand the reason for these two amendments; whether one of these two or another amendment is to deal with the situation, it needs to be dealt with. I am slightly surprised that neither amendment would actually stop the payment of dividends. I think there is an argument that, where the finances obviously mean that a dividend cannot be afforded, the company should not be allowed to make a dividend payment. I am not sure that Amendment 27 or Amendment 84 addresses the issue as well as it might be addressed. The Government might have another look at what they want to achieve, which should be stopping payments of dividends where they cannot be afforded.

4 pm

Baroness Bowles of Berkhamsted (LD): My Lords, I signed the amendment of the noble Lord, Lord Vaux, and agree entirely with the principle of both these amendments. I was particularly drawn to the notion of having a threshold and notification, as provided by the amendment of the noble Lord, Lord Vaux. He circulated it for comment and therefore I signed it after some negotiations with him.

Put simply, if the deficit is large and the effort to close it is too small—smaller than the dividend—the payment of the dividend becomes a notifiable event. The sequel to that would surely be what the noble Lord, Lord Flight, has just pointed out: that it be looked at and perhaps in certain cases, though not all if there are other things that could be taken into account, the dividend payment be stopped. The point is that it is brought to the regulator's notice, rather than the regulator potentially having to look at an awful lot of dividends and payments being made. Indeed, how will the regulator even find out about them? The amendment of the noble Lord, Lord Vaux, solves that little loop of how the regulator gets to know about them and has a reasonable number to look at rather than being overwhelmed.

In our negotiations, we tried to find a formula to keep the momentum going to close the gap, even within the five years, as a lot can go wrong in that period. I got as far as something like "the ratio of the dividend to deficit not being greater than the reciprocal of the remaining years and not conveniently commutative". I concluded that, if I carried on in that way, I would have to put in a job application to Dominic Cummings.

More seriously—I refer here to the helpful meeting I had with the Minister and officials yesterday—I want to see some specific push in the Bill for the regulator to be tougher, including in setting the contribution schedule for paying down the deficits. As has already been explained by other noble Lords, TPR has come forward with a set of principles, but maybe it needs something to back them up and get them over the line in enforcing them.

In the meeting yesterday, it was pointed out that more powers are being given to the regulator in the Bill and that regulations will be forthcoming. That is well and good, but something has to make sure that the regulator is urged to use those powers and to be strong, especially in standing up to larger and more forceful companies and individuals. We know that the record there is not necessarily all that good. The policy impetus needs to come from government and Parliament; otherwise, there may be more power but no enforced policy shift.

We also know that boards will take advice on these kinds of matters and be told what the market norms are, or at least what other companies have done. If the dial is to be shifted, the advice has to be shifted. The way to ensure that advice is shifted is for there to be an indication of the policy in the Bill, because an adviser cannot go against that in their duty to advise the companies.

It was very good to hear that the new offences that we discussed on Monday—which seems a long time ago now—are wide enough to embrace advisers, but you have to get at what their duty is to those they are advising. There are lots of reasons to have something in the Bill to make sure that the principles already outlined by TPR have that backing to be enforced and have that effect. As I said on Monday, it should not be normal to accept overly long continuation of deficits just because a company is well capitalised.

There can be many claims on and reasons for that extra capitalisation—there may be lots of tentative reasons why they need it. There might be plans to spend it to buy another company. All kinds of things could be going on, and what looks like a good capital margin could actually be shoring up many other things as well as the pension deficit. What is the excuse to the Pensions Regulator? What excuse might be given to other sources? Some of the clever analysts may work out what is going on; the ordinary investor and the ordinary pensioner is unlikely to do so. Therefore, I support the principle of both the amendments: something should go in the Bill to push or shore up the Pensions Regulator in its actions.

Baroness Altmann (Con): My Lords, I rise briefly—I have added my name to one of the amendments—to support the concept that has been so well explained already by noble Lords and to echo the warnings that this is a very important time in our defined benefit pension system, as we still have employers attached to schemes and, in some cases, members contributing. Some schemes are still not completely closed. Once a scheme has closed to new members, it will not be too long before it closes to new accruals and it will effectively be in run-off. While there are still employers with an interest in the scheme and before we get to the period, which will come in the next 10 years or so, when there is no economic interest between the employer and the scheme and it is seen merely as a major liability—with more and more companies looking for ways to get around the deficits—now is the time to be collecting as much money as possible.

Obviously, one does not want to damage the ongoing viability of the employer, but there needs to be more recognition of the fact that the pension scheme is a debtor of the company—not all companies see it in that way—and the choice between dividend payment and deficit funding should not be just between the

[BARONESS ALTMANN]
interest of shareholders and the interest of pension scheme members. The pension deficit has people's lives attached, so there is a higher importance here.

When one looks at the provisions of the Companies Act 2006, in particular with reference to Amendment 84, Section 830 says that a company should not be permitted to pay out a dividend if it has not made sufficient profit to cover its costs or if there are losses in the company. What is not explicit, but is made explicit in the amendment, which was originally part of my noble friend Lord Balfe's Private Member's Bill, is that the accounting measure of the pension deficit does not reflect the actuarial reality as estimated by a scheme actuary, or perhaps by trustees, of the true scale of the obligation—in other words, potential losses—that the company faces. Therefore, redefining the accounting measure and taking account of the actuarial measure would put the payment of dividend on a different plane. That is to be reflected in Section 830A, which would be added after Section 830, in terms of justification for payment of a dividend that might otherwise look viable.

Baroness Neville-Rolfe (Con): My Lords, I look forward to hearing what my noble friend the Minister says about this and whether the sort of concerns that have been expressed are already dealt with somewhere else. A very good point has been made.

I want to ask a question on Amendment 27, in the name of the noble Lord, Lord Vaux. He talks about the value of the assets of the scheme, and my noble friend Lady Altmann made this point; there is a big difference between an actuarial valuation and an insurance valuation in a scheme. If you were to base this on an insurance valuation, you would catch quite a lot of pension schemes, including those which probably could pay some dividends. I was a little concerned about that, and I would like some clarification when we come to wind up on what is intended.

Baroness Drake (Lab): My Lords, I support the principle behind Amendment 27, in the name of the noble Lord, Lord Vaux, but equally I have sympathy with the comments of the noble Lord, Lord Flight. When it comes to dividends, the mischief may be done regarding money leaving the sponsoring employer's company before the regulator can mobilise its full armoury of powers. This is particularly true where the dividends are paid to parent companies overseas, where pursuing a legal route by the regulator may be difficult, even more so if we leave the EU, because jurisdictions will change—except possibly foreign-owned UK banks, where in fact the PRA has the power to intrude pre-emptively on dividends going over to the parent company. To that extent, there is an element of precedent, and the PRA would take into account the debt in the pension fund in considering the sustainability issue when it strikes a view on dividends paid to the parent company.

I give credit to the proactive approach that the regulator is now taking to red flag where there is a kind of big ratio between dividends and deficit payment. However, that must be retrospective. The issue is capturing that mischief at the point when the money leaves the company; I am particularly concerned about where it is a foreign-owned company. Therefore, if some way could be found—perhaps by the regulator working with the department—to embrace dividends in some way in the notifiable events regime, that would be helpful. It is a problem, and once the money is gone, it is difficult to chase it, particularly when you have to go to jurisdictions where the power of TPR may not be strong.

Baroness Sherlock (Lab): My Lords, the Committee should thank the noble Lords, Lord Vaux and Lord Balfe, for having enabled this debate. One gets a high quality of debate on pension Bills; it is very well informed indeed.

We have been left with three questions. Is there a problem? Is it getting worse? And what are we going to do about it? I think there is a pretty much unanimous view around the Committee that we have a problem and that it is not going to disappear. As more DB schemes close, they will pay out more in pensioner payments, leaving them less to invest and reap returns, so they will start de-risking their remaining investments. This is the moment we have to address that.

We know that there is a problem. As my noble friend Lady Drake said at Second Reading, the Work and Pensions Select Committee report highlighted that half of FTSE 350 companies paid out 10 times more to shareholders than to their DB pension schemes. However, in some ways the key issue is the ratio, which was touched on by a couple of noble Lords. TPR certainly mentioned it in its annual funding statement, and it drilled down in its *Tranche 14 Analysis* for DB pension schemes, published last May. It looked at the FTSE 350 companies that sponsor DB schemes as the main or primary sponsoring employer and said that it found that

"The median ratio of dividends to DRCs"—

deficit repair contributions—

"has increased from 9.2:1 in 2012 to 14.2:1",

in the latest figures available, so it has gone from nine to 14 between 2012 and last year. Clearly, this is going in the wrong direction. It noted:

"This is mainly driven by the significant increase in aggregate dividends over the period, without a similar increase in contributions."

Therefore we have a problem. The regulator itself said in its last funding statement that it remains

"concerned about the disparity between dividend growth and stable DRCs",

and it highlighted recent corporate failures. If the regulator is concerned, then the Minister should be concerned.

The Minister's argument may be that the regulator already runs an internal control system, where it flags high dividend payments. A number of noble Lords, however, made the point that it is retrospective and that, depending on the valuation, it may not pick up all the areas where there is a problem. Noble Lords also cited TPR's funding statement, which set out the key principles behind its expectations about what should happen when an employer is weak, the ratio is high, or the employer cannot support the scheme.

Can the Minister assure us that there are not more cases coming in with high ratios and long recovery plans? The TPR says it is going to stop that. Is it not a

problem anymore, or is there a target for when it will not be? TPR could refuse to agree a funding strategy for a scheme in various ways but, as my noble friend Lady Drake pointed out so clearly, that is, first, retrospective; secondly, what happens if the money goes overseas? I would be grateful if the Minister could pick that up.

4.15 pm

We all think there is a problem; the question is how we go about addressing it. The noble Lord, Lord Balfe, said that his was a strong way to attack it, and the noble Lord, Lord Vaux, has come up with the notifiable regime as a way to do it. Whatever the Government are going to do, they need to do something about this.

Perhaps I could highlight some areas where action is needed, where dividends are high relative to deficit payments in DB schemes. There are particular circumstances: for example, where there is a real risk that money in dividends is an effective form of employer debt avoidance; where it downgrades the status of the pension scheme as a creditor to which the employer owes money; or where it raises the risk that the dividend payments are at a level that they could materially threaten the strength of the employer, which will in turn risk the strength of the scheme. We know that this is a problem because the regulator has had to deal with real, high-profile cases.

The questions for the Minister are: does she accept that there is a problem, and does she agree with the regulator that it is getting worse? If the answer to both those questions is yes, what is she going to do about it? Does she like the way forward proposed by the noble Lord, Lord Balfe, or does it feel too intrusive? Would she prefer that of the noble Lord, Lord Vaux, or does she think that would not work? That leaves her with only two possibilities. One is that she thinks that the powers the regulator has now, or will have soon, are enough. In which case, can she tell us how that will solve the problems described here? The other is that she has another way of dealing with it, which we do not yet know about. Which of those is it?

I urge the Minister to think hard about this because if the next scandal, one comparable to BHS or Carillion, turns out to be a company that shipped a load of money out the door just before it went down, it will not look very good if the Minister has had the opportunity to tell us how to solve it and has been unable to do so.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): I thank the noble Lords for tabling these amendments and all noble Lords for their contributions to this debate. It would be helpful to consider these amendments together, as they seek to address the payment of dividends when a defined benefit pension scheme is in deficit. One amendment seeks to prevent the payment of a dividend unless signed off by the trustees and the regulator; the other would require the sponsoring employers of pension schemes to submit a notice and accompanying statement to the regulator and to trustees when the employer declares a dividend in certain circumstances.

I do not think that the amendment to the Companies Act would have the effect that I believe is intended, as there are various technical problems with it. I will not go into these now, as it is more important to address the principles. The Government agree that defined benefit pension schemes in deficit should get a fair proportion of the resources available to employers.

The Government believe that they are taking a proportionate approach. The problem is not the payment of dividends; it is that some companies do not pay enough into their defined benefit pension schemes as part of the recovery plan when the scheme is in deficit. We believe we can address this problem proportionately without inhibiting reasonable dividend payments, which are a legitimate and essential part of normal business activity. We inhibit investment in UK business at our peril. A strong, profitable employer is the best possible protection for pension scheme members.

In addition, I should point out that pension schemes are also major investors. They receive significant dividends, and inhibiting or blocking these payments would impact their income and funding position.

The Pensions Regulator can, and does, take action to ensure that sponsors treat their schemes fairly. For example, in one case, a defined benefit scheme is now better funded after an upfront payment of £10 million, a reduction in the recovery plan length from 13 to seven years, annual deficit recovery payments of £3.7 million and a commitment to stop dividend payments for six years.

Information about dividends paid by these companies may be needed, but this is already available for public companies and can be obtained for private ones. The regulator takes this into consideration when it is looking at risks to a pension scheme. It would be disproportionate and unnecessary to require the sponsoring employers of pension schemes to submit a notice and accompanying statement to the regulator when the employer declares a dividend. Provided that a suitable recovery plan is in place, and the employer has the resources to pay the additional deficit repair contributions agreed, the company should be able to choose what it does with the remainder of the distributable reserves—it is rightly subject to business priorities.

But we do need to do more to ensure that the regulator can take a tough line where needed. That is why we are taking a power in this Bill to set out more clearly in secondary legislation what is required for an appropriate recovery plan. The secondary legislation will be informed by the regulator’s consultation on its revised funding code, and will work in tandem with it. The code will set clear expectations on what is an acceptable recovery plan, include guidelines on recovery plan length and structure, and support the regulator in enforcing these standards.

I turn now to some of the specific questions raised. The noble Lord, Lord Vaux, asked why the requirement under new Section 69A for a notice and accompanying statement cannot be included the Bill. New Section 69A is intended to give the Pensions Regulator information about events that pose greatest risk to pension schemes. The range of events for which a notice and accompanying statement must be given will be varied and will likely change in time. As such, the Government consider this to be a matter that is appropriate for secondary legislation. By setting out the range of events that are subject to the notification requirement in regulations, this enables

[Baroness Stedman-Scott]
new events to be added, or existing events to be removed, in order to keep pace with changing business practices.

The noble Lord, Lord Vaux, asked: why do we not propose to require a notice and accompanying statement when a dividend is paid? Dividends paid by companies with a pension scheme surplus, or those where an appropriate recovery plan is in place and deficit repair contributions are being paid, are unlikely to have adverse impact on the scheme or require any mitigations. A notice and accompanying statement about dividend payments by these companies would be unnecessary, and handling this information would be an ineffective use of the Pensions Regulator's resources. Instead, the regulator will focus on companies where schemes are in deficit and where an appropriate recovery plan is not in place. Information about dividends paid by these companies may be needed, but this is already available for public companies and can be obtained by private ones.

The noble Lord, Lord Vaux, asked: if dividends are not limited, is there not a risk that all the money will be gone before the needs of the scheme are considered? The trustee and sponsoring employer agree an appropriate funding target and deficit repair contributions to eliminate any deficit over an appropriate period. If an appropriate recovery plan is not in place, the regulator has powers to impose a schedule of contributions. Provided that an appropriate recovery plan is in place and the agreed deficit repair contributions are being paid, it is right that how other resources are used is a matter of business priorities. It would not be helpful or proportionate for the payment of dividends to be notified to the regulator.

Of course, there is a risk that excessive dividend payments could be made, which could result in the sponsor being unable to meet its obligations to make payments as part of the recovery plan, but this is very much the exception rather than the rule. We think that intervention to prevent dividend payments in some circumstances poses a greater risk of inhibiting investment in UK business and that our approach can deter inappropriate dividend payments and put things right if that happens.

The noble Lord, Lord Sharkey, requested information about the regulator's success in engaging with employers, and we will write to the noble Lord with that information.

Baroness Drake: Does the Minister accept that a regime for notifying dividends is not necessarily the same as stopping the payment of dividends?

Baroness Stedman-Scott: I will carry on and answer the question from the noble Lord, Lord Flight, and then I will answer the question asked by the noble Baroness, Lady Drake.

The noble Lord, Lord Flight, asked what the Government are doing to reform the UK's dividend regime. The Department for Business, Energy and Industrial Strategy is considering the case for requiring companies to disclose information about their distributable reserves from which dividends are paid. The Institute of Chartered Accountants in England and Wales has been asked to provide technical advice and options for doing so. It is expected to report shortly. Sir Donald Brydon's recent independent review into the quality and effectiveness of audit recommended that directors make a statement that the proposed dividends would not threaten the existence of the company and are within known distributable reserves, and, in some circumstances, that the distributable reserves should be subject to audit. Further consultation on this is expected later this year. The department has welcomed the Investment Association's recommendation to companies that they should publish a dividend policy setting out the board's long-term approach to making decisions on the amount and timing of return to shareholders.

In answer to the question asked by the noble Baroness, Lady Drake, yes, notifying is different from stopping. We do not want to stop them; we want to focus on ensuring that an appropriate recovery plan is in place. Things can be put right.

The noble Baroness, Lady Bowles, asked how the Pensions Regulator knows what resources the employer has and whether a recovery plan is appropriate. In assessing the appropriateness of a recovery plan, the Pensions Regulator looks at the strength of the employer covenant, which is a measure of the ability of a scheme's employer to support the scheme now and in future. The regulator takes account of a range of employer-specific information, including underlying trading strength and trajectory, profits, cash flows, debt structure, market risks and opportunities, asset strength, and insolvency risk. This can come from a range of sources including statutory accounts, publicly available information such as credit ratings, market analysts' views, sectoral analysis and analysis performed by the trustees, the employer or its adviser. The regulator will also focus on how a company uses the cash flow it generates to assess whether a scheme is receiving an appropriate and fair share of these amounts. Greater clarity will be provided through the provisions we are proposing in the Bill, and the regulator intends to set clearer guidelines on recovery plan length and structures for schemes in different circumstances. This will help to improve regulatory grip and make enforcement easier.

The noble Baroness, Lady Bowles, also asked how we will ensure that companies with significant available resources address defined benefit pension scheme funding shortfalls more quickly. Most employers do the right thing and treat their schemes fairly, but we know that this best practice is not universal and that some employers are not devoting a fair proportion of available resources to paying down deficits. We are determined to do something about this.

4.30 pm

The Pensions Regulator already takes action to ensure that sponsoring employers treat their defined benefit schemes fairly, but with the help of the measures in this Bill, the regulator can and will be tougher. The regulator is consulting on a revised funding code, which will set clear expectations on what recovery plan lengths and structures are acceptable, and we are taking a power to set out more clearly in secondary legislation what is required for an appropriate recovery plan. We will work closely with the regulator during the consultation and ensure that our regulations support

its ability to take action against employers that do not pay a reasonable proportion of their available resources to bringing down any pension scheme deficit.

In the absence of detailed evidence as to why it is essential in the circumstances of the employer, the regulator is unlikely to recognise a need to pay dividends as reasonable justification for an overly long recovery plan. Where an appropriate recovery plan is not agreed, the regulator will consider using its powers to impose a suitable recovery plan, so that the scheme gets a fair share of the available resources.

The noble Baronesses, Lady Drake and Lady Sherlock, asked whether we should prevent dividend payments going to shareholders outside the UK. According to the latest ONS figures, nearly 54% of the value of shares in UK quoted companies are held by investors outside the UK. There are no grounds for treating overseas and domestic shareholders differently. The UK would be a significantly less attractive economy in which to invest if foreign shareholders enjoyed lesser rights than UK shareholders.

The noble Baroness, Lady Sherlock, asked about the ratio of dividends to DRCs. I am advised that we will write to her on that.

I hope noble Lords will recognise that the measures I have outlined to strengthen funding, which are to be found elsewhere in this Bill, are the best way to tackle employers that do not direct an appropriate proportion of available resources to managing the pension scheme deficit. As such, I urge the noble Lord to withdraw his amendment.

Baroness Sherlock: My Lords, I want to pursue a couple of points. I am a simple soul compared to many around the table who can come back to the noble Baroness on the detail. However, I think that she has just said in summary that the regulator knows that some companies have a problem in this area but feels that, by and large, the current regime gives it the tools to deal with it; where there is a gap, it will deal with it by secondary legislation, which will be clearer about the requirements for an appropriate recovery plan; and that anything above that, such as notification, will be disproportionate and unnecessary. I invite her to correct me if I am wrong.

I will bring her back to what is missing from that statement. First, it is pre-emptive and proactive in nature. Neither I nor the noble Baroness, Lady Drake, said that separate rules should be set up for overseas shareholders or companies with them. We were making the point that one of the reasons that it would be useful to have a notification requirement, as set out by the noble Lord, Lord Vaux, would be so that money would not be taken out and the regulator would not then have to go after it—rather, it would get advance notice that this was going to happen and could see whether it was appropriate. The point about overseas companies was simply that, if money goes overseas, it is much harder and more expensive to get it back if the regulator goes after it.

I come back to my question: why do the Government not believe that it would be useful to have some requirement that companies should notify the regulator if they declare a dividend where there was a DRC in place? Why is that a problem?

Baroness Stedman-Scott: Requiring the payment of dividends to be reported is not necessarily very helpful to the regulator. It is likely to inhibit legitimate business processes without getting more resources for the scheme. We need to take a proportionate approach. We think that the priority is to ensure that a suitable recovery plan is put in place that takes account of the full range of circumstances of the employer and the scheme.

Trustees and the regulator need to look at a whole range of demands on the employer's resources. Dividends are just one of these. Others may include maintenance of its business, and investments in its sustainable growth and debt repayments. All of these need to be considered in deciding whether a recovery plan is fair.

The Pensions Regulator scrutinises all valuations and recovery plans submitted, assesses the key risks, and assesses whether further engagement and potential enforcement action is required. Measures in the Bill will help to clarify exactly what is required for an appropriate recovery plan. Along with the regulator's revised funding code, these measures will make it clear to trustees and employers what is expected, and will support the regulator in taking enforcement action where necessary. Provided that an appropriate recovery plan is in place, how the employer chooses to spend the remainder of its free resources is rightly a matter of business priority.

Baroness Donaghy (Lab): I have listened carefully to the debate and cannot help but think that this is not sufficiently fleet of foot to prevent those such as BHS and Carillion—there is recent past history on this—which were basically giant Ponzi schemes towards the end, where they were paying dividends instead of funding the pension scheme, had deliberately obscure governance rules and left their pensioners bereft of a considerable proportion of their money. Is this system sufficiently fleet of foot? Would it take account of a company which then decided to sell itself to another person for, for the sake of argument, £1? Would it help to cover the situations covered by the amendments? It does not sound to me as though we are doing anything different from just saying, "Everybody has the right to the appropriate dividends." How do we know that those dividends are appropriate, and how do we have power for the regulator to ensure that there are not some really bad guys out there?

Baroness Stedman-Scott: The noble Baroness makes some valid points. We consider that dividends are paid at a point in time. The regulator needs to form a picture of the employers' ability to pay and, for a period in the future, needs to see the whole picture.

Baroness Sherlock: Can we try to narrow the point of difference? The Minister is often being given briefings which cover points with which no one disagrees. To interpret her last answer to me, the Government are saying that they do not want every company to tell them why they are paying a dividend because there will be too much information and it will take too much resource to process, rather than focusing on things that raise a particular problem. However, the amendment from the noble Lord, Lord Vaux, does not suggest that; it simply suggests that, in some very specific circumstances, there should be a notification of a declaration to pay

[BARONESS SHERLOCK]
a dividend. He suggested that those circumstances are that there will be a dividend, there is a deficit on the scheme, the amount of the dividend exceeds the DRC and a ratio between the different on the valuation. If the Government think that those are the wrong criteria, they could suggest alternative criteria. I am trying to get to the bottom of what is the problem of saying, "In certain circumstances where there could be a risk, it will be helpful to have a requirement on companies to notify the regulator as part of the notifiable events regime so that it can then do something about those risk situations"? Why is that a problem?

Baroness Stedman-Scott: The last word I would use to describe the noble Baroness is simple; that is not the case. She and other noble Lords have raised some interesting, valid and appropriate points on this issue. I believe that the best way that we can delve down into this and, I hope, give the comfort that they are looking for, is to meet to discuss it outside the Committee, which we are happy to do.

Baroness Drake: I would just say that my argument is not with the noble Baroness personally; she will be provided with the arguments to answer the points we are asking. The argument she put was that the recovery plan would be the route through which one would deal with an excessive payout of dividend, but the recovery plan is also based on an assumption about the strength of the sponsoring employer covenant. If, after that recovery plan is settled, there is a huge dividend payout—particularly to an overseas parent—which impacts the strength of that covenant, I cannot believe that the regulator would sit there and say, "We will wait until the next actuarial valuation and the new recovery plan before we act". It would act: it has a range of powers to act straightaway. If there is a material change in the constituent elements that went into the recovery plan, the regulator has to act. A major excess of dividend payment from the sponsoring employer could materially impact the covenant strength. That is already in legislation. We just want to capture the impact of the high levels of dividend payment.

Baroness Stedman-Scott: I thank the noble Baroness for the points she has made. I think we should put this into the conversation that we will have to try to give answers which give noble Lords the comfort they need. My officials will call a meeting, and we will look at *Hansard* and try our very best to answer all the specific questions and allow further debate to resolve these issues.

Lord Balfe: May I also be included in this meeting?

Baroness Stedman-Scott: Of course.

Baroness Bowles of Berkhamsted: The point made by the noble Baroness, Lady Drake, is similar to the point that I was going to make. Some of the answers the Minister gave, in particular to my questions, were good and comprehensive, but they rely on having an appropriate plan in place. The point is that there are times when the appropriate plan is no longer appropriate, and at that point it all falls apart. I think what the Minister has said is that in regulations there will be things that will allay some of our fears, but it would be nice to have something about that in the Bill, because otherwise we are taking it on trust. It is not that we inherently mistrust the Minister or her officials. Of course there have been previous framework provisions that have been remarkably empty of policy, but that does not make it correct. The Government and this Parliament make policy. Regulators do not make policy; they shy away from it. There is no greater making of policy than putting it in the Bill.

Baroness Neville-Rolfe: I would also like to be involved in the further talks. We have to try to find a way of dealing with big risks between recovery plans without gungeing up the system for the regulator so that it cannot focus on what matters rather than on what does not matter with the bureaucracy overtaking the objective.

Lord Sharkey: I also want to be invited. A critical feature of the discussion is the effectiveness of TPR. When we have the meeting—to which almost everybody seems to be invited—it would be very helpful to have a detailed discussion on what assessment the Government have made of the performance of TPR against its three key principles, certainly in the past year and perhaps slightly longer. I know the Minister gave an example of TPR being effective, but that was one example and I would like to see more data on why we should have faith in TPR's ability to police this scheme or any scheme.

Baroness Stedman-Scott: We will pass a piece of paper around, and if noble Lords will write their names on it, we will make sure they are all invited.

I am sorry if I am repeating myself. I am well aware of the expertise of noble Lords in this Room who work in the industry. It is highly regarded and highly respected. The message in the points that noble Lords are making is received. We will meet to talk about them in more depth. That will give officials more time to reflect on the very detailed questions that noble Lords have asked, collect data, answer some of the exam questions and try to come to a place where we all understand and agree on what we are trying to do. We take it in that spirit. In that spirit, I ask the noble Lord to withdraw his amendment.

4.45 pm

Lord Vaux of Harrowden: I thank all noble Lords who have taken part in this excellent debate and the Minister for agreeing to meet with us—given the number of us wanting to attend that meeting, I slightly wonder whether we should not adjourn and have it now.

This debate has demonstrated a very clear feeling that there is a potential problem here and, as I said in introducing the debate, I have quite a lot of sympathy with the idea that getting too heavy-handed could damage the companies and notifying everything could clog up the Pensions Regulator. I do not disagree with any of that.

The noble Baroness mentioned that this risk is the exception; we are talking about the exception here and trying to make sure that it does not happen. There is a balance to be found. My amendment may well not be

the right balance, but it was an attempt to find some sort of balance or at least to work our way towards one. There is also a danger of overcomplicating.

When we meet, we need to sit down and work out where that balance lies, and this issue needs to be dealt with in the legislation. It is too important. We cannot afford another BHS or Carillion situation. However, on that basis and looking forward to the meeting, I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Clause 109 agreed.

Clause 110: Interviews

Amendment 28

Moved by ***Baroness Altmann***

28: Clause 110, page 97, line 2, at end insert—

"72B Provision of information: further provision

(1) The Regulator may, by notice in writing, require the trustees of a scheme to which section 35 of the Pensions Act 1995 applies to provide information as set out in subsection (5).

(2) A notice under subsection (1) may include a requirement for information—

(a) to be disclosed to the Regulator on a periodic basis, and

(b) in respect of specified periods of time.

(3) Where the provision of information is required by a notice under subsection (1), the information must be provided in such a manner, at such a place and within such a period as may be specified in the notice.

(4) The Regulator must publish information provided in respect of the provisions set out in subsection (5) on its website within one month of receiving it in a form that is searchable and easily accessible.

(5) For the purposes of subsection (1), information to be provided on request of the Regulator is any information set out in—

(a) regulation 29A of the Occupational and Personal Pension Scheme (Disclosure of Information) Regulations 2013 (publishing charges and transaction costs and other relevant information), and

(b) paragraph 30 of Schedule 3 of the Occupational and Personal Pension Scheme (Disclosure of Information) Regulations 2013."

Member's explanatory statement

This amendment would place a reporting duty on the Pensions Regulator to publish statements of investment principles (SIPs) under section 35 of the Pensions Act 1995. The amendment would place a requirement on the Pensions Regulator to create a SIP repository, accessible to the public through its website, so that all scheme members could check their scheme's investment strategy.

Baroness Altmann: My Lords, I rise to move Amendment 28 in my name in this group and will speak to Amendment 92, to which I have added my name. I also support a number of the other amendments. The noble Lords who tabled them will obviously rise shortly to expound on their own aspects of this issue.

The main area this group deals with is the environmental impacts that pension funds can have. We have £1.3 trillion of pension assets; they can help tackle climate change. Our country will host the COP 26 in December, at which we will have the opportunity to show world leadership in our thinking on climate change and policies to address these issues.

Climate change, as most of us believe, poses a potentially material risk to pensions and financial assets. The insurer Aviva estimates that investors could lose £2.7 trillion from investment value globally due to climate change. I am delighted that the Government have tabled amendments giving Ministers a power to require pension schemes to disclose how they manage climate-related financial risks in line with the more detailed, granular requirements of the Task Force on Climate-related Financial Disclosures.

I support those amendments, but the Government have said that they will require only large schemes to report in line with the TCFD disclosure requirements. They have not said what "large" means, but I assume it will probably not include schemes with fewer than 5,000 members, for example. These smaller schemes still need to manage the risks to savers' pensions potentially posed by climate change. Amendment 28 is therefore calling for the Pensions Regulator to create a compliance framework based on a public register of schemes and ESG—environmental, social and governance—investment policies.

In October 2018, the Government changed the law to require UK pension scheme trustees to prepare a policy on how they manage the financially material risks arising from issues such as climate change. Trustees are required to state these policies in their statement of investment principles, a statutorily mandated document which all schemes are required to have. Trustees should have updated these statements by 1 October 2019. Some schemes were required to publish them at that point.

However, the UK Sustainable Investment and Finance Association has reviewed—with the help of the Pensions Regulator—the policies of a representative sample of these UK trust-based pensions. For those schemes, representing 3 million or so savers, its report found clear evidence that "large scale non-compliance" with this requirement exists and that trustees had not been publishing their statement of investment principles. Two-thirds of the schemes in its sample had not published, and of those which had the policies were pretty thin and noncommittal.

It is not exactly clear why trustees are failing to disclose and comply with this new law. The UK Sustainable Investment and Finance Association has suggested that it may be because smaller schemes—schemes with fewer than 5,000 members, let us say—do not have a website, so the administrative burden of publishing these statements and complying with the law has proved overly taxing for them. There has therefore been a recommendation that the Pensions Regulator should be given a duty to obtain these statements of investment principles and publish them on its own website in a central registry. Amendment 28 seeks to insert this into the Bill.

If the Pensions Regulator has the power to obtain and publish these statements of investment principles, it will obviously be able to remove the administrative burden from the schemes. It will also give the regulator a much better ability to monitor compliance with these requirements. It will improve the transparency

[Baroness Altmann]

and scrutiny of the schemes' policies to manage these environmental, social and governance risks, as well as providing the industry with a resource to find out about and share best practice. Importantly, it would allow scheme members to see their own schemes' investment policies. These are the reasons why I urge the Minister to consider whether we might be able to insert this provision into the Bill.

The notion of a public register of these statements of investment principles and implementation statements could be a powerful way to drive up trustee awareness of action on the risks arising from climate change. It would allow monitoring and scrutiny of what these schemes currently do better to educate those which may not be compliant—some of these laggards, perhaps—about what the leading trustees and schemes are doing. Campaign groups could scrutinise this. Ministers could also scrutinise and report on the issues that are so important and potentially powerful in allowing our country to be a leader in this field, given the size of our pension assets. They dwarf those of most other countries, particularly in Europe. It could help to fill an important hole in the Government's overall climate change strategy.

The Government are of course right to mandate that the large schemes are going to do this. As I say, I support the government amendments, but we should also bear in mind that this is a question of protecting all pension savers' money—not just in the large schemes but in all schemes—from the risk of climate change. Therefore to expose workers in small companies or small schemes to more financial risks from climate change does not seem an effective way forward. We have an opportunity in the Bill to make a real difference. There is scope to help the pensions industry be better able to address the financial risks of climate change and to be better aligned with the interests of savers, who will increasingly be concerned about these issues. This is an opportunity to put our pension funds and pension industry on a more sustainable footing and, if noble Lords will forgive this play on words, it can also include sustainable investments in relation to climate and environmental sustainability.

I have added my name to Amendment 92 in the name of the Baroness, Lady Hayman, and I support Amendments 75 and 89, which talk about requiring schemes to align their portfolios with the Paris agreement objectives. The UK Government need to ensure that pension investment portfolios are aligned with, for example, the UK's emission reduction targets. Pension funds also need to act to protect their beneficiaries' savings from these financial risks. For example, research from the leading consultancy Mercer has found that for nearly all asset classes, regions and timeframes, a 2 degree increase in global temperature scenario would lead to much better projected returns than if there was a 3 or 4 degree increase in global temperatures. The requirements in these amendments would not necessarily involve disinvestment from any particular sector; it does not direct how the trustees must invest. It would involve trustees in assessing whether their assets in their portfolios have a clear strategy for, for example, aligning their business model with the UK emissions reduction timeline and taking appropriate action. That would also give the companies clear incentives to develop Paris-compliant business models and invest in low-carbon opportunities, making it much easier for the Government to achieve their own targets.

Amendment 92, in the name of the noble Baroness, Lady Hayman, would help to facilitate this by requiring pension schemes to report against the Task Force on Climate-related Financial Disclosures framework. The amendment would ensure that all pension schemes have to report against the same frameworks, so there is commonality here, and, as I say, it does not dictate that schemes have to pursue a particular investment or disinvestment strategy. It would be left to the trustees. Operational independence, which is, of course, an important part of our system for trustees, is maintained. However, the requirement to disclose how the trustees are mitigating climate risk should also help to drive up standards of trusteeship, as well as protecting these assets and enhancing the UK's global role in tackling climate change and other related issues.

I beg to move, and I look forward to the debate, other noble Lords' contributions and the Minister's response.

Baroness Hayman (CB): My Lords, I added my name to Amendment 28, which the Baroness, Lady Altmann, has just cogently explained to the Committee. I will speak to that, as well as to my own Amendment 52, about the information available for dashboards. I shall also speak to Amendments 74, 75, 76 and 92, which, as the noble Baroness mentioned, seek to strengthen the Government's welcome Amendment 73, which recognises the salience of climate change to pension funds and to the Bill. I remind the Committee of my interests as co-chair of Peers for the Planet, and that my son works for Make My Money Matter.

5 pm

The rationale behind all the amendments to which I am speaking relates to the climate crisis and the ways in which it needs to be taken into account in pensions legislation and regulation. There are three main areas of focus and salience for doing this. The first is to ensure transparency, so that individuals have the relevant information and therefore the choice over, and power to influence the behaviour of, the funds in which they are invested, on which they will depend for their pensions now or in the future. There is much survey evidence to show that this is a priority for savers and that there is an appetite for environmentally responsible investment. In an article in the *Telegraph*, the then Secretary of State for Work and Pensions, Thérèse Coffey, and the outgoing Governor of the Bank of England, Mark Carney, said:

"People must be able to see and understand whether their funds are invested in line with the values that they hold."

The second driver of these amendments is to protect the interests of savers by shining a spotlight on how effectively scheme managers and pension funds are planning for, and mitigating the risks of, the effects of climate change. As the noble Baroness, Lady Altmann, said, there have been a large number of surveys and reports, such as from Mercer and Aviva, as well as the research by JP Morgan reported in the papers this weekend, which paint a grim picture of the effects on

financial institutions and the economy if measures are not taken. Climate change and the threats to the economy that it poses are financially material issues for funds. It is clearly part of the fiduciary duty of pension fund trustees to act in the long-term interests of investors. This is fundamental information, which should be available in dashboards and other areas.

The third element behind these amendments is to encourage pension funds to use their huge economic power to play their part in meeting our 2050 targets and in transforming our economy to thrive in a low and zero-carbon environment. UK pension funds hold more than £1.6 trillion in assets. The size and influence of pension schemes mean they have a vital role to play in ensuring that the UK meets its climate commitments, as the Environmental Audit Committee noted in its *Greening Finance* report.

Those are the rationales behind the amendments. On Amendment 28, as the noble Baroness said, the report by the UK Sustainable Investment and Finance Association showed that two-thirds of schemes were not actually publishing their SIP. The proposal in the amendment to set up a registry—which has been done before with the modern slavery registry—is a good example of how this could work. It would ensure that all schemes would be covered and that all ESG, not just climate change, would be covered.

I would also support Amendment 36 in the name of the noble Baroness, Lady Bennett, which goes slightly wider by ensuring that implementation statements and chairs' statements would be made available to the Pensions Regulator.

My Amendment 52 would ensure that consumer dashboards include information on how pension schemes' investments align with the UK Stewardship Code and the objectives of the Paris agreement. As well as supporting transparency, there is a strong interest among savers in environment, social and governance issues, so the provision of greater information can also help to drive an increase in savings. DfID research into people's views on sustainable investment has shown that more than two-thirds of UK savers would like their investments to be responsible and impactful. Aviva, which has done much work in this area, found that 57% of people expect ESG or ethical investment options in a workplace pension and 30% say that pension providers are responsible for making sure that their savings are used for good, yet most pension savers are invested in non-ESG funds. Most savers are unaware of how their pension savings are invested and of the impact that they can have, and approximately 97% of savers are invested in the default funds, which invariably take little account of ESG and are far from Paris aligned. Dashboards will be extremely significant as a portal for savers, investors and pensioners to know what is happening to their money, and it is therefore important that they have a full range of information on these issues.

Again, the noble Baroness, Lady Bennett, has tabled Amendments 67A and 67B in this area, and I support them.

My last set of amendments—Amendments 74, 75, 76 and 92—is aimed at enhancing and strengthening government Amendment 73. I pay tribute to the Minister for instant action. The original Bill made no mention of climate risk, and it was pleasing to see that the Government issued this amendment to insert a new clause to ensure that there will be secondary legislation to create an oversight, disclosure and compliance regime, in line with the TCFD recommendations, for occupational pension schemes in relation to climate risk. However, the Minister will not be surprised that, having given something and opened the door, I will try to push it a little further.

At the moment, Amendment 73 relates to occupational pension schemes. Amendments 74 and 76 cover all pension schemes. I would be grateful to know from the Minister the number of people who would be excluded under the Government's amendment rather than my amendments, which would include everybody, and the rationale for excluding those people.

Amendment 75 is important, as it would ensure that the proposed regime imposes requirements on trustees or scheme managers to ensure that schemes are aligned with the objectives of the Paris agreement to hold the increase in the global average temperature to below 2 degrees. I think we all know by now that what we are talking about is 1.5 degrees. The UK has set itself a clear target; we have COP 26 this year; and we are aiming to be a beacon of achievement in many areas. This is one area where we could shine as that beacon. Not to align the pensions industry with the Government's overall objectives is to miss an opportunity.

Lastly, my Amendment 92 seeks to ensure that there is a clearer timetable for consulting on the implementation of TCFD recommendations. We now have a clear timetable in statute by which we must reach net zero, so we need a correspondingly clear timetable for aligning the finance sector with the Paris objectives. We, and others such as ShareAction, believe that new regulations can and should be introduced by next year, so my amendment would set a timetable both for the commencement of the consultation and for the Government's report on the results of that consultation.

There are other amendments in this group aimed at the same objectives. I will be interested to hear what other members of the Committee have to say and the Minister's response.

Baroness Bennett of Manor Castle (GP): My Lords, I thank the noble Baronesses, Lady Altmann and Lady Hayman, for their powerful, comprehensive introductions to this group. I shall try not to repeat what they said, which covered much of the ground that I would have covered. I shall speak specifically to Amendments 36, 67A, 67B and 97, which are tabled in my name, and to Amendment 52, to which I have attached my name. Just to make life even simpler for novice amenders like me, Amendments 67A and 67B were previously Amendments 55 and 56. For simplicity for anyone who is looking at the old paperwork, Amendment 55, now Amendment 67A, refers to environmental and social governance, and Amendment 56, now Amendment 67B, asks for the views of beneficiaries to be taken into account. I hope that makes things clearer.

The noble Baroness, Lady Altmann, said that she believes people believe in the climate change crisis. I would go somewhat further and say that I know there is a climate emergency and I think the world knows

[Baroness Bennett of Manor Castle]
there is a climate emergency and has acknowledged that through international declarations. I also stress the point that both noble Baronesses referred to previously: that as host of COP26, we have a particular responsibility to lead the world this year in measures such as this.

As the noble Baroness, Lady Hayman, said, Amendment 36 essentially mirrors Amendment 28. The drafting is different, as is the insertion point. I will leave it to those who know a great deal more about legal details than I do to work out which might be preferable. However, proposed new subsection (6B) goes further, because as well as having a statement of investment principles—principles are great, but what matters is what is actually happening—it requires the most recent version of the implementation statement, which states how the SIP is being implemented, and the most recent version of the statement of the chair, who is accountable for what is happening. Will the Minister consider this as a possibility?

Amendment 67A covers much the same ground as Amendment 52, which was focused on the climate emergency, but goes further by talking about environmental, social and governance factors. I am not sure how many noble Lords were at the Fairtrade Fortnight event down the corridor, but I am sure it was not just the really delicious tea, coffee and hot chocolate that produced a packed room. There is grave concern about poverty, hunger, access to education and the situation of women and girls around the world, and the way in which investment can make a difference. This amendment seeks to ensure knowledge about what people's money is doing to address those issues; it is broader than looking at just the climate emergency.

Further to that, the world is having a major conference on biodiversity and addressing the nature crisis, the accompanying crisis to climate change. We cannot afford to simply look at the climate emergency on its own. We have to look at the broader framework. The world is doing this through the globally agreed framework of the sustainable development goals. ESG is a way of asking whether we are addressing those goals. People will have the choice; as other noble Baronesses have said, we are not mandating what happens but trying to ensure that people have a choice and know where their money goes.

Amendment 67B closely relates to Amendment 92. There is rightly a lot of focus these days on transparency in decision-making and how people know that decisions are made. I quote the Pensions Minister, who said that pension schemes,

"ought to be thinking about the assets which help drive new investment in important sectors of the economy … which deliver the sustainable employment, communities and environments which all of us wish to enjoy".

However, I refer back to the advice from the Law Commission to trustees that they,

"may not impose their own ethical views on their beneficiaries".

I would argue that the legislation as currently drafted puts trustees in a difficult position, because they are not allowed to impose their own views but there is no mechanism directing where the choices should be made from. If we provide a mechanism by which schemes are directed to consult their beneficiaries, that will provide the guidance that the trustees need.

We seem to have been going for a very long while. I hope that this covers the main points of the amendment I have put forward. I look forward to the contributions from others who have put forward amendments, and to the Minister's response.

5.15 pm

Lord Flight: My Lords, I want to point out that Amendment 28 is important because members of pension schemes do not generally have much knowledge or understanding of how their assets are invested and managed. This clause places a reporting duty on the Pensions Regulator to publish statements of investment principles under Section 35 of the Pensions Act. The amendment would also place a requirement on the Pensions Regulator to create an SIPP repository, accessible to the public through its website, so that all scheme members could check their scheme's investment strategy.

It will be interesting to see how investment strategies are described. I think that it will be necessary for them to be described in a way that is readily understandable by all citizens.

Baroness Janke (LD): My Lords, my Amendment 89 relates to the occupational pension schemes regulations in the statement of investment principles. Again, it is about compliance with the Paris Agreement, particularly to hold the global average temperature increase to well below 2 degrees centigrade. Other amendments in the group seek compliance in this area.

It is clearly very important to protect the interests of savers and the economy. I am grateful to the Minister for her amendments on climate change risk, her speedy response and her awareness of issues arising in this area. I have also supported Amendments 75 and 92. I certainly support Amendment 28 from the noble Baroness, Lady Altmann, on the register and publication of the SIPPs from all pension schemes, and understand the administrative problems of smaller ones.

As we have heard from others, the size of the pension fund is hugely influential, particularly in transforming the economy into a green economy. I believe that pension schemes have had enormous effects in other areas. My own recollection is of South Africa, where schemes exerted very strong influence. In my city of Bristol, when creating a smoke-free city, we sought to get the pension schemes and their investors to support it. This can be a very powerful instrument in changing behaviour and thinking; I hope that it will be.

The noble Baroness, Lady Hayman, mentioned that her amendments extend to all pension schemes. Again, I am not clear what the differences are. I note that the briefing from the ABI suggests that the PRA and the FCA are better placed to deal with the smaller pension schemes, but I would like to hear the views of the Minister on this. I very much support the spirit and content of most of the amendments in this group.

Baroness Jones of Whitchurch (Lab): My Lords, I shall speak to Amendments 52, 74, 75, 76 and 92 to which I have added my name. As the noble Baronesses have said, these amendments refer to the need to strengthen the obligations on pension funds to play their part in meeting the challenge of the climate emergency. We accept that the issue goes wider than

this Bill, but we will succeed only if every part of government, including the DWP, industry and the economy play their part, so this pensions Bill does have a part to play.

In relation to pensions, it is vital that a consistent approach is taken across the pension scheme market with the DWP, the Pensions Regulator and the Financial Conduct Authority all requiring contract-based pension schemes and trust-based occupational schemes to demonstrate the same levels of compliance with our climate change objectives; otherwise, there could be adverse competition between the different funds, which we do not support.

I add my thanks to the Minister for acknowledging the importance of these issues when we raised them at Second Reading, arranging to meet us to discuss them further and tabling the Government's amendment today. As the noble Baroness, Lady Hayman, said, it happened very quickly, and we were very impressed by that. It is fair to say that it is a start, but we do not think that it goes far enough. However, I am sure that we will have a good dialogue on this issue. In the meantime, we have tabled amendments.

I shall be brief as I do not want to echo what other noble Lords have said. Amendments 74 and 76 take out the specific reference to occupational pension schemes so that the requirement would apply to all pension schemes. This is important because, although occupational defined benefit and defined contribution schemes comprise a large part of the pensions market, there is a gradual shift taking place towards contract-based personal schemes. As one model is regulated by the Pensions Regulator and the other by the Financial Conduct Authority, it is vital that we take this opportunity to provide alignment and consistency on the climate change action that they require across that sector.

In the Minister's helpful letter to Peers explaining the purpose of the government amendments, it did not seem to me that she addressed this lack of consistency. Perhaps she can do that now. Does she accept the need for a joint approach across the regulators to ensure that investment decisions have parity, so that one cannot take advantage of the other or lead to the detriment of members by requiring higher standards of one than another?

Secondly, our Amendment 75 explicitly spells out that the Government's reference to climate change means the need to align with the objectives of the Paris agreement to hold temperature rises well below 2 degrees centigrade. It is important to have that wording in there because we bandy around the expression "climate change" but it means different things to different people, and we are concerned that it could otherwise be loosely interpreted. That is why we set out a more explicit requirement. We set out the reasons for that requirement at Second Reading. As other noble Lords have said, we are currently on track for 2 to 4 degrees centigrade of global warming by the end of the 21st century, and we know that that will have a profoundly negative impact on the global economy and therefore upon the investments and the financial returns of pension schemes. So it is important that we have a requirement to deliver our Paris agreement commitments. It is not just about us being fluffy and caring about the planet; it is a more hard-nosed issue about the direct interests of savers and our economy. That is why pension funds have such critical role to play. I hope that the Minister will accept the intent and the importance of that amendment.

Thirdly, I was pleased to add my name to Amendment 92, which provides a timescale for the consultation on implementing the recommendations of the Task Force on Climate-related Financial Disclosures. It requires that the consultation will commence within one month and be completed within one year. Obviously we welcome the Government's intention to consult widely on this issue, and we understand some of the complexities that lie behind all that, but meanwhile the clock is ticking on our Paris commitments and we are failing to step up to the mark on that, so this is one of the many areas where we need to take urgent action but also where we could deliver the biggest impact. I hope that the Minister understands and accepts the need for that consultation and follow-up to take place within a specific timeframe.

Finally, our Amendment 52 returns to the issue that we raised at Second Reading about the need to inform pension savers via the dashboard of the actions being taken by their trustees to deliver on climate change as set out in the *UK Stewardship Code 2020* and to align with the Paris agreement. This amendment would add these factors as information that may be required to be provided by regulation. I know that at Second Reading there was some argument—maybe there will be again today—about the information on the dashboard needing to be kept simple in the first instance. We understand that issue, but we also have to acknowledge, as the noble Baroness, Lady Hayman said, that pension savers are concerned about their pension funds propping up fossil fuel extraction, and they are keen to have information so that they can be empowered to take action on these issues. Our amendment has been tabled to explore how best we can achieve that by providing information in a simple and meaningful way to pension savers.

I hope that the Minister will agree that savers need to have access to this information and that the dashboard could be a meaningful way of achieving that objective. I look forward to her response.

Lord Balfe: I would like to say one sentence about this. First, could the Minister comment on this situation? I do not have a big role in pensions but in so far as I have, I have been pushing people towards index trackers. An index tracker that conforms to the UN principles for responsible investment is generally accepted. However, at the moment the UN principles do not contain climate change, so to what extent are we putting forward something which would be difficult to implement? Secondly, I wonder whether we are suggesting something which, far from being implemented by the trustees, will be implemented by means of companies, such as one or two I have come across in my life, which will go to trustees and say, "Here you are; for just £500 we can give you a statement of principles which will get you past the regulator". There is a sense in which we might not be curing a problem at all but creating it, certainly for small pension funds that are largely invested in index trackers and bonds. Even bonds have their problems.

[LORD BALFE]

In a pension fund where I was once a trustee when I said, "We will probably buy some UK Government bonds", a member said, "Oh yes, Mr Blair needs the money to bomb Iraq, doesn't he?"

5.30 pm

Baroness Sherlock: My Lords, I do not think I will start at that point.

I will not add much. I had a lovely speech prepared, but it was much less good than some of the speeches we have heard already. Let me simply say that I am grateful to all noble Lords who have put this issue on the agenda. Like them, I am particularly delighted that the Minister was listening so carefully to my noble friend Lady Jones, the noble Baroness, Lady Hayman, and others at Second Reading. If that is what could happen over Second Reading, just think what will happen by Report, after all we have done here today. I am very excited indeed at this new responsive Government: hurrah!

I want to add just a couple of things. I hope we all now recognise that there is no way that the Government are going to hit the 2050 target, never mind Paris, without pension schemes stepping up and playing their part. In response to the noble Lord, Lord Balfe, I know it is difficult, but there is quite a lot of good thinking going on out there. I commend to him work done by the Church of England Pensions Board, which has recently developed an index, made available specially to enable funds—it is putting its own money where its mouth is—to do compatible things. I can talk to him about it afterwards. I should declare an interest: I am a Church of England priest, but my knowledge of pensions in the Church of England stops there, because I do not pay into any. There are things that can be done.

I am particularly conscious that people want to know this information. It will increasingly be the case: if we want more people to save, young people in particular will want to know where their money is going. The Government will have to find some way to address that. I will come on to talk about the dashboard, but I should be interested to know if MaPS is beginning to think about this. Is this in its consideration?

I should also be interested to know from the Minister about the amendments of the noble Baroness, Lady Hayman, and my noble friend Lady Jones to the government amendment, which raise interesting points. Is there a reason why the Government feel that they cannot apply them to all pension schemes and are they amenable to a stiffening around Paris, as opposed to generic climate change? If she could address both those questions, that would be helpful.

I should also be interested in her response to an amendment which is pushing a sense of urgency on the timescale of the task force on climate-related financial disclosures. It would be very helpful to get a sense of where the Government are going on that. It does not seem a hard ask: to run a consultation, soon after commencement, on implementing the recommendations of a task force coming back within a year would seem to be one of the easier concessions that the Minister has been asked to make, so perhaps she may look with a smile on that too.

Baroness Stedman-Scott: I thank all noble Lords for their amendments and contributions. They have been numerous, but they have been numerous in quality, so I thank them for that. I assure the noble Baroness, Lady Sherlock, and the whole Committee that we are listening and aim to please.

I thank all noble Lords who have taken part in this important debate. In responding, I will first address the three government amendments and then the others in the group. The Government are clear that action needs to be taken to address the risks that climate change brings. The Government announced in the *Green Finance Strategy*, published last July, that all large asset owners, including occupational pension schemes, would be expected to report on how they address climate change risk, in line with the international, industry-led task force on climate-related financial disclosure, by 2022.

Building on that expectation, the Government are now, through new Clauses 73, 81 and 98, seeking to take powers to require occupational pension schemes to manage the effects of climate change effectively as a financial risk to their investments and to report publicly on how they have done so. New Section 41A inserted into the Pensions Act 1995 confers powers on the Secretary of State to impose requirements on occupational pension scheme trustees and managers to secure effective governance on the effect of climate change on the scheme.

Let me be clear. This does not mean that it is for the Government to direct schemes or set their investment strategies. The Government never have directed pension scheme investment, and do not intend to. Our clear view is that the amendments do not permit us to do that. Amendments 74 and 76, tabled by the noble Baronesses, Lady Hayman and Lady Jones, would amend the new clauses, expanding the remit of these powers and those under new Section 41B beyond occupational pension schemes to include personal pension schemes. Personal pension schemes are regulated by the Financial Conduct Authority, not the Pensions Regulator. To place requirements on personal pension providers through the Bill would create a patchwork of overlapping regulatory oversight, under which providers would have to respond to two separate regulators on the same activity.

The noble Baroness, Lady Hayman, raised occupational schemes. The FCA is currently considering how best to enhance climate-related disclosures by workplace personal pension schemes. The noble Baroness, Lady Janke, also referenced personal pensions.

Turning back to the government amendment, the Government believe it is absolutely necessary that trustees act within their fiduciary duty to protect members' benefits against the growing physical risks of climate change and the risks of the transition to a lower-carbon economy. However, action taken by trustees and managers should not be limited to avoiding risk but should involve consideration of the investment opportunities that climate change presents, as new Section 41A(2) makes clear.

New Section 41A(3) sets out the kinds of activities trustees and managers of pension schemes may be required to undertake as part of their governance on

the effects of climate change. Where such requirements are introduced, our intention is that trustees or managers are doing the determination, review and revision of strategies and targets. It is not a matter for the Government. We will consult on the exact requirements, the timings for introducing them and the scheme in scope.

New Clause 92 seeks to bind the Secretary of State to a specific timeline for launching this consultation and publishing the response. I am very grateful to noble Lords for their compliments about the speed of our action on climate change; I must tell your Lordships that our Secretary of State Thérèse Coffey and Minister for Pensions Guy Opperman are 110% behind this. It was their action, not mine, that put this into the Bill, so I cannot take credit for something I did not do; they deserve all the credit for that. I understand the point of the noble Baroness, Lady Jones, that we should push further. As my great friend William Booth would have said, that and better will do. I understand the point she is making.

I assure the noble Baronesses, Lady Hayman and Lady Jones, in response to their amendment, that the Government intend to launch their consultation on the task force recommendations upon the Bill completing its passage through Parliament, and to respond within a year.

Amendments 52 and 75 and new Clause 89 specifically identify alignment with the Paris Agreement as one of the risk-assessment activities which schemes should be doing. Our view is that the industry is not quite ready for this sizeable step in reporting requirements. The noble Baroness, Lady Jones, raised global warming. Amendment 75 goes further than reporting on alignment to require governance of schemes to align with the Paris Agreement's objective of global warming of well under 2 degrees Celsius. This would be tantamount to directing schemes' investments, which the Government have already ruled out. The Government are seeking to ensure effective governance of climate change risk, not to direct trustees' or managers' investments.

However, new Section 41A(4) in Amendment 73, taken with new Section 41B, would enable the Government to prescribe reporting on Paris alignment, requiring schemes to consider their alignment with Paris in relation to risk and exposure and to make this information public. At present, there is little consensus on methodologies for reporting on Paris alignment. This area is developing very quickly, which is why the Government are seeking powers to prescribe such reporting in future. We will continue to monitor the development of methodologies and data in the industry, and would put any future proposals on this issue to consultation.

The Government believe that schemes should be doing effective governance, as new Section 41A will allow us to require, and that schemes should publish this information as set out in the task force recommendations. New Section 41B would enable the Government to lay regulations to require this information to be made public, free of charge, including to members.

New Clause 89 would require some of this information on Paris Agreement alignment to feature in the scheme's published statement of investment principles, or SIP. However, should the amendment be accepted, this would pre-empt the outcome of the consultation. In contrast, new Section 41B of the Government's amendment takes powers which would enable the Government to introduce publication requirements relating to the degree of Paris Agreement alignment at a later date.

When disclosing information and documents, subsection (3) of new Section 41B in the Government's amendment requires trustees and managers to have regard to statutory guidance which the department will publish. In requiring schemes to follow this guidance, consistency and comparability across reporting by different schemes will be easier to achieve. Other benefits of publication are ensuring that best practice is shared across the industry and that trustees and managers can learn from those with the most advance climate risk governance.

Amendments 28 and 36 seek to achieve a similar objective by granting the regulator the responsibility to create a repository of statements of investment principles and forcing schemes to provide their SIPs, as well as sections of annual statements, to the regulator. The Government were concerned by the UK Sustainable Investment and Finance Association's recent research, which showed widespread non-compliance in publishing SIPs. We have urged UKSIF to pass its findings to the regulator, so that it can take swift action. We believe a central repository has a part to play in that, but Amendment 28 does not take into account the growing concentration of the vast majority of members in a small number of schemes. Of more than 5,000 defined benefit schemes, the largest 200 schemes have more than 60% of members. Of more than 3,000 defined contribution schemes, the largest 150 have more than 96% of members. For these members, their own scheme's website or public pages are the natural places to look for investment information, not a corner of the Pensions Regulator's website.

Similarly, in relation to Amendment 36, the regulator has already placed the largest schemes under one-to-one supervision and has regular sight of the all the documents referred to. In any event, Amendments 28 and 36 are unnecessary, as I can report that officials at the DWP and the Pensions Regulator have already begun work to identify how a central index of SIPs can be produced. Amendment 97 seeks to put a duty on trustees to consult members each time they review their SIP. However, this imposes unreasonable burdens on trustees. The Law Commission has confirmed in two reviews that trustees are not required to take account of members' views, although in some circumstances they can. It would be unhelpful to require trustees to solicit member preferences which they had no ability or intention to take into account. Amendments 52, 67A and 67B seek to include information on Paris alignment reporting and consideration of ESG in the pensions dashboard.

We will turn to the dashboard later in Committee, but it is important to highlight here—

Baroness Altmann: I am so sorry to interrupt my noble friend. First, I want to draw the Committee's attention to my interests as set out in the register in connection with pensions, and to the fact that my son works on sustainable transport and reducing transport emissions.

[BARONESS ALTMANN]
Will the Minister write to members of the Committee about the regulator's plans for creating a central repository? Will it be comprehensive? If DWP and the Pensions Regulator are working on setting this up anyway, would it do any harm to have this measure in the Bill to make sure that it happens?

Baroness Stedman-Scott: Of course we will be happy to write to answer the questions that my noble friend has raised.

Baroness Hayman: There is a lot of detail in what the Minister has said and I am very grateful to her for saying that she will look at it. I think she said that the Financial Conduct Authority is considering the requirements to be put on personal pension schemes; that is, those not covered by the government amendment and the regulations. The Minister was very helpful about the timetable of the consultation on the Government's proposal on occupational schemes. Is there any timetable for personal pension scheme requirements? Is it the Government's ambition that they should parallel the requirements in the Bill?

Baroness Stedman-Scott: I am advised that we need to get that information from the FCA; when we do, we will give it to all members of the Committee. I hope that that is acceptable.

Baroness Bennett of Manor Castle: I apologise, but this seems to be the logical point at which to do this. I echo the comments of the noble Baroness, Lady Altmann, and request to also get a copy of that. Further to that, if there are already plans to have a central index of SIPPs and that system already exists, including the implementation and chair statements would surely be a very small administrative burden. Could the Minister consider whether that is possible? She can answer now or in the future.

5.45 pm

Baroness Stedman-Scott: Can I answer the noble Baroness's question when I come to the specifics that have been asked? If I get to the end and have not answered, I have no doubt that she will let me know.

We will turn to dashboards later in Committee. However, it is important to highlight here that the Government want to ensure that information on dashboard services can be easily comprehensible to consumers. For this reason, dashboards should start with simple information. We remain interested in finding out whether dashboards can support an increase in engagement on issues, including the investment decisions made by schemes.

Moreover, new paragraph (c)(i), which would be inserted by Amendment 52, would not only duplicate the intent of the Government's new clauses but would also duplicate existing duties that the Government have already placed on trustees. Amendment 67A would have a corresponding effect on workplace personal pension schemes, for which the FCA has also legislated to take account of such factors. Both these sets of requirements are mandatory, unlike the voluntary UK stewardship code referenced in this amendment.

Amendment 67B would enable the dashboard to include information on how schemes take into account members' interests. Notwithstanding earlier arguments for keeping the dashboard simple at first, occupational schemes already have duties to report on the extent to which they take account of members' views in investment decisions.

The final new section in the Government's amendment, new Section 41C, confers powers on the Secretary of State to lay regulations ensuring that managers and trustees of occupational pension schemes comply with requirements in regulations laid under powers delegated by new Sections 41A and 41B. In particular, regulations may allow the Pensions Regulator to issue compliance notices, third party compliance notices and penalty notices. The provisions in new Section 41C are consistent with similar compliance provisions relating to pension schemes in paragraph 3 of Schedule 18 to the Pensions Act 2014.

New Section 41C and indeed 41A are subject to the affirmative procedure at first use only. The first regulations made in exercise of the powers in these sections will confer enforcement powers on the regulator and place new requirements on trustees or managers. The Government therefore consider that they should be subject to a higher level of scrutiny. However, the Government expect any subsequent use of the powers to be for the purpose of periodically amending these requirements to ensure that they reflect developments. We therefore believe that the negative procedure beyond first use is appropriate. The consultation requirements in Section 120 of the Pensions Act 1995, into which these new sections are proposed to be inserted, would also apply.

Delegated powers to set out these requirements in secondary legislation are essential to ensure that the requirements can take account of developing operational and financial best practice and are proportionate to the scheme in question. It also ensures that they reflect the rapidly developing understanding of the effects of climate change and its interaction with the financial system. Furthermore, the urgency of action required to address the climate emergency demands a swift policy response now and in the future.

All the Government's new clauses also make provision for Northern Ireland that is equivalent to the provision that would be made by the Government's amendments. This would ensure that, in accordance with the long-standing principle of parity, the single system of pensions across the UK is maintained. As such, the arguments made in relation to the proposed amendments to the Pensions Act 1995 apply equally to the amendments proposed to the Pensions (Northern Ireland) Order 1995, inserting a new paragraph into Schedule 11.

The government amendments and their associated powers are as urgent as they are important. Climate change is a major risk to the nation's pension savings. It is appropriate and responsible for the Government to require those who have a duty to deliver members' retirement income to safeguard investments against climate risk and publish information on how they have done so.

I come to some of the specific questions raised—

Baroness Bowles of Berkhamsted: I am sorry to interrupt but this is specifically on the government amendments. Like others, I welcome what is there and I hear the Minister referring to the matter as urgent and important. I just come up against a block when I see that it says "Regulations may impose". Why can we not have "must" if there is an intention that these things are to be done? From the particular point of view of justice, in new Sections 41C and 41D, the reference to what would be your right of appeal to a tribunal still comes under "may". I know that it is a standard formulation but it really does not appear to be right, because nothing is actually promised when it says "may". Why can we not have "must", and certainly have "must" when it comes to defences and reference to tribunals?

Baroness Stedman-Scott: In answer to the noble Baroness, subject to the passage of the Bill we will consult extensively this summer on the content of new regulations, which will likely include the content of these new requirements and the timing thereof. When we lay regulations and when they come into force will depend upon the outcome of the consultation, but we will respond to that within a year of its launch.

Baroness Bowles of Berkhamsted: That still does not mean that something will definitely happen then. I understand that the regulations' shape depends upon the consultation but they should be regulations that do something, with a promise that we are going to have them—that there will be some, not that there "may".

Baroness Stedman-Scott: As I understand it, we have to consult before we can make that decision.

Lord Sharkey: Could I join in on this? We are talking about Amendment 73, which would insert new Section 41A on "Climate change risk". Its first proposed subsection says "Regulations may impose requirements"; it does not specify any requirements in that part because, as the Minister rightly says, they are all to be consulted on later. But it is odd that it should say "may" and not "must" since it talks about imposing requirements. In practice it means that the Government need not do anything at all, which is unfortunate.

Exactly the same comment applies to new Section 41C, headed "Sections 41A and 41B: compliance". It begins "Regulations may make provision" and underneath that is a long list of things that will eventually turn out to be regulations and will be consulted on. I understand that "may" is appropriate there but, as it stands, the Government do not have to do anything at all about this as long as the word "may" remains as it is in both those initial paragraphs. I re-emphasise the point made by my noble friend Lady Bowles: leaving the provision of an appeal mechanism to "may" might not be a very good idea.

Baroness Stedman-Scott: I do not know whether the noble Lord has put his name on the list to meet, but it looks as though I am able to offer him a meeting on the consultation first, if that is helpful, to try to get to where he wants to be.

Going back to the point raised by my noble friend Lady Altmann about schemes not having a website, schemes are not required to set up a website to publish their statement of investment principles or other documents. The information must be published on a publicly available website in a manner which allows for the content to be indexed by internet search engines. This can include a social media site, a blogging platform or a repository offered by a search engine provider, as long as trustees have ensured that the document is public and can be indexed. The Government are not in the business of endorsing publishing tools, but Facebook, WordPress and Google Docs allow for free publication.

Coming on to my noble friend Lady Altmann's point about what is meant by a large scheme, following the passage of the Bill, we will consult extensively in the summer on what schemes should be in scope and how the scope will increase over time. My noble friend also said that the Pensions Regulator is not doing anything about breaches of ESG legislation. The chief executive of the Pensions Regulator has written to DWP to confirm that it is taking action. The regulator has engaged with the findings of the UK Sustainable Investment and Finance Association on the poor state of compliance among some pension schemes and will follow up on breaches of compliance.

My noble friend Lady Altmann also said that pension schemes should be required to align their portfolios with the Paris Agreement to reach net zero by 2050. The Government's amendment and subsequent regulations will focus on schemes' governance of climate risk and disclosure of that risk. We do not wish to direct pension schemes to align their investments with the Paris Agreement targets, and the legislation does not allow us to do so. Nevertheless, Paris alignment reporting could be useful as a measure of climate-related risk to the scheme. We will consult over the longer term on whether it is a useful assessment of a scheme's exposure and risk.

I have already come clean to the noble Baroness, Lady Hayman, on whom to credit for the speedy inclusion of the amendments. She also raised a point about taking account of members' views. The Law Commission has found that pension schemes have a fiduciary duty to take account of all financially material risks, including environmental risks. We have legislated to require all schemes with 100 members to publish their policies on financially material environmental risks, including climate change, and defined contribution schemes will be required to report annually on how they manage those risks from October 2020.

Trustees do not have a duty to take account of members' ethical concerns but are free to do so when they believe a majority of members who express a view share those concerns and when doing so would not result in significant member detriment. The noble Baroness, Lady Hayman, asked why we will not legislate for personal pension schemes. Personal pension schemes are regulated by the Financial Conduct Authority, not the Pensions Regulator. To place requirements on personal pension providers through this legislation would create a patchwork of overlapping regulatory oversight under which providers would have to respond to two separate regulators on the same activity. The FCA is currently considering how best to enhance climate-related disclosures by workplace personal pension schemes, building on its existing rules framework and enforcement powers. I will write on the number of members of personal pension schemes.

[Baroness Stedman-Scott]

The noble Baroness, Lady Hayman, asked whether dashboards will include pension schemes' environmental, social and governance policies. We are very interested in how dashboards can support and increase engagement, including whether information on areas such as ESG, which trustees are required to cover as part of their disclosure obligations, may be incorporated into the dashboards. This is to be informed by user testing and may evolve over time.

The noble Baroness, Lady Bennett, quoted the Minister for Pensions, who wrote,

"pension schemes ought to be thinking about the assets which help … drive new investment in important sectors of the economy … which deliver the sustainable employment, communities and environments which all of us wish to enjoy."

How will we meet this if the scheme does not know members' wishes? The Government have been very clear that the purpose of a pension scheme trust is to deliver an appropriate return to its beneficiaries. The context of the Minister's quote makes this clear and that it is possible to deliver this while having a beneficial effect on the communities in which they invest. The noble Baroness also talked about the implementation and chair statements being published. Schemes are already required to publish their chair's statement and implementation statement. We are working closely with the regulator to develop a central index that can also be applied to the implementation statement and the chair's statement.

Finally on the point raised by the noble Baroness, Lady Bennett, about pension schemes being required to go beyond climate change to consider sustainability more broadly, trustees already have clarity that they should take account of financially material social and environmental risk in investment policies. This includes, for example, considering violations of human rights laws and destructive environmental practices. In practice, most trustees do not actively manage investments and cannot make stock selections, but the Government have set the requirement for a clear policy which will be published and shared with those managing the investments. As I have said before, the Government do not tell pension schemes how to invest. Seeking to do that would force trustees to chose between acting in the best interests of members and following government directions.

I hope I have answered all noble Lords' questions and therefore urge the noble Baroness to withdraw her amendment and urge noble Lords to support the amendments standing in my name.

6 pm

Baroness Altmann: I thank my noble friend for her comprehensive response. I think she can tell from the comments that we would be grateful for some follow-up conversations. In the meantime, I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Debate on whether Clause 110 should stand part of the Bill.

Lord Kirkhope of Harrogate (Con): Compared with the very interesting debate we have just had on these important amendments, what I have to say regarding the stand-part element of Clause 110 is probably rather insignificant in many minds. On Second Reading, I raised with the Minister the question of the nature of the regulator's responsibilities, particularly in relation to the process of interview. I am concerned about Clause 110(4), where there is a situation concerning an individual summoned for interview by the regulator failing to answer a question or to provide an explanation that satisfied the regulator. That comes in new Section 72A of the Pensions Act 2004.

I am concerned because, as far as I am aware, an explanation is defined as a statement or account that makes something clear, but there is a massive amount of subjectivity and responsibility on the regulator's shoulders in concluding whether that explanation is satisfactory. With the sanctions in place—ultimately a criminal sanction, but also civil sanctions—it seems a very serious area and one in which the basic right of individuals not to self-incriminate, for instance, or even providing some information can result in a more serious effect than anticipated.

I want to defend the regulator here because some remarks have been made during the debate on these amendments suggesting that the regulator needs thoroughly investigating. We are putting upon the regulator a whole lot of new responsibilities, partly in the area I am talking about—decision-making on subjective matters—but also in the overall workload, which I am concerned about.

I was just looking at the impact assessment of the Pension Schemes Bill 2020. In relation to the matters I am talking about, it suggests, for instance, that the impact on the government side of this—the changes that might be made to the requirements for the regulator or the regulator's ability to pursue these matters—is "broadly cost neutral". I suggest that this is not a fair appraisal because the extra responsibility placed on the regulator, and the way in which that becomes controversial from time to time, is bound to be costly. It will cost money, and the regulator therefore needs to be resourced adequately to be able to deal with that and other responsibilities we are placing on it.

Similarly, the extra obligations on those who are being interviewed or are required to comply with these things are not inconsiderable. There will be costs for those businesses that are already having to find considerable resources to deal with matters where the regulator has the powers to intervene. Therefore—perhaps my noble friend would consider this—I suggest that it would be very useful if, when this legislation is passed, the regulator is taken fully into account in terms of the resource. Just as importantly, it would be very useful if the regulator had thorough and better guidance compared to the present guidance about how to handle these circumstances and how these subjective requirements should be dealt with. That is enormously important. It is not part of the legislation as such but I think that the regulator is entitled not to be so liable for its judgments. Also, more guidance should be available to it so that it does not find itself in an unfair and unreasonable position in making these powers work.

That is all that I want to say to my noble friend at this point. I did so at Second Reading and have spoken to her subsequently. Although this issue is not as important

as some of the amendments, it is significant in terms of the obligations on the regulator and on those who fall under these regulations.

Baroness Stedman-Scott: I thank my noble friend for that contribution, which is equally as important as the amendments. The regulator will update its current compliance enforcement policy in due course and that will include how it conducts interviews under this clause. We will discuss the impact assessment at a later stage, and I suggest that we address the specific issues that my noble friend has raised at that point. I hope that he is happy to proceed on that basis.

Clause 110 agreed.

Clause 111 agreed.

Clause 112: Fixed penalty notices and escalating penalty notices

Amendment 29

Moved by ***Lord Sharkey***

29: Clause 112, page 99, line 7, leave out "£50,000" and insert "£1 million"

Lord Sharkey: My Lords, I shall be very brief. Amendments 29, 30 and 32 in my name are all probing. Their purpose is to allow discussion of the reasoning behind the choice of penalties written into Clauses 112 and 115. In each case, I would be interested to know two things: what comparisons, if any, did the Government make in deciding on the penalty amounts, and what was done to assess the likely effectiveness of these amounts? In other words, are the upper limits really large enough to influence behaviour, and what has convinced the Government that they are?

At Second Reading, I noted that the Government seem uncertain about the merit of the £1 million upper limit contained in new Section 88A, inserted into the Pensions Act 2004 by Clause 115. Subsection (2) of new Section 88A is where this £1 million is set, but the very next subsection allows for secondary legislation to change this upwards without limit. As far as I can tell, this power to adjust upwards by regulation does not apply to the penalty upper limits in Clause 112, and I think that that deserves an explanation. Why are the Government confident that they will not need to change upwards the lesser penalties in Clause 112 but feel that they might have to do so for the major penalty in Clause 115? Surely it is not wise to allow unlimited power to raise penalty levels by regulation.

The Government implicitly acknowledge that that is the case by setting limits on the face of the Bill. Then they do a reverse ferret by giving themselves unlimited discretion to revise upwards in one case. I can see why the Government might lack confidence in the proposed £1 million limit, given the resources of those upon whom the penalty might fall, but surely it would be better to have in the Bill a limit that we think might work, or at least a limit on how far the initial amount may be raised or a proportional system, as proposed by the amendment of my noble friend Lady Bowles.

In any event, it would be very helpful to know how the Government alighted on all these upper bounds, especially the £1 million limit, and especially as they all seem intuitively to be rather on the low side. I look forward to the Minister's response. I beg to move.

Baroness Bowles of Berkhamsted: My Lords, I support all the amendments in this group—Amendment 31 is my own. The broad principle is not to let the fines simply be a cost of doing business for the wealthy and especially large companies. Inevitably, large fines give rise to concern among those who would be the bottom end of any range of fines, with respect both to the seriousness of their offence and their resources. It is clear that proportionality is key—proportionality both to the severity of the offence and the resources of the offender. The fine must also be a sufficient deterrent, not just a cost of doing business.

It does not seem to be customary to recite proportionality in legislation, as it is presumed. For my part, I would not see it as damaging to include wording on proportionality, and anyway it would always be part of any appeal. That is why, in Amendment 31, I changed the new Section 88A fine from "£1 million" to

"twice the employer's pension deficit or 4% of the employer's annual global turnover (whichever is greater)".

The fines may not be these amounts; they are the maximums. These fines can be for egregious matters that put pension funds at risk—and, therefore, the livelihood and well-being of pensioners and future pensioners—and potentially impose on taxpayers. They are fines for being a social pestilence.

I thought that the size of the deficit was relevant—maybe I should have made it three times the size, because my inspiration was US-style triple damages that can apply for monstrous offences. I have made it clear that I think doing bad things to pensions is pretty monstrous.

Turnover-linked criteria are also not new. They are in use in the UK, having been recently introduced for the Information Commissioner; that is what I have copied. They have, of course, been in play for some time for competition offences. The Information Commissioner penalties also have a numerical option, although again that is not limited to the turnover side of the penalty. I left out the number in my amendment to emphasis the proportionality point, but I would have no problem adding in the amendment of my noble friend Lord Sharkey so that we have a numerical measure in there as well.

It would seem from something that was said to me—in one of the meetings, I think—that the £1 million fine level was inspired by "similar fine provisions" by the FCA. Well, I can suggest several responses to that. First, the FCA may be the one out of line with modern thinking, the fine having been set a while ago. Also, it has perhaps been undermined because it always has to do consultations and, strangely, has to consult those who might be fined. But, as a matter of consultation, I note that the ABI has supported my amendment.

Baroness Sherlock: My Lords, these amendments offer a good opportunity to explore whether the penalties in the Bill are of the right kind and scale. I hope the

[Baroness Sherlock]

Minister will take this opportunity to set out the thinking behind the decisions that the Government have reached. I read the DWP policy brief for the Bill; it says that, in developing the new sanctions, the main priority had been getting the right balance between increased deterrents and protection for members, minimising any negative impacts on industry, and ensuring that the new sanctions are in line with the wider statute book. So one of the questions is: has it done that?

The first question, raised by the noble Lord, Lord Sharkey, is: are the penalties set at the right place and why are they set at that place? What is the argument —why £50,000 and not £100,000? Why £l million and not £10 million or £50 million? Was this done to mirror provisions elsewhere? If so, which ones? If not, what work—what modelling—was done to lead Ministers to believe that they have landed in the right place?

Interestingly, the policy brief then says that the DWP considered the level when establishing the new penalty of up to £1 million. It says that the level had to be proportionate for local individuals and businesses of different wealth levels and appropriate for a wide range of behaviours, provide a stronger deterrent than the current regime and work alongside the new criminal offences for non-compliance, under which an unlimited fine can be issued. I need the Minister to help me here because this is not my area of expertise: if the maximum fine is £1 million, why does the maximum fine have to take account of a wide range of behaviours and wealth of individuals or businesses? Presumably, the maximum fine applies only to the people at the top of the scale, either those who have the most money or have done the worst thing. How does that balance work in setting a maximum fine? There may be a really good reason—maybe you have to be proportionate; I do not know—but could she explain it to me?

6.15 pm

Secondly, the brief said that in choosing the level the DWP decided that it should be in line with the average penalties issued by the FCA against individuals, whereas I think these fines are going to be issued against individuals and businesses. The policy brief says that, if you exclude one extreme case, the average FCA penalty since 2016-17 was less than £1 million. I assume that the extreme case, whatever it was, was above £1 million. What if there is another extreme case? Even if we ignore the extreme case, if the average of the rest was below £1 million then was any of them above £1 million? After all, if they averaged below £1 million, maybe one of them was higher and others were lower. I just wonder why the Government are so confident that the cases coming up now would not go above that ceiling. Even the ABI, as the noble Baroness, Lady Bowles, said, has said that the proposed cap of just £1 million on fines is unlikely to be an effective deterrent for employers who can easily afford this. It recommended that the fines should reflect the savings made by the sponsor by wilfully acting to the detriment of scheme members.

That brings me to the second question asked by the noble Baroness, Lady Bowles: why a fixed maximum penalty rather than one that relates to the circumstances of the case—that is, the turnover, the deficit or some other relevant factor? Again, the DWP policy brief explains this. It says that the department followed the FCA in terms of penalty levels but that adopting a similar approach to the Financial Conduct Authority's approach based on turnover was considered and discounted, and that it was deemed that providing a fixed maximum level for the new penalty provided a better balance of the considerations previously outlined.

That raises an obvious question: why did it decide that? I can see that that is what the department thought it was doing, but that does not explain why it considered and discounted it; the brief simply says that it did. Were the circumstances different enough from those in the case of the FCA to merit sticking with them in terms of levels but moving away from them in terms of the kinds of fines? Could the Minister explain that?

The noble Lord, Lord Sharkey, made an interesting point about regulations and the ability to vary the maximum. I would be interested to know if there is a comparable power for HMT or HMRC to vary that. Is that something else that has been taken from a parallel elsewhere?

The noble Baroness, Lady Bowles, made some interesting points at Second Reading about the effect of repeated offences that appear to be small but which, if done deliberately and repeatedly, could have effects that were actually quite big, yet the penalties on them are limited and quite small. Has the Minister reflected on that at all?

I am interested in how the Government got here. I accept that in reality most of the work is not going to be done by the fines; by the time you get to fining someone, frankly, the damage is done. Most of the work will be done by the supervision and regulatory regime, and we will spend much more time on that. However, the fines play an important symbolic role in signalling how bad we think offences are. I am with the noble Baroness, Lady Bowles, if less colourfully, in thinking that people who put pension schemes at risk are doing very bad things and the Government should discourage them from so doing, so I would be grateful to hear the Minister's explanation of how they propose to do that.

Baroness Stedman-Scott: I thank noble Lords for tabling these amendments and I will do my best to answer all their questions. Clause 112 inserts new provisions for the Pensions Regulator to impose fixed and escalating civil penalties where a person has not complied with the regulator's information-gathering powers. The level of the penalties is to be set in regulations, but the fixed penalty cannot exceed £50,000 and the rate of the escalating penalty cannot exceed £10,000 a day.

Clause 115 provides for a new financial penalty in the Pensions Act 2004 which can be issued by the Pensions Regulator, and sets the maximum amount of this financial penalty at £1 million. Amendments 29 and 30, in the name of the noble Lord, Lord Sharkey, seek to raise the penalty levels for both the fixed and escalating penalties. Fixed and escalating penalties are already available to the regulator for non-compliance with information-gathering provisions in connection with automatic enrolment and master trusts. We consider that it would be inconsistent and unfair to have a

much higher maximum, as introduced by these amendments, for similar breaches connected to other types of pension schemes.

We have no evidence that these maximum levels are inadequate or not working. On the contrary, the regulator confirms that the current levels of fixed and escalating penalties provide an adequate deterrent in automatic enrolment: issuing a fixed penalty results in compliance in the majority of cases, with only a few cases resulting in escalating penalties. The noble Lord's amendment would introduce a maximum fixed penalty of £1 million, but that is the maximum level of the financial penalty that the Bill is introducing for serious breaches of pension legislation—for example, deliberately giving the regulator false information, or conduct that puts members' benefits at risk.

I know that some noble Lords feel that the financial penalty should be higher, but we believe it is set at the right level. It would not be right for the penalty for not complying with an information request to be as high as for serious breaches of pension legislation. I should also make it clear that not complying with information requests, or obstructing an inspector, is a criminal offence and will remain so, with the potential for an unlimited fine. The intention is that these fixed and escalating penalties will be imposed for less serious breaches, where the regulator thinks a civil penalty is more appropriate than a criminal prosecution. Imposing a civil penalty is likely to take less time than instituting criminal proceedings, therefore the regulator can receive the necessary information and conclude an investigation more quickly. In the 2018 consultation on the regulator's powers, mirroring the approach for automatic enrolment and master trusts was supported by industry representatives.

Amendment 31, in the names of the noble Baronesses, Lady Bowles and Lady Janke, and Amendment 32 in the name of the noble Lord, Lord Sharkey, seek to raise the maximum amount of the new financial penalty. We consulted on our proposals in 2018 and they were developed from the Green Paper consultation in 2017. The £1 million maximum penalty was supported by the majority of respondents. The £1 million penalty is positioned as a mid-level sanction, between the lower £50,000 penalty for acts of non-compliance by corporates and £5,000 by individuals and the new higher-level criminal offences for serious wrongdoing that has an unlimited fine. The £1 million maximum level was also deemed to be appropriate as it is comparable with the average level of equivalent sanctions for financial crimes in the financial sector issued to individuals by the Financial Conduct Authority.

The new financial penalty can be applied to a number of offences, and changing the maximum penalty to the levels in the noble Baronesses' amendment would be inappropriate in the case of some of these offences. Moreover, the people who are within scope of these penalties vary. In some cases, the target of the penalty may not have any direct connection to the sponsoring employer's company or to the scheme itself. It would therefore be difficult to justify why such a person should be liable to pay a penalty of up to a maximum of double the scheme deficit or a percentage of the employer's turnover. In such cases, a maximum level of £1 million is more proportionate and provides clarity. The introduction of the new financial penalty in this clause was also an integral part of enabling the Pensions Regulator to take action more swiftly, thereby becoming a "clearer, quicker, tougher" regulator.

The new maximum penalty levels proposed in Amendment 31 in particular go against this intention, as the precise meaning of the terms "deficit" and "turnover" is uncertain, and how these are to be calculated is unclear. This leads to uncertainty for any targets of the penalty and will place an unnecessary burden on the regulator. For example, the regulator would need to interpret what is an appropriate definition of deficit to use for the purposes of the penalty and then estimate what this deficit would be. Similarly, the regulator would need to dedicate resources to estimating what constitutes the employer's annual global turnover and what would be relevant turnover for this calculation. Further, a question arises about the time at which the deficit or turnover should be assessed. For example, should it be calculated from the time the act took place or at the point of instituting proceedings? If the act is part of a series, at which point in the series should the deficit or turnover be calculated?

Until the regulator had carried out these assessments, the maximum penalty that could be charged would be uncertain. The assumptions that the regulator would need to use would also be open to challenge by the target. This would impede the regulator's ability to take swift action and could tie enforcement up in lengthy challenges over the penalty amount. This would also put a drain on the resources the regulator has to undertake its functions.

The clause contains a power to increase the maximum amount of the financial penalties if required. This is to ensure that the penalty remains an effective deterrent in the future and accounts for factors such as inflation.

The noble Lord, Lord Sharkey, asked why we were consulting on the level of penalties rather than putting these figures in the Bill. The maximum level of penalties is included in the Bill. The level and daily rate of the existing fixed and escalating penalties which relate to automatic enrolment and master trusts are set in regulations. These provisions mirror that approach. Feedback during the consultation on the regulator's powers indicated strong agreement on similar fixed and escalating civil penalties, but little consensus on the detail of the exact levels. We need to consult further to ensure that the penalties are set at an appropriate level.

The noble Baroness, Lady Bowles, asked why we do not follow the method of imposing fines used by the Information Commissioner's Office. The ICO has a fining power as required in accordance with the 2016 general data protection regulation. Article 83 of the GDPR states that the penalties must be at particular levels.

The noble Baroness, Lady Sherlock, asked what modelling or consultation took place to set the maximum financial penalty at £1 million. The Government consulted on the proposals for strengthening the regulator's powers in 2018, which were developed from the Green Paper consultation in 2017. As I have said, the £1 million maximum penalty was supported by the majority of respondents to the consultation.

[BARONESS STEDMAN-SCOTT]

The noble Baroness, Lady Sherlock, also asked about different fines decided by the FCA rather than by averages. I am afraid that I will have to write to her to answer her question on whether others have the power to change the maximum.

I hope that I have reassured noble Lords that the Government have thought carefully about these penalty amounts and struck the right balance between protecting members and being proportionate to the business. Therefore, I urge noble Lords not to press their amendments.

Baroness Sherlock: I realise that my questions were quite detailed, so could I ask the Minister to look at the record and write to me to answer each of them in turn? Could I encourage her to draw on the expertise behind her to answer the questions? Sometimes one gets letters after a debate and, while they relate to the general area of the questions, they are maybe not quite as well targeted as one would hope. I encourage her to do that and would be delighted to leave it at that at this time.

Baroness Stedman-Scott: I thank the noble Baroness for this homework. I will ensure it is delivered to her and that it is accurate.

Lord Sharkey: My Lords, in her explanation of the £1 million upper limit, the Minister relied to some extent on the consultation outcomes from 2018. I am curious about who was consulted. Was the ABI a consultee? She will have heard earlier in this debate the ABI's rather enthusiastic approval of an increase in the £1 million limit, so it would be interesting to know whether the ABI has done a reverse ferret or whether it was not included in the first place.

Secondly, if the Minister is confident in her arguments for the £1 million penalty, as she clearly is, then I find it very strange that in the next section of the Bill it says, "If we don't like that, we can increase it to anything we like via regulation". That shows a startling lack of confidence in the £1 million. It is quite wrong to give unlimited discretion via regulation to raise the fine to any amount at all. It is unsatisfactory that this provision exists within the Bill. I am sure that we will want to discuss this further, preferably before Report, and if not, certainly on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendment 30 not moved.

6.30 pm

Clause 112 agreed.

Clauses 113 and 114 agreed.

Clause 115: Financial penalties

Amendments 31 and 32 not moved.

Clause 115 agreed.

Amendment 33

Moved by ***Baroness Bowles of Berkhamsted***

33: After Clause 115, insert the following new Clause—

"Report for the purposes of the Company Directors Disqualification Act 1986

(1) The Pensions Regulator must make a report to the Secretary of State under this section if the circumstances in subsection (2) apply.

(2) The circumstances in this subsection are where—

(a) a person has been convicted of an offence under this Act or another offence related to a pension scheme,

(b) it appears to the Pensions Regulator that a person has committed an offence under this Act or another offence related to a pension scheme, or

(c) a person is fined under section 88A of the Pensions Act 2004.

(3) In the report under subsection (1) the Pensions Regulator must—

(a) identify the person,

(b) identify, where the person is a corporate body, any person who was a director of it at the time any offence was committed or appears to have been committed,

(c) report on any facts which appear to the Pensions Regulator to be relevant to the Secretary of State for the purpose of making a decision under section 8(1) of the Company Directors Disqualification Act 1986, and

(d) state whether the Pensions Regulator considers that, having regard to the need for public confidence in the system of pensions regulation, it would be expedient in the public interest for any person so identified to be the subject of a disqualification order.

(4) But the Pensions Regulator is not to be required to make a report to the Secretary of State in respect of a person if—

(a) that person is a director who is the subject of a disqualification order under section 2 of the Company Directors Disqualification Act 1986 in respect of a criminal offence, or

(b) in the case of a fine under section 88A of the Pensions Act 2004, it appears to the Pensions Regulator that no public interest would be served in making a disqualification order against that person."

Baroness Bowles of Berkhamsted: My Lords, this amendment aims to utilise an existing provision in the Company Directors Disqualification Act 1986. Section 8(1) of that Act was broadened in 2015 so that the Secretary of State for BEIS may, in the public interest, apply to the court for a disqualification order. It used to be the case that Section 8(1) was activated by a report after certain specific investigations, one of which was an investigation by the FCA. The change in 2015 recognised that the reports did not need to be so restrictive. What I propose follows the theme of the original procedure and suggests that when there has been a serious offence committed regarding pensions, the Pensions Regulator should make a report to the Secretary of State for BEIS for the purposes of the Company Directors Disqualification Act.

The Pensions Regulator would be required to identify the person, or, if a body corporate, the directors at the time when the offence was committed, and,

"state whether the Pensions Regulator considers that, having regard to the need for public confidence in the system of pensions regulation, it would be expedient in the public interest for … a disqualification order."

It would then be up to the Secretary of State to decide whether to refer it to the court for disqualification. The fact that I have had to explain what this is all about to others outside the Committee, and that it is

already envisaged or in law, indicates that it needs a nudge to make it active and that the regulator needs to be empowered and encouraged to make reports.

My proposed new clause is constructed so that all offences can trigger such a report from the Pensions Regulator, whether criminal offences or fines. But under its subsection (4), the Pensions Regulator has discretion not to make a report if a disqualification is already proceeding, which is possible in the event of a criminal offence being decided against an individual, or if the offence is a fine rather than a criminal offence. These new provisions would be particularly relevant when a company has been found guilty. It would mean that the actions of the directors would be investigated. Again, I note that the ABI has indicated support for this amendment.

The inspiration for the amendment comes from the fact that there are certain financial instances or breaches of competition law where the directors are always investigated. Pensions is a significant social issue on which hearing from the relevant regulator should also be a matter of course. There is no automatic disqualification or even an automatic reference to the court—that is up to the Secretary of State—but at least for a criminal matter there would always be a report concerning the circumstances and an added incentive for board scrutiny of matters relating to pensions. I beg to move.

Baroness Sherlock: My Lords, I can add little to that careful explanation of the amendment; I know a lot more than I did five minutes ago. However, as the Minister responds, perhaps she could tell us a little more about what happens both now and when the Bill becomes law: that is, what the TPR does when someone has committed an offence, what is its understanding of to whom this should be reported, in what circumstances, and how its enforcement team works with the supervision team and with the FCA's enforcement supervision arrangements. That is not directly the point which the noble Baroness, Lady Bowles, was making but I very much endorse her approach, which is to put the importance of pensions on a par with the importance of threats in other parts of the economy. That is interesting, and I am interested in the Government's response to it.

Baroness Stedman-Scott: I thank the noble Baroness, Lady Bowles, for tabling this amendment, which would require the Pensions Regulator to provide a report to the Secretary of State for the purposes of the Company Directors Disqualification Act 1986. Director disqualification is within the remit of the Insolvency Service, which has the powers, resources and expertise to disqualify directors. As such, the Pensions Regulator does not have the power to disqualify directors, as this would be unnecessary, costly and inefficient. However, the Pensions Regulator is already able to share information with the Insolvency Service if it meets the "gateway" criteria as outlined in its restricted information regime under Section 82 of the Pensions Act 2004. The regulator can use this gateway in circumstances where the sharing of information is with a view to instigating director disqualification proceedings.

As such, the regulator is already able to share information with the Insolvency Service where it has identified persistent wrongdoing by a director or where it has already taken regulatory action. Under Section 8 of the Company Directors Disqualification Act 1986, the Insolvency Service is then able to apply to the court for a disqualification order on behalf of the Secretary of State, based on investigative material provided by other agencies or departments. Whether or not the Insolvency Service takes action to disqualify a director on the basis of information provided by others, such as the Pensions Regulator, will depend upon its assessment of the case in question. The Pensions Regulator and the Insolvency Service regularly engage with each other to discuss areas of joint interest. They continue to monitor the effectiveness of the disclosure process and are taking steps to streamline it when necessary. This will help to ensure that the organisations are able to work together to achieve successful outcomes and better protect the public.

In summary, the amendment is looking to introduce a process which is already in place. The Pensions Regulator and the Insolvency Service continue to work closely together to streamline this disclosure process and ensure that both organisations have a good working knowledge of each other's remits. On that basis, I urge the noble Baroness to withdraw her amendment.

Baroness Bowles of Berkhamsted: I thank the Minister for that explanation. I think that there are two provisions within the Company Directors Disqualification Act: the ones with the Insolvency Service tend to be based around purely financial mechanisms. I will carefully read the response in *Hansard* to see whether it covers everything that I envisaged it should. I am a little suspicious that it does not; there would otherwise not be the provision of Section 8(1) and its very careful amendment in 2015. As the Committee might expect, I have had some communication with QCs who deal with these kinds of issues. If it is covered, I am happy; if not, I would like to see whether we can tighten it up. With that, I beg leave to withdraw my amendment.

Amendment 33 withdrawn.

Amendments 34 to 36 not moved.

Clause 116 agreed.

Schedule 7 agreed.

Clause 117 agreed.

Schedule 8 agreed.

Clause 118: Qualifying pensions dashboard service

Amendment 37

Moved by ***Baroness Drake***

37: Clause 118, page 105, line 4, after "service" insert "(which may be publicly or privately owned)"

Baroness Drake: My Lords, I shall speak to Amendments 37, 47, 48, 60 and 61. Amendments 37, 47 and 60 place in the Bill that there can and will be a

[Baroness Drake]
publicly owned pensions dashboard. The Minister may give ministerial assurances that it is intended that there will be a public dashboard; unfortunately, ministerial Statements have currency only until the next occupant. There is no requirement in this Bill as drafted that would require a future Secretary of State to make such a provision.

The amendments require that the dashboard ecosystem will include a publicly owned dashboard. The Government's current policy,

"supports the coordination of an industry-led dashboard"—

leading—

"to the creation of a dashboard service designed, developed and owned by industry".

The whole of the UK's second-tier pension system will be mandated to participate in dashboards owned in the industry, giving rise to major public good considerations, yet nowhere in that wording is there a requirement to set up a publicly owned dashboard, nor is there one in the Bill.

The DWP feasibility study launched at the end of 2018 set out a clear direction of travel towards a single non-commercial dashboard before moving towards multiple dashboards. By April 2019, in responding to the consultation on their study, the Government had shifted their view to commencing with the simultaneous testing of commercial dashboards. Of the 125 replies to the consultation, 15 were from individual citizens and according to my calculation, nearly 60% were from financial service providers and associated trade bodies and six were from consumer bodies. By late 2019, in a previous version of this Bill, and in this Bill and its impact assessment for this version, commitment to a publicly owned dashboard has faded further.

Amendments 48 and 61 do not prevent commercial dashboards being authorised. They seek to ensure that the Government secure a level of confidence in operational delivery, security, consumer protection and insights into customer behaviour by commencing with a publicly owned pension dashboard for at least a year, and that the Secretary of State should lay before each House of Parliament a review of that service before commercial dashboards enter the market. A year is not a long time, given the scale of the consumer interest. If the Secretary of State believes that there is good reason for taking longer than a year, then my noble friend Lady Sherlock and I will be guilty only of prescience.

6.45 pm

Part 4, together with Schedule 9, grants significant regulation-making powers. As the Constitution Committee, of which I am a member, observes:

"These powers are skeletal as the scheme has not yet been developed ... There is a need for some of these powers in order to commence the work on pensions dashboards … the rest of the powers could have been omitted until the policy had been prepared and sample regulations produced for consideration as part of a future bill."

The committee, while recognising that pension issues can be complex, concludes that,

"complexity is not an excuse for taking powers in lieu of policy development."

Policy and key decisions have not been settled on some fundamental issues. I may not go as far as the observation of the noble Baroness, Lady Noakes, at Second Reading, who said:

"I have to say that this is at best a half-baked policy. We have no idea exactly how this will work."—*Official Report*, 28/1/20; col. 1382.]

I do not go that far, but I fundamentally believe that the project calls for some effective risk controls, hence the call for a first run of the service to be through a publicly controlled dashboard, followed by a report to Parliament.

Building a pensions dashboard service has complexities. Here is just a short list, by way of illustration, of some of the matters not yet resolved or settled. Different parts of the infrastructure will be owned by different people; what are the implications? Liability can occur at different points in the dashboard service, involving different parties, but we do not know what the liability model will be. A matter of importance to trustees is releasing their data and consumers seeking redress on detriment. The proposition as to the presentation of data is not settled. We have not seen the data-sharing risks impact assessment referred to in this Bill's impact assessment. We do not know to whom or to what body the Secretary of State will delegate powers to set standards and how those bodies will be publicly accountable, an issue which the Constitution Committee highlights. How will the risk framework for the dashboard service align with that applied to pension schemes on scams? What will be the charging model for accessing dashboard services? When will delegated access to an individual's data be allowed? That is a list not of criticisms but of necessary work in progress. Such unresolved matters require a check. Without it, scrutiny by Parliament is inhibited and the public interest is not well served.

The long-term savings market is particularly vulnerable to consumer detriment because of asymmetry of knowledge and understanding between the consumer and the provider, customer behavioural biases, the complexity of products and the irreversible nature of many pension decisions. There is a plethora of reports and cases from the regulators—the FCA, the CMA, TPR and the OFT—that confirm this. Their reports opine that competition alone cannot correct it. The dashboard will not mitigate all these drivers of consumer detriment, but there are multiple ways that functionality in commercial dashboards could create detriment if not properly introduced.

There are those who argue that the complexities are overconsidered and that pensions dashboards can follow in the slipstream of open banking. Exposing the weaknesses in that argument was done comprehensively by the DWP in its dashboard feasibility study—my compliments to the drafter. It set out how the open banking and pensions dashboard projects differ. To highlight just some of those differences, open banking is intended to create better consumer outcomes through competition in an area where consumers already know what they have and where. Pensions dashboards are intended to increase awareness and understanding in an area where many people do not know how much they have saved and with which providers. The architectural solutions for each are different. Open banking allows

consumers to share their banking data with an authorised third party because customers know who they bank with and the digital architecture does not include a finding service.

In pensions, a finder service is required precisely to reconnect people with their savings or to keep track of multiple pots. Open banking customers authorise the service provider to access their data through direct authorisation via their bank account. That is not possible in pensions: most schemes do not have online consumer-facing platforms which allow direct authorisation. The dashboard model would have to support the guidance process through delegated access —an issue of some major significance—which open banking does not support.

The Government conclude that the architectural solutions are not the same and that key differences in objectives et cetera and their legislative and funding bases mean the open banking entity is not a viable option. The solution that is right for dashboards has to be found within the dashboard system itself. I am not alone in my view that the dashboard service should commence with a public dashboard. I will name a few of my—if I may presume to call them such—allies. NEST, with some 8 million members and growing, in its response to the government consultation, argued that,

"the Government's focus should be on the creation of a single non-commercial public dashboard, with strong governance and consumer protections applied."

The People's Pension—a large not-for-profit master trust with more than 5 million members—in its publication *Delivering Pensions Dashboards in the Public Interest* supported a single non-commercial dashboard before moving towards multiple dashboards as necessary for the public interest. The Pensions and Lifetime Savings Association, much quoted by the Minister at Second Reading in defence of the Government's position on many things, takes the view that the Government should ensure that they begin with the first dashboard with a single, non-commercial dashboard to ensure that the level and quality of customer protection is fit for purpose. Which? in its briefing states:

"The Pension Schemes Bill should enable the best possible dashboards to be created in the shortest possible time, starting with a Government-backed pensions dashboard".

The long-term savings sector needs to harness the consumer positives which financial technology can deliver. It is behind the curve. The pensions dashboard has the potential to enhance private and public good if it is implemented well. The aspiration may be to improve engagement and decision-making and to resolve the problem of small pots, but we need to understand how the dashboard is driving behaviours, including any unintended consequences because the weight of current evidence—and it is heavy—is that in a market vulnerable to consumer detriment, individuals reveal powerful behavioural biases, and even the financially capable can make irrational and sub-optimal decisions.

Once the dashboard architecture is built, it should be tested exclusively as a single, non-commercial dashboard. This amendment recognises the complexities, the risks to be addressed, the choices still to be made and the extent of the delegated powers. It seeks to commence with a public dashboard service and that the Secretary of State lays a review of the structure and effectiveness of that service before each House of Parliament prior to commercial dashboards being authorised.

These amendments are not an argument against commercial dashboards. They are saying, "Get it right; get a level of confidence before you put 25 million people's data out into a network of commercial services." It is not only the private interest of the individual customer. If you are putting the whole of the second-tier pension system in the UK into the dashboard ecosystem there are huge issues of public interest and public good. I am not arguing against the dashboard or against harnessing the benefits of financial technology. I am saying that the challenges and the risks are so great, so what is wrong with trialling it through a public dashboard for a year and presenting it to Parliament? If the Secretary of State is confident, the Government go ahead; if not, and they need more time, we will not have done anything wrong in this amendment. I beg to move.

Lord Young of Cookham (Con): My Lords, Amendments 70 and 71 in my name have much in common with Amendments 47 and 60, tabled by the noble Baroness, Lady Drake, which I support. But my amendments are more specific, in that Amendment 70 designates the Money and Pensions Service as the public body, to which the noble Baroness has just referred, which would have to provide a publicly owned pensions dashboard. Amendment 71 stipulates a date by which it should be up and running. Without a date, there is no guarantee in the Bill that we will ever see the service. I will mention in a moment some of the slippages.

I assume that MaPS would qualify under the description of a public body from the noble Baroness, Lady Drake. It is an arm's-length body sponsored by the DWP, and the Government appoint the chairman and chief executive. It is funded by levies on both the financial services industry and pension schemes, but that does not preclude it from being a public body. We have been told that it is going to provide a dashboard. Page 70 of the very helpful policy brief says:

"The Government is committed to the provision of a dashboard hosted by MaPS."

If that is a commitment, I see no difficulty in making it a statutory requirement, which Amendment 70 does. Without such a requirement, we would be entirely dependent on the private sector to take the project forward. As we saw from the Library briefing at Second Reading, it has doubts about costs, and the noble Baroness, Lady Drake, has just reminded the Committee of some of the warnings about being over-reliant on the private sector.

I turn to Amendment 72 about the date. At Second Reading, I quoted from the Pensions Dashboard Prototype Project, which said:

"The industry and government hope to have Pensions Dashboard Services ready by 2019."—[*Official Report*, 28/1/20; Col. 1372.]

My remarks were drawn to the attention of the project and the comment was hastily withdrawn. However, yesterday, I logged on to the ABI website entitled, "The Pensions Dashboard—your online pension finder". That website has a 2020 date at the foot of the last page, indicating that it has been updated relatively recently, but on page 1 it said:

[LORD YOUNG OF COOKHAM]

"The Government's objective is for the service to be available to consumers by 2019."

I expect that also to be revised in the near future—indeed, an email may already be winging its way to the ABI.

Against that background, my target date of December 2023, for something for which we are told the Government's objective was for it to be up and running two months ago, is excessively generous. Reading the ABI website further, I found the following question:

"If the prototype has worked, why do I have to wait until 2019 to use this myself?"

The answer makes it clear that, in the ABI's view, any delay is down to the Government. It says:

"The prototype has proved that the technological challenges of agreeing data standards, verifying people's identities and reporting back in a secure and meaningful way can be done, but it is only part of the solution."

It goes on to say:

"Setting up a service like this cannot be done by the pensions industry alone, but needs support from the Government and regulators to agree rules for how it will operate."

That, of course, is what we are doing this evening. It seems that the ABI is ready to go and is just waiting for the Government.

I will put this in a historic context. In 2002, the then Secretary of State at the DWP, Andrew Smith, said that the Government would create a web-based retirement planning tool—the online retirement planner—showing people their total projected pension income. Fast-forward to 2014—if fast-forward is the right expression—when Mark Hoban, then Financial Secretary to the Treasury, said:

"A 'RetirementSaverService' (dashboard) will be essential to support pension freedoms."

Five years after pension freedoms were introduced, there is still no dashboard. In the meantime, eight national pensions dashboards have been launched in Europe.

7 pm

Assuming the Bill reaches the statute book later this year, why should it take more than another 12 months to get the service up and running by MaPS? Will the Government, if they are minded not to accept my amendment, propose an amendment of their own on Report with an earlier date?

Lord Sharkey: My Lords, I strongly support the amendments in this group and have signed Amendment 70 in the name of the noble Lord, Lord Young. I signed it because I was extremely puzzled by the use of "may" in this context. I had thought that the Government had publicly committed to establishing a public, free-to-use dashboard under the aegis of MaPS. Can the Minister say whether that commitment stands? If it does, surely "must" has to replace "may", as suggested by the amendment?

Baroness Sherlock: My Lords, my noble friend Lady Drake has made a compelling case for the importance of this issue as well as giving us a helpful strategic overview of the state of the long-term savings industry and the impact of this dashboard on it. Done right, a dashboard could in time offer a useful service to savers. It would offer a chance to locate lost pots, to view in one place all the different bits of pension, state and private, and to make a realistic assessment whether someone is saving enough for retirement. But equally, the risks are huge, particularly given the scale if, as my noble friend said, data for more than 22 million people are to be channelled through this platform.

This becomes a public good only if it is designed and delivered in the right way, with transparency and all the necessary safeguards. As my noble friend Lady Drake said at Second Reading,

"public good cannot be traded off against commercial interests."—[*Official Report*, 28/1/20; col. 1367.]

Labour would prefer this to be a public service, but if the Government are determined to go down the road of commercial dashboards, it is clearly essential that there be one "public good dashboard" owned, controlled and governed by a public body. My noble friend has given us a frankly staggering list of organisations supporting this that are right at the heart of the industry, including the CEO of the Pensions Regulator, who told the Work and Pensions Select Committee on 26 June 2019 that

"there must be the public dashboard".

It is really very simple: the public should not be required to use a commercially owned dashboard to access their own data, especially in a market so susceptible to consumer detriment.

It is quite extraordinary that there is nothing in the Bill saying that there should be a public dashboard, when I think everybody had assumed this was going to happen. The Minister said at Second Reading

"MaPS committed to providing a dashboard in its 2019-20 business plan."—[*Official Report*, 28/1/20; col. 1414.]

However, a Minister telling us that an NDPB has plans to do something is not the same as legislating that it must happen, so our amendments simply require that there be a public good dashboard.

The MaPS business plan said:

"It is envisaged that there will be multiple dashboards connected to the infrastructure, but also that there is merit in a consumer facing dashboard provided by a non-commercial and impartial organisation. The Money and Pensions Service, as part of its business as usual function to provide impartial information and guidance, will begin the development of a noncommercial consumer facing dashboard."

There is not exactly a sense of urgency there; it contrasts quite markedly with what the noble Lord, Lord Young, has described as the ABI champing at the bit to get going and hoping to have it done by last year, or at the very latest this year.

That is the second point. Even if Ministers seek to assure us that MaPS is committed to producing a public dashboard, we want to know that it will be up and running before any commercial dashboards are allowed to start operating. That is what Amendment 48 is designed to ensure. I cannot see why this should be controversial. If Ministers are confident that MaPS is on target, no doubt they will accept the amendments from the noble Lord, Lord Young, and reassure the Committee that a good public dashboard will be set up. Would it not be obviously sensible to have that up and running to test the architecture and infrastructure before allowing private companies to set their own up dashboards, with the additional risks that will bring?

I suppose it is possible that Ministers are not confident that MaPS will have its public dashboard running any time soon. They could easily dispel that thought by accepting the amendments from the noble Lord, Lord Young, or indeed ours. I believe MaPS has said only that it hopes to be one of the first. The state's recent track record with large-scale IT projects, as those of us covering DWP know to our cost, has not been fantastic. If multiple dashboards are to be allowed to be set up all at once, and if MaPS is to take its time in doing it, there could potentially be a considerable period in which consumers will be able to access their data only through a commercial dashboard. That does not seem to be in line with what we understood the Government intended to do.

Our amendments are simply designed to ensure three things: that there is a dashboard which is publicly owned, controlled and governed; that it is free to use and does not display advertising; and that if Ministers are to go down the route of commercial dashboards, they do not do so until the public dashboard has been operating for at least a year, and the Secretary of State has been able to report to Parliament on its structure and effectiveness.

I would like to ask the Minister some specific questions. They are really easy—not A-level questions but low-grade SATs questions, which I have no doubt should be in her brief somewhere. I shall read them really slowly. First, when does DWP expect the MaPS dashboard to be up and running? Secondly, when does it expect the first commercial dashboard to be up and running? Sorry, I was looking at the wrong Minister. Thirdly, how many dashboards do the Government think we will have? How many do they know of that are being tested or in the pipeline? Fourthly—this is a biggie—will commercial dashboards be allowed to charge consumers for using them? Fifthly, and this may be at GCSE standard, I understand that alongside any dashboard developed by MaPS, a liability model will need to be developed. We do not have any guarantee that the liability model will be ready before commercial dashboards become available, even if the MaPS dashboard is not ready. Is there any way that there could be a gap between people using commercial dashboards and the liability model being ready? That matters because, of course, if detriment is created then we need to know how it is to be managed and where responsibility lies.

I remain very worried about what the Government may be creating without considering all the implications, and its unintended as well as intended consequences. I look forward to the Minister's reply to our amendments and to those tabled by the noble Lord, Lord Young. I hope the Government can reassure us that they will in fact be committed to having a high-quality, public good dashboard established before the industry is allowed to get into a free-for-all.

Earl Howe (Con): My Lords, I thank the noble Baronesses, Lady Drake and Lady Sherlock, my noble friend Lord Young and the noble Lord, Lord Sharkey, for their valuable contributions to a debate on what I am the first to acknowledge is a significant set of topics. This group of amendments explores how privately operated dashboards will work alongside a public dashboard provided by the Money and Pensions Service. They also explore whether a public service dashboard will be delivered.

I want first to reassure the Committee that the Government are absolutely committed to the Money and Pensions Service, or MaPS, providing a qualifying dashboard service. Let there be no doubt about that; it was clearly set out in our consultation response *Pensions Dashboards: Government Response to the Consultation* published in April last year. The MaPS business plan for 2019-20, also published last April, subsequently confirmed its commitment to deliver a dashboard.

Furthermore, to pick up the sense of Amendments 47, 48 and 70, we entirely understand the importance of having a dashboard run by a public body without any commercial interest. One of the core functions of the Money and Pensions Service under the Financial Guidance and Claims Act 2018 is to provide free and impartial information and guidance about occupational and private pensions. Read together with Clause 122, that ensures that MaPS has the legal powers to provide a pensions dashboard that includes state pension information. To be clear, I say that accessing the information on dashboards will remain free, regardless of whether a dashboard is provided by MaPS or another organisation.

MaPS will be able to include signposting to free and impartial guidance on its dashboard, as will other organisations, as that supports its pensions guidance function. However, MaPS will not be able to host any income-generating advertising. MaPS has no revenue-raising powers under the Financial Guidance and Claims Act 2018.

I turn to ownership. We expect MaPS to provide a dashboard on an ongoing basis. However, it is important for there to be flexibility in how that function is carried out in line with changing technology and consumer interests. Here I am talking about the medium to long term. We also want to maximise the Government's ability to ensure that ownership of the dashboard is in the right place in the longer term.

On Amendment 71, I very much share my noble friend Lord Young's desire for a dashboard to be delivered in a timely manner to help people plan for their retirement. However, setting a date in legislation may be counterproductive. It risks creating a situation where decisions are taken simply to meet a legislative deadline, regardless of outcomes, rather than to meet the needs of individuals. To my mind, more important here is that we ensure that the service is accurate, secure and consumer focused. Developing a service that gives consumers a single point of access to their pensions information is complex. There are 40,000 schemes of differing types, covering around 25 million people with private pension wealth. The staged onboarding of thousands of pension schemes covering millions of separate records will raise issues that are not currently apparent, it is safe to predict. That tells us that dashboards should be delivered only when the Government and MaPS are confident that they are ready, so that consumers can be confident in the service offered. I hope that the noble Baroness, Lady Sherlock, in particular agrees, given her apposite references to computer systems that perhaps have not quite lived up to expectations.

[EARL HOWE]

Through Amendments 37 and 48 the noble Baronesses, Lady Drake and Lady Sherlock, also probe the question of introducing multiple dashboards alongside a MaPS dashboard. Having the potential to offer multiple dashboards at launch maximises the possible reach of this policy from the outset and could help to meet the differing needs of the many people using them. User research completed as part of the Government's feasibility study and consultation showed that individuals may prefer to use a dashboard provided by an organisation with which they already have a relationship—for example, their employer—due to higher levels of familiarity and trust. It is a case of one step at a time, however.

I hope that the Committee is reassured that the information shown on all dashboards, public or private, will be the same, and based on user testing. We also intend all dashboards to start with a limited functionality until we better understand how individuals interact with their information.

A majority of respondents to the government consultation were supportive of multiple dashboards, provided sufficient consumer protections were in place. The Government have considered how to ensure that consumer protection, and accordingly we shall be introducing a new regulated activity under the Financial Services and Markets Act 2000 to reflect the provision of dashboard services. As I am sure noble Lords are aware, we will cover this issue in more detail later.

Clause 118 provides the power to set out detailed requirements "for qualifying pensions dashboards". It is also likely that this will be linked to the new regulated activity outlined by the Financial Conduct Authority. These are all provisions to ensure consumer protection in relation to privately run dashboards. Our job is to put that consumer protection regime in place, but, once it is in place, we do not wish to constrain the potential reach of the policy. Nor do we wish unnecessarily to limit consumer choice.

7.15 pm

The noble Baroness, Lady Drake, asked a number of questions. One was whether I could reassure her that pension schemes will not find themselves contravening any GDPR rules when they respond to a request received by the pension finder service. A request of that kind will inevitably be a subject access request from an individual to the data controller to view their data. The individual's identity will have been verified to the agreed standard, so the pension scheme can be confident about who is making the request. Only the Money and Pensions Service and qualifying pensions dashboard providers that meet the requirements set out in regulations and operate to agreed standards will be able to connect to the dashboard infrastructure. Any request to search for consumers' pension information that is not received from the pension finder service will not be provided via pensions dashboards.

The noble Baroness also referred to the issues raised by your Lordships' Constitution Committee about the nature of the skeletal powers in the Bill, and the whole issue of delegated powers. Perhaps I may say, very respectfully, that the noble Baroness was slightly unfair on your Lordships' committee. As it acknowledged, enacting skeletal provisions was done for a purpose, which was to provide momentum to the process of co-operation that will be required to develop the dashboard infrastructure. The delegated powers memorandum set out why that approach was taken, and the need to reflect what is a dynamic technical environment.

The noble Baroness, Lady Drake, also asked what steps the Government were taking to ensure that consumers did not fall victim to scammers. I accept the importance of that issue and hope we are sufficiently seized of it. The dashboards will be designed to prevent consumers' data being unlawfully harvested. Only qualifying dashboard providers and the dashboard provided by the Money and Pensions Service will be permitted to connect to the system and have access to the pension finder service, which is the route for displaying information from pension schemes. We should remember at all times that it will be consumers who have control over who can access information, and that they will be able to revoke their consent at any time. In addition, before guiders and financial advisers can view any pensions information, they will be required to prove their identity, and that they are on the list of registered financial advisers.

The noble Baronesses, Lady Drake and Lady Sherlock, asked about the liability model. We will—I suspect on Monday—come to Amendment 46, tabled by the noble Baroness, Lady Bowles, and I intend to cover the liability model then, if the Committee will allow.

My noble friend Lord Young and the noble Baroness, Lady Sherlock, pressed me on when we believe pensions dashboards will actually materialise. I need hardly say that we are keen to see dashboards available as soon as possible, to help consumers plan for their retirement. However, as I have explained, it is important that we ensure that the service designed is accurate, secure and consumer focused. I repeat that this is a very complex business. It is important that we do not rush it and that the design and functionality of the service is right. That is why we have asked the Money and Pensions Service to convene an industry delivery group. That group will lead the design and development of the infrastructure that will support the delivery of dashboards.

I am afraid that all this will take a bit of time. The dates that my noble friend referred to, which apparently still appear on the ABI website, were, in hindsight, somewhat heroic. We have to live with the reality that we find ourselves in, but I can tell my noble friend that MaPS and the industry delivery group intend to set out their approach for the year ahead by Easter. By then, we should have at least the outline of a plan, with milestones I hope, so that we can be a little clearer on the answer to the question that he raised.

The noble Baroness, Lady Sherlock, and my noble friend referred to the ABI commentary on the need for a commercial dashboard. The ABI briefing for Committee showed that, in its research, 49% of respondents were comfortable accessing information from pension providers, 47% from online banking, 32% by a mobile app and 20% from a government service. That is quite a revealing set of findings. The first figure that I quoted, 49%, tells a particularly powerful story.

The noble Baroness, Lady Sherlock, asked several very simple questions, some of which I have answered. One was about how many commercial dashboards are

currently under development. We do not have an answer to that. There has, however, been significant interest from around the industry, and I can only suppose that we will get greater clarity on that over the coming months. I am sorry that I cannot be more illuminating on that point.

I should just say, as I do not think I have made this clear, that we cannot see any reason why commercial dashboards should not be available at the same time as the publicly owned and funded dashboard, as long as they meet the criteria. It could be that the publicly funded dashboard will be launched first and be first in class, and that others will follow. On the other hand, it could equally be that we will see a range of dashboards emerging at more or less the same time. I am not able to predict which of those will happen, but we are open to both scenarios.

I think that covers the main points. I would like noble Lords to be reassured that, as we move forward with this process, the way that dashboards develop will be kept under regular review by the industry delivery group, the regulators and the Government. User interests are, and will remain, central to the delivery and development of dashboards, and I restate the Government's commitment that the Money and Pensions Service will provide a dashboard.

I hope that this provides the Committee with the necessary clarity, certainty and—

Baroness Altmann: I hope my noble friend will forgive me for intervening, but after what he has just said, it is important to put on record that there are potentially significant dangers in launching commercial dashboards at the same time as the publicly funded dashboard. It is likely that that will generate enormous confusion in the consumer. It is entirely possible that consumers will not know which dashboard is which and will be driven to a commercial dashboard, which may not be in their impartial interests. I urge my noble friend to consider carefully that there are really strong and important reasons from a consumer protection perspective to have this publicly funded dashboard first, especially as the Government have devoted so much resource and commitment to providing it.

Earl Howe: I say—gently—to my noble friend that I could not disagree more. I cannot see the risks that she has articulated, given all that I have said about putting the necessary consumer protections in place before anyone makes the first move to launch a commercial dashboard. Having said that, I very much respect her knowledge of the landscape and would be happy to have a conversation with her about the risks that she referred to. But having thought about this in some depth myself, I am satisfied that we will not allow a situation to arise where consumers are confused or put at risk by the multiplicity of dashboards. All the dashboards will show the same information. They will not be allowed to show different information. They may set it out differently, but that does not seem to constitute a risk to the consumer or of confusing the end user.

Subject to those remarks, and despite the lack of clarity around the timing of the matters I referred to, I hope that the assurances I have given are sufficient for noble Lords, and that the noble Baroness feels content to withdraw her amendment on that basis.

Baroness Drake: My Lords, this is the first chance Parliament has had to scrutinise this major project. I am not asking for the project to be rushed. I am the last person who would want to set up MaPS or the DWP to fail. I wish them well and to succeed. I do not have a negative view, but I want this project to work.

The Minister gave assurances that there will be a public dashboard, but it is not in the Bill. I could cite various previous occasions when Ministers made assurances about things but they did not materialise. If we accept, which I do, the sincerity with which the Minister has committed to there being a publicly owned dashboard, I see no reason why a little amendment to the Bill could not capture that assurance, so that the next Secretary of State does not change their mind.

On the ownership of the dashboard, I was actually rather worried—not reassured—by one comment the Minister made. He said that ownership in the long term, with a whole series of unknowns about how things will develop, is something that will need to be considered. That may be true; however, given those unknowns and that we do not know how policy will develop, the delegated powers in this Bill should not take to themselves the ability to make fundamental changes to the ownership of the dashboard. Because it is of such significance, that issue should come back to Parliament. Does the Minister accept that point?

7.30 pm

I accept that some people may prefer to use their own provider's dashboard: I can see situations where one would, if there is a high level of trust. However, I hope the Minister will accept that there is equally strong evidence that consumers want access to a public dashboard outside the commercial environment. Does he accept, equally, that the general public seek this?

This will not work unless the schemes release their data. I do not go behind that but accept it as something that has to be done for a dashboard to work. They are entitled to a level of confidence about the protection of that data and the liability when it is released. In the documents that we have, the state has protected itself: it has reserved that it may not release state data onto the dashboard. I do not want to go behind that. However, if the state is not confident at a given point in time to release its data for whatever reason, one has to ask why it is okay to mandate private schemes, since they will ask that question too. Does the Minister accept that that will be one of the concerns?

I was not trying to over-select—or select at all, in that sense—the Constitution Committee's comments, and I accept that there is a need for flexibility in the momentum when building the architecture. However, that is different from having open-ended delegated powers on all matters of policy that might emerge on market and consumer behaviour.

In his comments, the Minister said that the dashboard would start with limited functionality, which is reassuring—that is the sort of comment I like to hear. However, on my next amendment I want to address where that functionality moves on. The delegated powers allow it to move on and there are no protections in the Bill for when the functionality extends beyond the collection and display of information.

Earl Howe: I will come back on a couple of points raised by the noble Baroness. The regulations that would achieve any future changes to the dashboard are subject to consultation and the affirmative resolution process. It comes back to what I indicated earlier was a step-by-step process. If the Government wanted to augment or change the content of the dashboard, they would have to do it in a measured and ordered way.

She also asked whether I believe that consumers want a publicly funded dashboard. I think that the answer to that will be revealed in consumer behaviour: if they clearly want it, they will use it, and we will know that. Of course, we cannot predict how consumer behaviour may change over the medium to long-term. That is the point that I was seeking to make earlier.

Lord Flight: I will make a practical point. Running up to the launch, it would surely be very useful to have extensive marketing and advertising of MaPS, so that citizens know what to expect when it is live.

Earl Howe: That is a very constructive suggestion from my noble friend. I will take it away with me.

Baroness Sherlock: My Lords, that had better not happen too soon, though, because there might be nothing to see for a while. I am very grateful to the Minister for his thorough response, even if some of it disappoints me. I am grateful to him for taking his time to go through the questions.

My noble friend Lady Drake, as always, expresses it more cogently and thoroughly than I do, but my problem is that the Minister is essentially saying that the Government are committed to MaPS producing a dashboard. This is not the same as the Government saying that they will ensure that there is a dashboard. My worry is that I do not want to see this rushed. I have been an adviser in government myself, when tax credits were being developed. I realise the problems that come out and I know only too well that when you develop new computer systems, you do not know what will happen until you press the button on the first day. However, my worry is that that is precisely what could happen here. If the Government are determined to allow commercial dashboards to go live whenever they are ready, what if MaPS then takes years to get it right? What if it never does? What if MaPS itself fails on another front? We could end up never having a public dashboard, in which case the Minister would not have broken his word but none the less a public dashboard would never have come to pass. If it were in the Bill there would be an obligation on Ministers.

I take my noble friend Lady Drake's point about new incumbents. I have been in my brief since I think 2011 or 2012. I think that I am on my seventh Secretary of State. Given that one of them was there for quite a long time, there has been an awful lot of turnover since. It is not impossible that a new Secretary of State could come in and take a radically different view from their predecessor, as they have in my time, on some aspect of policy. It is not really the kind of assurance that we would want.

My worry is that the Minister has not addressed one point: if the Government believe that there should be a public dashboard, but are relaxed about the fact there could be a long period of time where consumers would be able to access their data, which the Government had mandated the release of, through only a commercial dashboard, why do they think that there should be a public dashboard at all? Theoretically, there could be five years between the commercial dashboard and the MaPS dashboard. If the Government think that it does not matter that there will be no public dashboard for that interim period, why do they think that it matters at all?

My final point is about the fact that the Minister thinks that there are no risks at all. I would like to hear this conversation between him and the noble Baroness, Lady Altmann, but I think it should take place in this Committee. The Minister defended the skeletal nature of the Bill. We will come back to this in the next group on Monday, but the Constitution Committee was quite explicit in saying that the Government's defence that the Bill is very complex, that we have to get on with it and that we should not worry because the regulations will be affirmative, is not adequate or an excuse for drafting the Bill in this way. Part 4 is almost a skeleton.

The combination of all this is that the Government are saying, "There should be a dashboard. We cannot tell you when the public dashboard will be up. Don't worry, it'll be fine because we will regulate it. We can't tell you who will regulate it, or how, or any of the circumstances. We can't even tell you how we'll make sure the risks don't come to pass". The Minister says that the information will be the same, but can he tell me whether it will be displayed in the same way, who will decide what the information will be or what the time periods will be? None of these questions has yet been answered. We will come back to them with our next amendment.

The Minister is asking the Committee to take a huge amount on trust when we have literally no idea what the dashboard will look like. Yet, somehow, we are just meant to say that it will be fine and the risks are fine. I spent 10 years on the board of the Financial Ombudsman Service. Every year we had to read a selection of case files. I have a pretty long experience of all the things that have gone wrong in sectors where the Government were confident they were well regulated and controlled, and where things could never possibly go wrong. My goodness, they have gone wrong in ways one could never have imagined when the regulations were being framed.

I am glad that the Minister is confident that there are low risks. I do not share his confidence, but maybe I am an old cynic. I would be interested if he could respond in particular to the point about why there needs to be a public dashboard at all if the Government do not mind whether there is not one for as long as it takes for MaPS to catch up. Can he answer that point?

Earl Howe: I believe I am right in saying that while your Lordships' Delegated Powers Committee had some trenchant things to say about the delegated powers in the rest of the Bill, it felt pretty relaxed about the powers in Part 4, because it recognised that it was absolutely necessary to have the kind of flexibility I referred to. We must take it that the committee

looked at these matters in some depth. Clearly, it did not feel constrained in criticising the nature of the powers in other parts of the Bill. I think the delegated powers here are necessary. I do not think we should be frightened of them, but I can see that the accumulation of them might appear off-putting to noble Lords.

Baroness Drake: I am conscious that I was a member of the Constitution Committee. The issue is not that simply the Government do or do not want flexibility. The issue is that such extensive delegated powers are being taken in the absence of significant areas of policy being settled. That is not the correct way to approach legislation.

Earl Howe: I hear what the noble Baroness says. It is not that the policy is not settled but that the implementation of the policy is not settled. We know broadly what we want to achieve but the detail has yet to be worked through; including the functionality and the way that the liability model will form. We do not know all the answers; we know some of the answers, but not all of them. I do not accept that the policy as such is a blank sheet of paper.

Baroness Drake: I beg leave to withdraw my amendment.

Amendment 37 withdrawn.

Committee adjourned at 7.41 pm.